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WHEN: Tuesday, May 12, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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

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

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 176

Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards

AGENCY: Office of Federal Financial Management, Office of Management and Budget (OMB).

ACTION: Interim final guidance.

SUMMARY: The Office of Federal Financial Management (OFFM) is establishing Governmentwide guidance and standard award terms for agencies to include in financial assistance awards (namely, grants, cooperative agreements, and loans) as part of their implementation of sections 1512, and 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). This guidance does not cover all award terms that may be needed on financial assistance awards funded directly or assisted by the Federal Government under the Recovery Act. The focus of this guidance is on implementing Recovery Act provisions that may require greater clarification in order to foster consistent application across the Federal Government. Under the interim final guidance, agencies would use the standard award terms in their financial assistance awards to require recipients and subrecipients (first-tier that are not individuals) to maintain current registrations in the Central Contractor Registration (CCR) database; to require recipients to report quarterly on project or activity status, subgrant and subcontract information; to notify recipients of the domestic sourcing (''Buy American'') requirements that apply to certain iron, steel and manufactured goods; to notify recipients of the wage rate requirements that apply to certain projects; and to ensure proper accounting and reporting of Recovery Act expenditures in single audits.

DATES: This document is effective April 23, 2009. To be considered in preparation of the final guidance, comments on the interim final guidance must be received by no later than June 22, 2009.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Comments may be sent to via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''Recovery Act Guidance'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

Electronic mail comments may also be submitted to: Marguerite Pridgen at *mpridgen@omb.eop.gov.* Please include ''Recovery Act Guidance'' in the subject line and the full body of your comments in the text of the electronic message and not as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–3952.

Comments may be mailed to Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

All responses will be summarized and included in the request for OMB approval.

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

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 1512(c) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, hereafter referred to as ''the Recovery Act'' or ''the Act'') requires, as a condition of receipt of funds, quarterly reporting on the use of funds. The data elements proposed for reporting the information described in section 1512(c) were published in the **Federal Register** on April 1, 2009 [74 FR 14824]. An entity that receives assistance funding under the Recovery Act must report information including, but not limited to,

i. The total amount of recovery funds received from that agency;

ii. The amount of recovery funds received that were expended or obligated to projects or activities; and

iii. A detailed list of all projects or activities for which recovery funds were expended or obligated, including—

1. The name of the project or activity;

2. A description of the project or activity;

3. An evaluation of the completion status of the project or activity;

4. An estimate of the number of jobs created and the number of jobs retained by the project or activity; and

5. For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

iv. Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109–282, hereafter referred to as ''the Transparency Act''), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget. The Transparency Act identifies specific data elements that the Web site (USAspending.gov) must include for each Federal award and authorizes OMB to specify additional elements for other relevant information. A 2008 amendment to the Transparency Act called the ''Government Funding Transparency Act of 2008'' (Pub. L. 110–252) added a requirement to collect

compensation information on certain chief executive officers (CEOs) of the recipient and subrecipient entity. An entity that receives assistance funding under the Recovery Act must report information required under the Transparency Act including, but not limited to,

1. The name of the entity receiving the award;
2. The amount of the award;
3. The transaction type;
4. The funding agency;
5. The Catalog of Federal Domestic Assistance number;
6. The program source;
7. The location of the entity receiving the award, including four data elements for the city, State, Congressional district, and country;
8. The location of the primary place of performance under the award, including four data elements for the city, State, Congressional district, and country;
9. A unique identifier of the entity receiving the award;
10. A unique identifier of the parent entity of the recipient, should the recipient be owned by another entity; and
11. The names and total compensation of the five most highly compensated officers of the company if it received (1) 80% or more of its annual gross revenues in Federal awards; and (2) $25M or more in annual gross revenue from Federal awards.

B. Section 1512(h) of the Recovery Act requires recipients of Recovery Act funds, including those receiving funds directly from the Federal Government, to register in the Central Contractor Registration (CCR) database at *http://www.ccr.gov.* Because recipients must report information on their first-tier contracts and awards, 2 CFR part 176 would establish a requirement for subrecipient registration in the CCR as a way to help ensure consistent reporting of data about each entity and thereby make the data more useful to the public. Without the requirement, multiple recipients doing business with the same entity may use different variations of the entity's name, address, or parent organization when they each report on their awards to the entity. It should be noted that in order to register in CCR, a valid Data Universal Numbering System (DUNS) Number is required.

C. Section 1605 of the Recovery Act requires that projects, funded by the Recovery Act, for the construction, alteration, maintenance, or repair of a public building or public work use American iron, steel, and manufactured goods in the project unless one of the specified exemptions applies. The Act provides that this requirement be applied in a manner consistent with U.S. obligations under international agreements. Definitions of ''manufactured good,'' ''public building and public work,'' and other terms as they pertain to the Buy American guidance in 2 CFR part 176 are found in § 176.140 and § 176.160.

D. Section 1606 of the Recovery Act requires the payment of Davis-Bacon Act (40 U.S.C. 31) wage rates to ''laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government'' pursuant to the Recovery Act.

E. To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 2 CFR 215.21, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and other Non-Profit Organizations'' and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. Guidance and an award term are provided in part 176 to help ensure that recipients understand their responsibilities with respect to tracking, accounting and reporting transactions during the award and in preparing audit documentation and reports in accordance with OMB Circular A–133, if applicable.

II. Next Steps

We will consider all comments received on the interim final version of the OMB guidance as we develop the final guidance. Federal agencies that award grants, cooperative agreements, and other financial assistance awards will immediately implement this interim final guidance through the appropriate award terms. The award terms on awards made while this interim final version of this guidance is in effect do not need to be modified to reflect any modified award terms in the final guidance unless specifically required in the final guidance.

List of Subjects in 2 CFR Part 176

Assistance awards, Authorized agency action official, Award officials, Buy American, Classified, Davis-Bacon Act, Grants, Cooperative agreements, Loans, Recovery Act, Wage rate.

Danny Werfel,

Deputy Controller.

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR chapter I by adding part 176 to read as follows:

PART 176—AWARD TERMS FOR ASSISTANCE AGREEMENTS THAT INCLUDE FUNDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUBLIC LAW 111–5

Sec.
176.10 Purpose of this part.
176.20 Agency responsibilities (general).
176.30 Definitions.

Subpart A—Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009

176.40 Procedure.
176.50 Award term—Reporting and registration requirements under section 1512 of the Recovery Act.

Subpart B—Buy American Requirement Under Section 1605 of the American Recovery and Reinvestment Act of 2009

176.60 Statutory requirement.
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176.160 Award term—Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.
176.170 Notice of Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.

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Subpart C—Wage Rate Requirements Under Section 1606 of the American Recovery and Reinvestment Act of 2009

176.180 Procedure.

176.190 Award term—Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act of 2009.

Subpart D—Single Audit Information for Recipients of Recovery Act Funds

176.200 Procedure.
176.210 Award term—Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients.

Authority: American Recovery and Reinvestment Act of 2009, Public Law 111–5; Federal Funding Accountability and Transparency Act of 2006, (Pub. L. 109–282), as amended.

§ 176.10 Purpose of this part.

This part establishes Federal Governmentwide award terms for financial assistance awards, namely, grants, cooperative agreements, and loans, to implement the cross-cutting requirements of the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (Recovery Act). These requirements are cross-cutting in that they apply to more than one agency's awards.

§ 176.20 Agency responsibilities (general).

(a) In any assistance award funded in whole or in part by the Recovery Act, the award official shall indicate that the award is being made under the Recovery Act, and indicate what projects and/or activities are being funded under the Recovery Act. This requirement applies whenever Recovery Act funds are used, regardless of the assistance type.

(b) To maximize transparency of Recovery Act funds required for reporting by the assistance recipient, the award official shall consider structuring assistance awards to allow for separately tracking Recovery Act funds.

(c) Award officials shall ensure that recipients comply with the Recovery Act requirements of Subpart A. If the recipient fails to comply with the reporting requirements or other award terms, the award official or other authorized agency action official shall take the appropriate enforcement or termination action in accordance with 2 CFR 215.62 or the agency's implementation of the OMB Circular A–102 grants management common rule. OMB Circular A–102 is available at *http://www.whitehouse.gov/omb/circulars/a102/a102.html.*

(d) The award official shall make the recipient's failure to comply with the reporting requirements a part of the recipient's performance record.

§ 176.30 Definitions.

As used in this part—

Award means any grant, cooperative agreement or loan made with Recovery Act funds. Award official means a person with the authority to enter into, administer, and/or terminate financial assistance awards and make related determinations and findings.

Classified or *''classified information''* means any knowledge that can be communicated or any documentary material, regardless of its physical form or characteristics, that—

(1)(i) Is owned by, is produced by or for, or is under the control of the United States Government; or

(ii) Has been classified by the Department of Energy as privately generated restricted data following the procedures in 10 CFR 1045.21; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17, 1995, or classified in accordance with the Atomic Energy Act of 1954.

Recipient means any entity other than an individual that receives Recovery Act funds in the form of a grant, cooperative agreement or loan directly from the Federal Government.

Recovery funds or Recovery Act funds are funds made available through the appropriations of the American Recovery and Reinvestment Act of 2009, Public Law 111–5.

Subaward means—

(1) A legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible subrecipient;

(2) The term does not include the recipient's procurement of property and services needed to carry out the project or program (for further explanation, see §____.210 of the attachment to OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations''). OMB Circular A–133 is available at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.*

(3) A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

Subcontract means a legal instrument used by a recipient for procurement of property and services needed to carry out the project or program.

Subrecipient or *Subawardee* means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in §____.210 of OMB Circular A–133.

Subpart A—Reporting and Registration Requirements Under Section 1512 of the American Recovery and Reinvestment Act of 2009

§ 176.40 Procedure.

The award official shall insert the standard award term in this Subpart in all awards funded in whole or in part with Recovery Act funds, except for those that are classified, awarded to individuals, or awarded under mandatory and entitlement programs, except as specifically required by OMB, or expressly exempted from the reporting requirement in the Recovery Act.

§ 176.50 Award term—Reporting and registration requirements under section 1512 of the Recovery Act.

Agencies are responsible for ensuring that their recipients report information required under the Recovery Act in a timely manner. The following award term shall be used by agencies to implement the recipient reporting and registration requirements in section 1512:

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (*http://www.ccr.gov*) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (*http://www.dnb.com*) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at *http://www.FederalReporting.gov* and ensure that any information that is pre-filled is corrected or updated as needed.

Subpart B—Buy American Requirement Under Section 1605 of the American Recovery and Reinvestment Act of 2009

§ 176.60 Statutory requirement.

Section 1605 of the Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver under three circumstances:

(a) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(b) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or

(c) Applying the domestic preference would be inconsistent with the public interest.

§ 176.70 Policy.

Except as provided in § 176.80 or § 176.90—

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work (see definitions at §§ 176.140 and 176.160) unless—

(1) The public building or public work is located in the United States; and

(2) All of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.

(i) Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

(ii) There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

(b) Paragraph (a) of this section shall not apply where the Recovery Act requires the application of alternative Buy American requirements for iron, steel, and manufactured goods.

§ 176.80 Exceptions.

(a) When one of the following exceptions applies in a case or category of cases, the award official may allow the recipient to use foreign iron, steel and/or manufactured goods in the project without regard to the restrictions of section 1605 of the Recovery Act:

(1) *Nonavailability.* The head of the Federal department or agency may determine that the iron, steel or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 48 CFR 25.104(a) and the procedures at 48 CFR 25.103(b)(1) also apply if any of those articles are manufactured goods needed in the project.

(2) *Unreasonable cost.* The head of the Federal department or agency may determine that the cost of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25 percent in accordance with § 176.110.

(3) *Inconsistent with public interest.* The head of the Federal department or agency may determine that application of the restrictions of section 1605 of the Recovery Act would be inconsistent with the public interest.

(b) When a determination is made for any of the reasons stated in this section that certain foreign iron, steel, and/or manufactured goods may be used—

(1) The award official shall list the excepted materials in the award; and

(2) The head of the Federal department or agency shall publish a notice in the **Federal Register** within two weeks after the determination is made, unless the item has already been determined to be domestically nonavailable. A list of items that are not domestically available is at 48 CFR 25.104(a). The **Federal Register** notice or information from the notice may be posted by OMB to Recovery.gov. The notice shall include—

(i) The title ''Buy American Exception under the American Recovery and Reinvestment Act of 2009'';

(ii) The dollar value and brief description of the project; and

(iii) A detailed written justification as to why the restriction is being waived.

§ 176.90 Non-application to acquisitions covered under international agreements.

Acquisitions covered by international agreements. Section 1605(d) of the Recovery Act provides that the Buy American requirement in section 1605 shall be applied in a manner consistent with U.S. obligations under international agreements.

(a) The Buy American requirement set out in § 176.70 shall not be applied where the iron, steel, or manufactured goods used in the project are from a Party to an international agreement, listed in paragraph (b)(2) of this section, and the recipient is required under an international agreement, described in the appendix to this subpart, to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of $7,443,000 or more and projects that are not specifically excluded from the application of those agreements.

(b) The international agreements that obligate recipients that are covered under an international agreement to treat the goods and services of a Party the same as domestic goods and services and the respective Parties to the agreements are:

(1) The World Trade Organization Government Procurement Agreement (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);

(2) The following Free Trade Agreements:

(i) Dominican Republic-Central America-United States Free Trade Agreement (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua);

(ii) North American Free Trade Agreement (NAFTA) (Canada and Mexico);

(iii) United States-Australia Free Trade Agreement;

(iv) United States-Bahrain Free Trade Agreement;

(v) United States-Chile Free Trade Agreement;

(vi) United States-Israel Free Trade Agreement;

(vii) United States-Morocco Free Trade Agreement;

(viii) United States-Oman Free Trade Agreement;

(ix) United States-Peru Trade Promotion Agreement; and

(x) United States-Singapore Free Trade Agreement.

(3) United States-European Communities Exchange of Letters (May 15, 1995): Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark,

Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

§ 176.100 Timely determination concerning the inapplicability of section 1605 of the Recovery Act.

(a) The head of the Federal department or agency involved may make a determination regarding inapplicability of section 1605 to a particular case or to a category of cases.

(b) Before Recovery Act funds are awarded by the Federal agency or obligated by the recipient for a project for the construction, alteration, maintenance, or repair of a public building or public work, an applicant or recipient may request from the award official a determination concerning the inapplicability of section 1605 of the Recovery Act for specifically identified items.

(c) The time for submitting the request and the information and supporting data that must be included in the request are to be specified in the agency's and recipient's request for applications and/or proposals, and as appropriate, in other written communications. The content of those communications should be consistent with the notice in § 176.150 or § 176.170, whichever applies.

(d) The award official must evaluate all requests based on the information provided and may supplement this information with other readily available information.

(e) In making a determination based on the increased cost to the project of using domestic iron, steel, and/or manufactured goods, the award official must compare the total estimated cost of the project using foreign iron, steel and/or relevant manufactured goods to the estimated cost if all domestic iron, steel, and/or relevant manufactured goods were used. If use of domestic iron, steel, and/or relevant manufactured goods would increase the cost of the overall project by more than 25 percent, then the award official shall determine that the cost of the domestic iron, steel, and/or relevant manufactured goods is unreasonable.

§ 176.110 Evaluating proposals of foreign iron, steel, and/or manufactured goods.

(a) If the award official receives a request for an exception based on the cost of certain domestic iron, steel, and/or manufactured goods being unreasonable, in accordance with § 176.80, then the award official shall apply evaluation factors to the proposal to use such foreign iron, steel, and/or manufactured goods as follows:

(1) Use an evaluation factor of 25 percent, applied to the total estimated cost of the project, if the foreign iron, steel, and/or manufactured goods are to be used in the project based on an exception for unreasonable cost requested by the applicant.

(2) Total evaluated cost = project cost estimate + (.25 × project cost estimate, if paragraph (a)(1) of this section applies).

(b) Applicants or recipients also may submit alternate proposals based on use of equivalent domestic iron, steel, and/or manufactured goods to avoid possible denial of Recovery Act funding for the proposal if the Federal Government determines that an exception permitting use of the foreign item(s) does not apply.

(c) If the award official makes an award to an applicant that proposed foreign iron, steel, and/or manufactured goods not listed in the applicable notice in the request for applications or proposals, then the award official must add the excepted materials to the list in the award term.

§ 176.120 Determinations on late requests.

(a) If a recipient requests a determination regarding the inapplicability of section 1605 of the Recovery Act after obligating Recovery Act funds for a project for construction, alteration, maintenance, or repair (late request), the recipient must explain why it could not request the determination before making the obligation or why the need for such determination otherwise was not reasonably foreseeable. If the award official concludes that the recipient should have made the request before making the obligation, the award official may deny the request.

(b) The award official must base evaluation of any late request for a determination regarding the inapplicability of section 1605 of the Recovery Act on information required by § 176.150(c) and (d) or § 176.170(c) and (d) and/or other readily available information.

(c) If a determination, under § 176.80 is made after Recovery Act funds were obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official must amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis of the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or manufactured goods. When the basis for the exception is the unreasonable cost of domestic iron, steel, and/or manufactured goods the award official shall adjust the award amount or the budget, as appropriate, by at least the differential established in § 176.110(a).

§ 176.130 Noncompliance.

The award official must—

(a) Review allegations of violations of section 1605 of the Recovery Act;

(b) Unless fraud is suspected, notify the recipient of the apparent unauthorized use of foreign iron, steel, and/or manufactured goods and request a reply, to include proposed corrective action; and

(c) If the review reveals that a recipient or subrecipient has used foreign iron, steel, and/or manufactured goods without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of section 1605 of the Recovery Act in accordance with § 176.120.

(2) Consider requiring the removal and replacement of the unauthorized foreign iron, steel, and/or manufactured goods.

(3) If removal and replacement of foreign iron, steel, and/or manufactured goods used in a public building or a public work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Federal Government, the award official may determine in writing that the foreign iron, steel, and/or manufactured goods need not be removed and replaced. A determination to retain foreign iron, steel, and/or manufactured goods does not constitute a determination that an exception to section 1605 of the Recovery Act applies, and this should be stated in the determination. Further, a determination to retain foreign iron, steel, and/or manufactured goods does not affect the Federal Government's right to reduce the amount of the award by the cost of the steel, iron, or manufactured goods that are used in the project or to take enforcement or termination action in accordance with the agency's grants management regulations.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate remedies, such as withholding cash payments pending correction of the deficiency, suspending or terminating the award, and withholding further awards for the project. Also consider preparing and

forwarding a report to the agency suspending or debarring official in accordance with the agency's debarment rule implementing 2 CFR part 180. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

§ 176.140 Award term—Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the award term described in the following paragraphs:

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

_____

[*Award official to list applicable excepted materials or indicate ''none''*]

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON

Description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]
*[*Include all delivery costs to the construction site.]*

§ 176.150 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and do not involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the notice described in the following paragraphs in their solicitations:

(a) *Definitions.* Manufactured good, public building and public work, and steel, as used in this notice, are defined in the 2 CFR 176.140.

(b) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by paragraphs at 2 CFR 176.140(c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.* If the Federal Government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost, if foreign iron, steel, or manufactured goods are used in the project based on unreasonable cost of comparable manufactured domestic iron, steel, and/or manufactured goods.

(d) *Alternate project proposals.* (1) When a project proposal includes foreign iron, steel, and/or manufactured goods not listed by the Federal Government at 2 CFR 176.140(b)(2), the applicant also may submit an alternate proposal based on use of equivalent domestic iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with 2 CFR 176.140(c) and (d) for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.140(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic iron, steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic items.

§ 176.160 Award term—Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that involves iron, steel, and/or manufactured goods materials covered under international agreements, the agency shall use the award term described in the following paragraphs:

(a) *Definitions.* As used in this award term and condition—

Designated country—(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods—(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good—(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel

and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and *public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of $7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

[*Award official to list applicable excepted materials or indicate ''none''*]

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods.. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON

Description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]
*[*Include all delivery costs to the construction site.]*

§ 176.170 Notice of Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the notice described in the following paragraphs in the solicitation:

(a) *Definitions. Designated country iron, steel, and/or manufactured goods, foreign iron, steel, and/or manufactured good, manufactured good, public building* and *public work*, and *steel*, as used in this provision, are defined in 2 CFR 176.160(a).

(b) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by 2 CFR 176.160 (c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.* If the Federal Government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost if foreign iron, steel, or manufactured goods are used based on unreasonable cost of comparable domestic iron, steel, or manufactured goods.

(d) *Alternate project proposals.* (1) When a project proposal includes foreign iron, steel, and/or manufactured goods, other than designated country iron, steel, and/or manufactured goods, that are not listed by the Federal Government in this Buy American notice in the request for applications or proposals, the applicant may submit an alternate proposal based on use of equivalent domestic or designated country iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with paragraphs 2 CFR 176.160(c) and (d) for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.160(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic or designated country iron, steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic or designated country items.

Appendix to Subpart B of Part 176—U.S. States, Other Sub-Federal Entities, and Other Entities Subject to U.S. Obligations Under International Agreements

States	Entities covered	Exclusions	Relevant international agreements
Arizona	Executive branch agencies		—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Arkansas	Executive branch agencies, including universities but excluding the Office of Fish and Game.	construction services	—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —US.-Peru TPA. —U.S.-Singapore FTA.
California	Executive branch agencies		—WTO GPA (except Canada). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Colorado	Executive branch agencies		—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA.

States	Entities covered	Exclusions	Relevant international agreements
Connecticut	—Department of Administrative Services. —Department of Transportation. —Department of Public Works. —Constituent Units of Higher Education.		—U.S.-Singapore FTA. —WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Delaware	—Administrative Services (Central Procurement Agency). —State Universities. —State Colleges.	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —DR–CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Florida	Executive branch agencies	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Georgia	—Department of Administrative Services —Georgia Technology Authority.	beef; compost; mulch	—U.S.-Australia FTA.
Hawaii	Department of Accounting and General Services.	software developed in the state; construction.	—WTO GPA (except Canada). —DR–CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Idaho	Central Procurement Agency (including all colleges and universities subject to central purchasing oversight).		—WTO GPA (except Canada). —DR–CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Illinois	—Department of Central Management Services.	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA. —U.S.-EC Exchange of Letters (applies to EC Member States for procurement not covered by WTO GPA and only where the state considers out-of-state suppliers).
Iowa	—Department of General Services —Department of Transportation. —Board of Regents' Institutions (universities).	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Kansas	Executive branch agencies	construction services; automobiles; aircraft.	—WTO GPA (except Canada). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Kentucky	Division of Purchases, Finance and Administration Cabinet.	construction projects	—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Louisiana	Executive branch agencies		—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.

States	Entities covered	Exclusions	Relevant international agreements
Maine	—Department of Administrative and Financial Services. —Bureau of General Services (covering state government agencies and school construction). —Department of Transportation.	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Maryland	—Office of the Treasury. —Department of the Environment. —Department of General Services. —Department of Housing and Community Development. —Department of Human Resources. —Department of Licensing and Regulation. —Department of Natural Resources. —Department of Public Safety and Correctional Services. —Department of Personnel. —Department of Transportation.	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Massachusetts	—Executive Office for Administration and Finance. —Executive Office of Communities and Development. —Executive Office of Consumer Affairs. —Executive Office of Economic Affairs. —Executive Office of Education. —Executive Office of Elder Affairs. —Executive Office of Environmental Affairs. —Executive Office of Health and Human Service. —Executive Office of Labor. —Executive Office of Public Safety. —Executive Office of Transportation and Construction.		—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Michigan	Department of Management and Budget.	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Minnesota	Executive branch agencies		—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Mississippi	Department of Finance and Administration.	services	—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Missouri	—Office of Administration —Division of Purchasing and Materials Management.		—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Montana	Executive branch agencies	goods	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Nebraska	Central Procurement Agency		—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
New Hampshire	Central Procurement Agency	construction-grade steel (including requirements on subcontracts), motor vehicles; coal.	—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.

States	Entities covered	Exclusions	Relevant international agreements
New York	—State agencies. —State university system. —Public authorities and public benefit corporations, with the exception of those entities with multi-state mandates.	construction-grade steel (including requirements on subcontracts); motor vehicles; coal; transit cars, buses and related equipment.	—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
North Dakota			—U.S.-EC Exchange of Letters (applies to EC Member States and only where the state considers out-of-state suppliers).
Oklahoma	Department of Central Services and all state agencies and departments subject to the Oklahoma Central Purchasing Act.	construction services; construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Oregon	Department of Administrative Services.		—WTO GPA (except Canada). —DR–CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Pennsylvania	Executive branch agencies, including: —Governor's Office. —Department of the Auditor General. —Treasury Department. —Department of Agriculture. —Department of Banking. —Pennsylvania Securities Commission. —Department of Health. —Department of Transportation. —Insurance Department. —Department of Aging. —Department of Correction. —Department of Labor and Industry. —Department of Military Affairs. —Office of Attorney General. —Department of General Services. —Department of Education. —Public Utility Commission. —Department of Revenue. —Department of State. —Pennsylvania State Police. —Department of Public Welfare. —Fish Commission. —Game Commission. —Department of Commerce. —Board of Probation and Parole. —Liquor Control Board. —Milk Marketing Board. —Lieutenant Governor's Office. —Department of Community Affairs. —Pennsylvania Historical and Museum Commission. —Pennsylvania Emergency Management Agency. —State Civil Service Commission. —Pennsylvania Public Television Network. —Department of Environmental Resources. —State Tax Equalization Board. —Department of Public Welfare. —State Employees' Retirement System. —Pennsylvania Municipal Retirement Board.	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.

States	Entities covered	Exclusions	Relevant international agreements
	—Public School Employees' Retirement System. —Pennsylvania Crime Commission. —Executive Offices.		
Rhode Island	Executive branch agencies	boats, automobiles, buses and related equipment.	—WTO GPA (except Canada). —DR–CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
South Dakota	Central Procuring Agency (including universities and penal institutions).	beef	—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Tennessee	Executive branch agencies	Services; construction	—WTO GPA (except Canada). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Texas	Texas Building and Procurement Commission.		—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Utah	Executive branch agencies		—WTO GPA (except Canada). —DR–CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Vermont	Executive branch agencies		—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Washington	Executive branch agencies, including: —General Administration. —Department of Transportation. —State Universities.	fuel; paper products; boats; ships; and vessels.	—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
West Virginia			—U.S.-EC Exchange of Letters (applies to EC Member States and only where the state considers out-of-state suppliers).
Wisconsin	Executive branch agencies, including: —Department of Administration. —State Correctional Institutions. —Department of Development. —Educational Communications Board. —Department of Employment Relations. —State Historical Society. —Department of Health and Social Services. —Insurance Commissioner. —Department of Justice. —Lottery Board. —Department of Natural Resources. —Administration for Public Instruction.		—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.

States	Entities covered	Exclusions	Relevant international agreements
Wyoming	—Racing Board. —Department of Revenue. —State Fair Park Board. —Department of Transportation. —State University System. —Procurement Services Division —Wyoming Department of Transportation. —University of Wyoming	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —DR–CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Other sub-federal entities	**Entities covered**	**Exclusions**	**Relevant international agreements**
Puerto Rico	—Department of State —Department of Justice. —Department of the Treasury. —Department of Economic Development and Commerce. —Department of Labor and Human Resources. —Department of Natural and Environmental Resources. —Department of Consumer Affairs. —Department of Sports and Recreation.	construction services	—DR–CAFTA. —U.S.-Peru TPA.
Port Authority of New York and New Jersey.		restrictions attached to Federal funds for airport projects; maintenance, repair and operating materials and supplies.	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Port of Baltimore		restrictions attached to Federal funds for airport projects.	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
New York Power Authority		restrictions attached to Federal funds for airport projects; conditions specified for the State of New York.	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Massachusetts Port Authority			U.S.-EC Exchange of Letters (applies to EC Member States and only where the Port Authority considers out-of-state suppliers).
Boston, Chicago, Dallas, Detroit, Indianapolis, Nashville, and San Antonio.			U.S.-EC Exchange of Letters (only applies to EC Member States and where the city considers out-of-city suppliers).
Other entities	**Entities covered**	**Exclusions**	**Relevant international agreements**
Rural Utilities Service (waiver of Buy American restriction on financing for all power generation projects).			—WTO GPA. —DR–CAFTA. —NAFTA. —U.S.-Australia FTA. —U.S.-Bahrain FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Oman FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Rural Utilities Service (waiver of Buy American restriction on financing for telecommunications projects).			—NAFTA. —U.S.-Israel FTA.

General Exceptions: The following restrictions and exceptions are excluded from U.S. obligations under international agreements:

1. The restrictions attached to Federal funds to states for mass transit and highway projects.

2. Dredging.

The World Trade Organization Government Procurement Agreement (WTO GPA) Parties: Aruba, Austria, Canada, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania,

Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom.

The Free Trade Agreements and the respective Parties to the agreements are:

(1) Dominican Republic-Central America-United States Free Trade Agreement (DR–CAFTA): Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua;

(2) North American Free Trade Agreement (NAFTA): Canada and Mexico;

(3) United States-Australia Free Trade Agreement (U.S.-Australia FTA);

(4) United States-Bahrain Free Trade Agreement (U.S.-Bahrain FTA);

(5) United States-Chile Free Trade Agreement (U.S.-Chile FTA);

(6) United States-Israel Free Trade Agreement (U.S.-Israel FTA);

(7) United States-Morocco Free Trade Agreement (U.S.-Morocco FTA);

(8) United States-Oman Free Trade Agreement (U.S.-Oman FTA);

(9) United States-Peru Trade Promotion Agreement (U.S.-Peru TPA); and

(10) United States-Singapore Free Trade Agreement (U.S.-Singapore FTA).

United States-European Communities Exchange of Letters (May 30, 1995) (U.S.-EC Exchange of Letters) applies to EC Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Subpart C—Wage Rate Requirements Under Section 1606 of the American Recovery and Reinvestment Act of 2009

§ 176.180 Procedure.

The award official shall insert the standard award term in this Subpart in all awards funded in whole or in part with Recovery Act funds.

§ 176.190 Award term—Wage Rate Requirements under Section 1606 of the Recovery Act.

When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use the award term described in the following paragraphs:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

Subpart D—Single Audit Information for Recipients of Recovery Act Funds

§ 176.200 Procedure.

The award official shall insert the standard award term in this Subpart in all awards funded in whole or in part with Recovery Act funds.

§ 176.210 Award term—Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients.

The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures:

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 ''Uniform Administrative Requirements for Grants and Agreements'' and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is available at *http://www.whitehouse.gov/omb/circulars/a102/a102.html.*

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix ''ARRA-'' in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

[FR Doc. E9–9073 Filed 4–22–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AO–192–A7; AMS–FV–07–0004; FV06–984–1 C]

Walnuts Grown in California; Order Amending Marketing Order No. 984; Correcting Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correcting amendment.

SUMMARY: The Agricultural Marketing Service published a final rule in the **Federal Register** on March 3, 2008 (73 FR 11328). The document implemented amendments to the California walnut marketing order. However, that document inadvertently omitted a change that would make the term of office for California Walnut Board (Board) members correspond with the time period prescribed for the Board's marketing year. This correcting amendment changes the term of office of Board members from July 1 through June 30 to September 1 through August 31 to correspond with the Board's marketing year.

DATES: *Effective Date:* April 24, 2009.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Northwest Marketing Field Office, Portland, Oregon 97204; Telephone: (503) 326–2724, Fax: (503) 326–2724, or e-mail: *Melissa.Schmaedick@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This document provides a correcting amendment to Marketing Order 984, as amended, (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.''

A Secretary's Decision and Referendum Order was published in the July 13, 2007, **Federal Register** (72 FR 38498). That document proposed several amendments to the order, including changing the term of office of Board members from July 1 through June 30, to September 1 through August 31 so the term of office would correspond with the proposed change to the marketing year defined in the order. That document also directed that a referendum be held among producers to determine if they supported the proposed changes. In referendum, producers approved the proposed changes.

A final rule establishing an Order Amending Marketing Order No. 984 was issued in the **Federal Register** on March 4, 2008 (73 FR 11328). That document included amendments approved by producers in referendum, but omitted the amendment to change the term of office of Board members. This action corrects the amended order to include the change that was omitted.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

■ Accordingly, 7 CFR part 984 is amended by making the following correcting amendment:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.36 is revised to read as follows:

§ 984.36 Term of office.

The term of office for Board members and their alternates shall be for a period of two years ending on August 31 of odd-numbered years, but they shall serve until their respective successors are selected and have qualified.

Dated: April 17, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–9289 Filed 4–22–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[Document Number AMS–FV–09–0019; FV–09–703]

Mushroom Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correcting amendment.

SUMMARY: The Agricultural Marketing Service (AMS) published a final rule in the **Federal Register** on July 20, 1992, on the Mushroom Promotion, Research, and Consumer Information Order (Order) referendum procedures. This rule established procedures for the conduct of a referendum to determine if producers and importers favored implementation of the Order. The procedures also apply to any subsequent referenda to amend, continue, or terminate the Order. As written, language to amend, suspend, or terminate the program was inadvertently omitted from the procedures. This document corrects that omission.

DATES: *Effective Date:* April 24, 2009.

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915 or (888) 720–9917 (toll free); or facsimile: (202) 205–2800; or e-mail: *Jeanette.Palmer@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This document corrects 7 CFR part 1209 by incorporating the words amendments, suspension, or termination for referendum procedures in the Order.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mushroom promotion, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 1209 is amended by making the following correcting amendment:

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

Subpart C—Procedure for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order

■ 1. The authority citation for 7 CFR part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101–6112; 7 U.S.C. 7401.

■ 2. Revise § 1209.300 to read as follows:

§ 1209.300 General.

A referendum to determine whether eligible producers and importers favor the amendment, continuation, suspension, or termination of the Mushroom Promotion, Research, and Consumer Information Order shall be conducted in accordance with these procedures.

Dated: April 17, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–9290 Filed 4–22–09; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–9027; 34–59776; 39–2465; IC–28698]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual to reflect updates to the EDGAR system. The revisions were made primarily to improve the Form D filing process. The revisions to the Filer Manual reflect changes within Volume I entitled EDGAR Filer Manual, Volume I: ''General Information,'' Version 6 (March 2009) and Volume II entitled EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 11 (March 2009). The updated manual will be incorporated by reference into the Code of Federal Regulations.

DATES: *Effective Date:* April 23, 2009. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of April 23, 2009.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, contact Rick Heroux, at (202) 551–8800; in the Office of Interactive Disclosure for questions concerning the XBRL/Interactive Data and the 2008 Mutual Fund Risk/Return Summary Taxonomy contact Jeffrey Naumann, Assistant Director of the Office of Interactive Disclosure, at (202) 551–5352; in the Division of Corporation Finance, for questions on saving a partially completed Form D filing, minor Form D screen changes, and the ability to attach a PDF document to a Form ID submission contact Cecile Peters, Chief, Office of Information Technology, at (202) 551–3600; Office of Disclosure Regulation, at (202) 551–6784; and for the removal of submission form types 497K1, 497K2, 497K3A and 497K3B, the new submission form type 497K or N–4 filings, contact Ruth Armfield Sanders, Senior Special Counsel, Office of Legal and Disclosure, at (202) 551–6989; and in the Division of Trading and Markets for the addition of the Office of Thrift Supervision (OTS) as a new Appropriate Regulatory Agency (ARA) on InfoPath Forms TA–1 and TA–1/A and the ability to use an older version of the InfoPath Forms TA–1 and TA–1/A after they have been updated contact Catherine Moore, Special Counsel, Office of Clearance and Settlement, at (202) 551–5710.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume I and Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink[2] and the Online Forms/XML Web site.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[3] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[4]

The EDGAR system was upgraded to Release 9.15.1 on March 16, 2009 to improve the Form D filing process by allowing filers to save a partially completed Form D filing offline to a designated location on their computer. The file generated can be used at a later date to complete the Form D submission. The Form D online application can be accessed from the EDGAR OnlineForms/XML Web site (*https://www.onlineforms.edgarfiling.sec.gov*) by logging in and selecting the ''File Form D'' link. Filers can also log in by clicking the ''Would you like to File a Form D?'' link from the EDGAR Portal Web site (*http://www.portal.edgarfiling.sec.gov*). Minor Form D screen elements and functionality will be updated. The changes will be as follows:

- Issuer(s) Information screen: Wording will be changed from ''Primary Filing Issuer's Information:'' to ''Issuer(s) Identified in the Filing''
- Item 1—Issuer's Identity: The order of the choices for ''Year of Incorporation/Organization'' will be changed so that ''Over Five Years Ago'' appears first and ''Yet to be Formed'' is last
- Item 1—Issuer's Identity: The ''Previous Name'' field will default to None
- Item 6—Federal Exemption(s) and Exclusion(s) Claimed: Help text will be displayed when the filer hovers over the ''Securities Act Section 4 (6)'' label with their mouse
- Item 6—Federal Exemption(s) and Exclusion(s) Claimed:—If the filer has chosen ''Investment Company Act Section 3(c)'' under Item 6, the system shall pre-populate the ''Pooled Investment Fund Interests'' option under Item 9. The filer will have the option of retaining the ''Investment Company Act Section 3(C)'' option if the ''Pooled Investment Fund Interests'' option is deselected.
- Item 12—Sales Compensation: The State(s) of Solicitation list will be limited to U.S. States and U.S. Territories
- Item 13—Offering and Sales Amounts: The ''Total Remaining to be Sold'' calculation will be performed before the filer leaves the screen
- Signature and Submission Screen: The ''I also am a duly authorized representative of the other identified issuer(s) in Item 1 above and authorized to sign on their behalf'' checkbox will only be visible when there is more that one issuer
- Signature and Submission Screen: The following language will be inserted directly above the signature block; ''For signature, type in the signer's name or other letters or characters adopted or authorized as the signer's signature.''

The online Form ID application process was updated to allow filers to attach a scanned notarized authentication PDF document to the Form ID submission as an alternative to faxing the document (does not apply to updating passcodes or converting to an electronic filer). Filers can complete a fillable PDF version of the Form ID document that can be found on the SEC's public Web site. Once completed, the fillable PDF can be printed, signed, notarized, scanned and attached to your electronic Form ID application. Filers can continue to fax their authentication document if desired.

A new EDGAR submission form type 497K was added for the Summary Prospectus effective March 31, 2009. It cannot be filed before that date. Also, effective March 31, 2009, EDGAR submission form types 497K1, 497K2, 497K3A and 497K3B will be removed as of close of business (5:30 PM EST) March 30, 2009.

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on April 16, 2009. *See* Release No. 33–9022 (April 8, 2009).

[2] This is the filer assistance software we provide filers filing on the EDGAR system.

[3] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[4] *See* Release No. 33–9022 (April 8, 2009) in which we implemented EDGAR Release 9.14. For a complete history of Filer Manual rules, please see the cites therein.

EDGAR will not accept XBRL submissions that include both EX–100 and EX–101 exhibit types within the same submission. XBRL submissions must use either EX–100 or EX–101. For investment companies submitting under the voluntary program, only document type EX–100 may be used.

N–4 filings will no longer be suspended if the company does not have an 811 file number and is adding series and classes in their N–4 filing.

Notices and orders related to form type 40–8F–2 will be added to EDGAR.

The Office of Thrift Supervision (OTS) was added as an Appropriate Regulatory Agency (ARA) on EDGARLite Forms TA–1 and TA–1/A. In addition TA–1 filers can use older versions of the EDGARLite Forms TA–1 and TA–1/A after they've been updated to a new version as long as the older form version contains all required fields. If the older form version does not include all of the required fields, the submission will be suspended and a version that contains all required fields must be used.

Revisions were also made to support the 2008 Mutual Fund Risk/Return Summary Taxonomy.

Chapter 6 (Interactive Data) of the EDGAR Filer Manual, Volume II—EDGAR Filing, has been updated to make clarifications to the instructions on XBRL/Interactive Data tagging.

EDGARLink submission template 3 was updated to add submission form type 497K. It is highly recommended that filers download, install, and use the new EDGARLink software and submission template to ensure that submissions will be processed successfully. Previous versions of the templates may not work properly. Notice of the update has previously been provided on the EDGAR Filing Web site and on the Commission's public Web site. The discrete updates are reflected on the EDGAR Filing Web site and in the updated Filer Manual, Volume II.

It is anticipated that the EDGAR system will be upgraded to Release 9.15.2 in the third quarter of fiscal year 2009. Within this minor release, EDGAR will be modified to support the validation of submission type SH–ER information table XML documents against the schema documents provided in the EDGAR Submission Type SH–ER Information Table XML Technical Specification posted on *http://www.sec.gov.info/edgar.shtml.*

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1520, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.*

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[5] It follows that the requirements of the Regulatory Flexibility Act[6] do not apply.

The effective date for the updated Filer Manual and the rule amendments is April 23, 2009. In accordance with the APA,[7] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 9.15.1 became available on March 16, 2009. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[8] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[9] Section 319 of the Trust Indenture Act of 1939,[10] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[11]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

[5] 5 U.S.C. 553(b).

[6] 5 U.S.C. 601–612.

[7] 5 U.S.C. 553(d)(3).

[8] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[9] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78o, 78w, and 78*ll.*

[10] 15 U.S.C. 77sss.

[11] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 6 (March 2009). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 11 (March 2009). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: ''N–SAR Supplement,'' Version 1 (September 2005). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1520, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

By the Commission.

Dated: April 16, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–9314 Filed 4–22–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 4 and 61

RIN 2900–AN35

Posttraumatic Stress Disorder Nomenclature Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations by making nonsubstantive changes. These changes are made for clarity and accuracy.

DATES: *Effective Date:* These amendments are effective April 23, 2009.

FOR FURTHER INFORMATION CONTACT: William F. Russo, Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7566. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA is amending its regulations which contain the term ''post-traumatic stress disorder'' by changing that term to ''posttraumatic stress disorder''. We have chosen to use the term ''posttraumatic stress disorder'' because it has become the standard term used by psychiatric professionals. *See Diagnostic and Statistical Manual of Mental Disorders* (4th ed.1994) (published by the American Psychiatric Association); *see also Merck Manual of Medical Information* (2nd edition 2003); and *Dorland's Illustrated Medical Dictionary* (31st edition 2007). No substantive changes are intended by these amendments.

Administrative Procedure Act

This final rule consists of nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

Unfunded Mandates

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment merely consists of nonsubstantive changes. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects

38 CFR Part 4

Disability benefits, Pensions, Veterans.

38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Approved: April 15, 2009.

William F. Russo,

Director of Regulations Management.

■ For the reasons set forth in the preamble, 38 CFR parts 4 and 61 are amended as follows:

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

§ 4.130 [Amended]

■ 2. Section 4.130 is amended by revising ''Post-traumatic'' to read ''Posttraumatic''.

Appendix B to Part 4—[Amended]

■ 3. Appendix B to Part 4 is amended by revising ''Post-traumatic'' to read ''Posttraumatic''.

Appendix C to Part 4—[Amended]

■ 4. Appendix C to Part 4 is amended by revising ''Post-traumatic'' to read ''Posttraumatic''.

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

■ 5. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note.

§ 61.1 [Amended]

■ 6. In § 61.1, the definition of ''Chronically mentally ill'' is amended by revising ''post-traumatic'' to read ''posttraumatic''.

[FR Doc. E9–8988 Filed 4–22–09; 8:45 am]

BILLING CODE P

POSTAL SERVICE

39 CFR Part 20

International Product and Price Changes; Correction

AGENCY: Postal Service ™

ACTION: Final rule; correction.

SUMMARY: The Postal Service published in the **Federal Register** of February 25, 2009, a document concerning international product and price changes for implementation in May 2009. Inadvertently, Exhibit 292.452 included in that document, did not include all destination countries and price groups. This document corrects the table.

DATES: This correction is effective and is applicable on May 11, 2009. We will implement this international price change concurrent with our domestic Mailing Services price change on May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Rick Klutts at 813–877–0372.

SUPPLEMENTARY INFORMATION: The Postal Service published a document in the **Federal Register** on February 25, 2009, (74 FR 8473) amending sub-section 292 of the *International Mail Manual* (IMM®). In FR doc. 36–8473, published in the **Federal Register** of February 25, 2009, (74 FR 8473) sub-section 292.452 was inadvertently published without a complete list of IPA destination countries. This amendment corrects Exhibit 292.452 published on February 25, 2009.

In rule FR Doc. E9–3962 published on February 25, 2009, (74 FR 8473) make the following correction. On pages 8477–8480, remove the current Exhibit 292.452 and insert the following exhibit.

EXHIBIT 292.452—IPA COUNTRY PRICE GROUPS AND FOREIGN EXCHANGE OFFICES

Price group	Country	Destination code	Exchange office name
15	Afghanistan	KBL	Kabul.
12	Albania	TIA	Tirana.
15	Algeria	ALG	Algiers.
11	Andorra.[1]		
15	Angola	LAD	Luanda.
13	Anguilla	AXA	The Valley.
13	Antigua and Barbuda	ANU	St. John's.
13	Argentina	BUE	Buenos Aires Avion.
15	Armenia	EVN	Yerevan.
13	Aruba	AUA	Oranjestad.
12	Ascension.[1]		
9	Australia.[2]	SYD	Sydney.
11	Austria	VIE	1000 Wien.
15	Azerbaijan	BAK	Baku.
11	Azores.[1]		
13	Bahamas	NAS	Nassau.
15	Bahrain	BAH	Bahrain.
15	Bangladesh	DAC	Dhaka Apt.
13	Barbados	BGI	Bridgetown.
12	Belarus	MSQ	Minsk PI 2.
11	Belgium	BRU	Brussels EMC.
13	Belize	BZE	Belize City.
15	Benin	COO	Cotonou.
13	Bermuda	BDA	Hamilton.
15	Bhutan.[1]		
13	Bolivia	LPB	La Paz.
13	Bonaire.[1,3]		
12	Bosnia and Herzegovina	SJJ	Sarajevo.
15	Botswana	GBE	Gabrone.
13	Brazil	RIO	Rio de Janeiro.
13	British Virgin Islands	RAD	Roadtown.
14	Brunei Darussalam	BWN	Bandar Seri Begawan.
12	Bulgaria	SOF	Sofia.
15	Burkina Faso	OUA	Ouagadougou.
15	Burma (Myanmar)	RGN	Rangoon.
15	Burundi	BJM	Bujumbura.
14	Cambodia	PNH	Phnom Penh.
15	Cameroon	DLA	Douala.
1	Canada	See 292.47—Canadian Labeling Information	
15	Cape Verde	RAI	Praia.
13	Cayman Islands	GCM	Grand Cayman.
15	Central African Republic	BGF	Bangui.
15	Chad	NDJ	N'Djamena.
13	Chile	SCL	Santiago Avion.
14	China	BJS	Beijing.
13	Colombia	BOG	Bogota Aeropuerto.
15	Comoros Islands.[1]		
15	Congo, Dem. Rep. of the	FIH	Kinshasa CTT.
15	Congo, Rep. of the	BZV	Brazzaville.
11	Cook Islands	RAR	Rarotonga.
5	Corsica.[1]		
13	Costa Rica	SJO	San Jose.
15	Cote d'Ivoire	ABJ	Abidjan.
12	Croatia	ZAG	Zagreb.
13	Cuba	HAV	Havana Avion.
13	Curacao[3]	CUR	Willemstad.
15	Cyprus	NIC	Nicosia.
12	Czech Republic	PRG	Prague 120.
11	Denmark	CPH	Copenhagen INC.
15	Djibouti	JIB	Djibouti.
13	Dominica	DOM	Roseau.
13	Dominican Republic	SDQ	Santo Domingo.

EXHIBIT 292.452—IPA COUNTRY PRICE GROUPS AND FOREIGN EXCHANGE OFFICES—Continued

Price group	Country	Destination code	Exchange office name
13	Ecuador	UIO	Quito.
15	Egypt	CAI	Cairo Int'l Airport.
13	El Salvador	SAL	San Salvador.
15	Equatorial Guinea	SSG	Malbo.
15	Eritrea	ASM	Asmara.
12	Estonia	TLL	Tallinn.
15	Ethiopia	ADD	Addis Ababa.
13	Falkland Islands.[1]		
12	Faroe Islands.[1]		
14	Fiji	NAN	Nadi.
11	Finland	HEL	Helsinki.
5	France	CDG	Roissy CI.
13	French Guiana	CAY	Cayenne.
14	French Polynesia	FAA	PPT Centre Traitement Courier Air.
15	Gabon	LBV	Libreville.
15	Gambia	BJL	Banjul.
15	Georgia, Republic of	TBS	Tbilisi.
4	Germany	FRA	Frankfurt/M.
15	Ghana	ACC	Accra.
11	Gibraltar	GIB	Gibraltar.
3	Great Britain (includes England, Scotland, Wales, Northern Ireland, Guernsey, Jersey, Alderney, Sark, and The Isle of Man).	LON	Great Britain.
11	Greece	ATH	Athens.
11	Greenland.[1]		
13	Grenada	GND	St. George's.
13	Guadeloupe	PTP	Pointe-a-Pitre.
13	Guatemala	GUA	Guatemala.
15	Guinea	CKY	Conakry.
15	Guinea-Bissau	OXB	Bissau.
13	Guyana	GEO	Georgetown.
13	Haiti	PAP	Port-au-Prince.
13	Honduras	TGU	Tegucigalpa.
14	Hong Kong	HKG	Victoria.
12	Hungary	BUD	Budapest 1005.
11	Iceland	REK	Reykjavik.
15	India	DEL	Delhi Air.
14	Indonesia	JKT	Jakarta Soekarnohatta.
15	Iran	THR	Tehran.
15	Iraq	BGW	Baghdad.
11	Ireland	DUB	Dublin.
11	Israel	TLV	Tel Aviv-Yafo.
7	Italy	MIL	Milan.
13	Jamaica	KIN	Kingston.
10	Japan	NRT	Narita AP A.
15	Jordan	AMM	Amman.
15	Kazakhstan	ALA	Almaty PCI–5.
15	Kenya	NBO	Nairobi.
14	Kiribati	TRW	Tarawa.
14	Korea, Democratic People's Republic of (North).[1]		
14	Korea, Republic of (South)	SEL	Seoul IPO.
15	Kuwait	KWI	Kuwait MSC.
12	Kyrgyzstan	FRU	Bichkek PI–1.
14	Laos	VTE	Vientiane.
12	Latvia	RIX	Riga OE Letters.
15	Lebanon	BEY	Beirut.
15	Lesotho	MSU	Maseru.
15	Liberia	MLW	Monrovia.
15	Libya	TIP	Tripoli.
11	Liechtenstein.[1]		
12	Lithuania	VNO	Vilnius.
11	Luxembourg	LUX	Luxembourg Ville.
12	Macao	MFM	Macau.
12	Macedonia	SKP	1003 SKOP JEB.
15	Madagascar	TNR	Antananarivo TRI.
11	Madeira Islands.[1]		
15	Malawi	LBE	Limbe.
14	Malaysia	KUL	Kuala Lumpur.
15	Maldives	MLE	Male.
15	Mali	BKO	Bamako.
15	Malta	MAR	Valletta.

EXHIBIT 292.452—IPA COUNTRY PRICE GROUPS AND FOREIGN EXCHANGE OFFICES—Continued

Price group	Country	Destination code	Exchange office name
13	Martinique	FDF	Fort de France.
15	Mauritania	NKC	Nouakchott.
15	Mauritius	MRU	Port Louis SSR.
2	Mexico	MEX	Mexico Aereo DF.
15	Moldova	KIV	Kishinev.
11	Monaco	MCM	Monte Carlo.
14	Mongolia	ULN	Ulaanbaatar CPO.
13	Montenegro	TGD	Montenegro Post.
15	Montserrat	MNI	Plymouth.
15	Morocco	CAS	Casablanca CCI.
15	Mozambique	MPM	CPI Maputo.
15	Namibia	WDH	Windhoek.
14	Nauru	INU	Nauru.
14	Nepal	KTM	Kathmandu.
8	Netherlands	AMS	Amsterdam EXP.
13	Netherlands Antilles.[1,3]		
14	New Caledonia	NOU	Noumea CTC.
11	New Zealand[4]	AKL	Auckland.
13	Nicaragua	MGA	Managua.
15	Niger	NIM	Niamey CNTLC.
15	Nigeria	LOS	Lagos.
11	Norway	OSL	Oslo Letter Centre.
15	Oman	MCT	Muscat.
15	Pakistan	ISB	Islamabad IM.
13	Panama	PTY	Panama City.
14	Papua New Guinea	BOR	Boroko.
13	Paraguay	ASU	Asuncion.
13	Peru	LIM	Lima Transito.
14	Philippines	MNL	Manila.
14	Pitcairn Island.[1]		
12	Poland	WAW	Warsaw Wer.
11	Portugal	LIS	Lisbon Province.
15	Qatar	DOH	Doha.
15	Reunion	RUN	St. Denis.
12	Romania	BUH	Bucuresti C.
12	Russia	MOW	Moscow PCI–1.
15	Rwanda	KGL	Kigali.
13	Saba.[1,3]		
13	Saint Christopher (St. Kitts) and Nevis	SKB	Basseterre.
13	Saint Eustatius.[1,3]		
13	Saint Helena.[1]		
13	Saint Lucia	SLU	Castries.
13	Saint Maarten[3]	SXM	Philipsburg.
13	Saint Pierre and Miquelon.[1]		
13	Saint Vincent and The Grenadines	KTN	Kingstown.
11	San Marino.[1]		
12	Sao Tome and Principe.[1]		
15	Saudi Arabia	DMM	Dammam Central Post.
15	Senegal	DKR	Dakar Centre de Tri Postal.
12	Serbia, Republic of	BEG	Belgrad C 11003 Letters.
15	Seychelles	SEZ	Victoria Seychelles Post Office.
15	Sierra Leone	FNA	Freetown.
14	Singapore	SIN	Singapore.
12	Slovak Republic (Slovakia)	BTS	Bratislava 090.
12	Slovenia	LJU	Ljubljana 1003.
14	Solomon Islands	HIR	Honiara.
15	Somalia	MGQ	Mogadishu.
15	South Africa	JNB	Johannesburg.
11	Spain	MAD	Madrid Airport.
15	Sri Lanka	CMB	Colombo.
15	Sudan	KRT	Khartoum.
13	Suriname	PBM	Paramaribo.
15	Swaziland	MTS	Manzini.
11	Sweden	STO	Stockholm Flug.
6	Switzerland	ZRH	Zurich 1.
15	Syria	DAM	Damascus.
14	Taiwan	TPE	Taipei.
15	Tajikistan	DYU	Dushanbe.
15	Tanzania	DAR	Dar es Salaam.
14	Thailand	BKK	Suvarnabhumi Mail Centre.
15	Togo	LFW	Lome.

EXHIBIT 292.452—IPA COUNTRY PRICE GROUPS AND FOREIGN EXCHANGE OFFICES—Continued

Price group	Country	Destination code	Exchange office name
14	Tonga	TBU	Nukualofa.
13	Trinidad and Tobago	POS	Port of Spain.
15	Tristan da Cunha.[1]		
15	Tunisia	TUN	Tunis.
12	Turkey	IST	Istanbul Uluslararasi Posta Isleme.
12	Turkmenistan	ASB	Achgabat PI–1.
13	Turks and Caicos Islands	GDT	Grand Turk.
14	Tuvalu.[1]		
15	Uganda	KLA	Kampala.
15	Ukraine	IEV	Kiev PI–1.
15	United Arab Emirates	DXB	Dubai.
13	Uruguay	MVD	Montevideo.
15	Uzbekistan	TAS	Tashkent.
14	Vanuatu	VLI	Port Vila.
11	Vatican City	VAT	Vatican City.
13	Venezuela	CCS	Caracas.
14	Vietnam	SGN	Ho Chi Minh Ville.
14	Wallis and Futuna Islands.[1]		
14	Western Samoa	APW	Apia.
15	Yemen	SAH	Sanaa.
15	Zambia	LUN	Lusaka Airmail.
15	Zimbabwe	HRE	Harare CSO.

Footnotes:

[1] Direct country sacks are not made to these destinations. Prepare direct country packages and include in mixed direct country sacks labeled to the assigned U.S. exchange office listed in 292.462.

[2] At the mailer's option, a finer sortation for IPA items addressed to Australia may be used. If this option is chosen, items addressed with postal codes beginning with 0, 1, 2, 4, and 9 and uncoded mail should be sorted and packaged to Sydney. Direct country sacks should be tagged to Sydney as well. Both the three-letter exchange office code, ''SYD,'' and the country name, Australia, should be entered in the ''TO'' block of Tag 178. Items addressed with postal codes beginning with 3, 5, 6, 7, and 8 should be sorted and packaged to Melbourne. Direct country sacks should be tagged to Melbourne as well. Both the three-letter exchange office code, ''MEL,'' and the country name, Australia, should be entered in the ''TO'' block of Tag 178.

[3] Netherlands Antilles includes Bonaire, Curacao, Saba, St. Eustatius, and St. Maarten.

[4] For all destinations to New Zealand other than Cook Islands. For Cook Islands see Exhibit 292.452.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–8512 Filed 4–22–09; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–SC–0002–200535(a); FRL–8894–8]

Approval and Promulgation of Implementation Plans; South Carolina; NO_X SIP Call Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a source-specific State Implementation Plan (SIP) revision submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) on April 14, 2005. The revision responds to EPA's regulation entitled, ''Interstate Ozone Transport: Response to Court Decisions on the Nitrogen Oxides (NO_X) SIP Call, NO_X SIP Call Technical Amendments, and Section 126 Rules,'' otherwise known as the ''NO_X SIP Call Phase II.'' This revision meets the requirements of the NO_X SIP Call Phase II, which requires South Carolina to submit NO_X SIP Call Phase II revisions necessary to achieve applicable, incremental reductions of NO_X, including emission reductions from large internal combustion (IC) engines. Transcontinental Gas Pipeline Corporation Station 140 (Transco) is the only facility in South Carolina affected by the NO_X SIP Call Phase II. The intended effect of this SIP revision is to reduce emissions of NO_X originating in the State of South Carolina to help attain and maintain the national ambient air quality standard (NAAQS) for ozone. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule is effective June 22, 2009 without further notice, unless EPA receives adverse comment by May 26, 2009. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–SC–0002, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: ward.nacosta@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2005–SC–0002,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's official hours of business. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2005–SC–0002.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *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 *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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can also be reached via electronic mail at *ward.nacosta@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Analysis of the State's Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On October 27, 1998, EPA published a final rule known as the ''NO_X SIP Call'' (63 FR 57355), and later known as the ''NO_X SIP Call Phase I.'' Phase I of the NO_X SIP Call required 22 states, including the State of South Carolina, to meet NO_X emission budgets during the ozone season (March through September) to reduce the amount of ground level ozone that is transported across the eastern United States. EPA identified NO_X emission reductions by source category when they could be achieved by using cost-effective measures. These source categories include electric generating units (EGUs), non-EGUs, internal combustion (IC) engines and cement kilns. For each affected jurisdiction, EPA determined the NO_X emission budgets based on the implementation of cost effective controls. The budgets are to be met by the year 2007. Phase I of the NO_X SIP Call gave states the flexibility to decide which source categories to regulate to meet the statewide budget. During Phase I, South Carolina regulated EGUs, non-EGUs and cement kilns, but chose not to address IC engines. See, *e.g.*, 67 FR 43546 (June 28, 2002) (Approval and Promulgation of Implementation Plans: South Carolina: Nitrogen Oxides Budget and Allowance Trading Program).

A number of parties, including certain states as well as industry and labor groups, challenged Phase I of the NO_X SIP Call rule. On May 14, 1999, and March 2, 2000, EPA published additional technical amendments to the NO_X SIP Call in the **Federal Register** (64 FR 26298 and 65 FR 11222, respectively). On March 3, 2000, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit Court) issued its decision on the NO_X SIP Call, ruling in favor of EPA on all major issues. *Michigan* v. *EPA*, 213 F.3d 663 (DC Cir. 2000). However, the DC Circuit Court remanded four specific elements to EPA for further action: the definition of EGU; the level of control for stationary IC engines; the geographic extent of the NO_X SIP Call for Georgia and Missouri; and the inclusion of Wisconsin. On May 28, 2002, SC DHEC submitted revisions to its SIP that complied with the requirements of Phase I of the NO_X SIP Call. EPA approved the revisions on June 28, 2002 (67 FR 43546); these revisions became effective on July 29, 2002.

On April 21, 2004, EPA published a final rule addressing the remanded portion of the NO_X SIP Call rule. This rule is entitled, ''Interstate Ozone Transport: Response to Court Decisions on the NO_X SIP Call, NOx SIP Call Technical Amendments, and Section 126 Rules,'' and is otherwise known as ''NO_X SIP Call Phase II'' (69 FR 21604). This rule promulgated specific changes in response to the DC Circuit Court's ruling on Phase I of the NO_X SIP Call. Specifically, this action finalized certain aspects of the definitions of EGU and non-EGU; the control level for large stationary IC engines; partial State budgets for Georgia, Missouri, Alabama, and Michigan; changes to the statewide NO_X budgets; SIP submittal dates for the required states to address the Phase II portion of the budget; SIP submittal dates for Georgia and Missouri; the compliance date for all covered sources; and the exclusion of Wisconsin from the NO_X SIP Call (69 FR 21604, April 21, 2004). This rule also required states that submitted NO_X SIP Call Phase I revisions, to submit Phase II SIP revisions, as necessary to achieve incremental reductions of NO_X, no later than April 1, 2005. Phase II requires emissions reductions that are relatively small, representing less than 10 percent of the total reductions required by Phase I of the NO_X SIP Call. For large, natural gas fired, stationary IC engines the control level was set at 82 percent. For diesel and dual fuel stationary IC engines the control level was set at 90 percent.

Phase II of the NO_X SIP Call required South Carolina to reduce the Phase I NOx emissions originating in the State from 127,756 tons of NO_X emissions per year to 123,496 tons per year, or by 4,260 tons [1] of NO_X emissions per year (69 FR 21604, 21629, April 21, 2004). South Carolina is achieving these NO_X emission reductions for sources located in South Carolina by setting the control level for large, stationary IC engines at 82 percent, and for diesel and dual fuel stationary IC engines at 90 percent. On

[1] After further evaluation, EPA determined that South Carolina could meet its reduction requirements with a reduction of NO_X emissions by 4,010 tons per ozone season. The Docket for this rulemaking contains additional information regarding Transco's control projects and anticipated NO_X reductions associated with the projects.

April 14, 2005, SC DHEC submitted revisions to incorporate these requirements as a proposed source-specific SIP revision, intended to meet the requirements of the NO_X SIP Call Phase II.

II. Analysis of State's Submittal

The April 14, 2005, proposed revisions to the South Carolina SIP are consistent with EPA's requirements for Phase II of the NO_X SIP Call. Phase II requires South Carolina to set NO_X emission levels for large stationary IC engines, including large utility and industrial boilers (*i.e.* engines emitting more than one ton of NO_X per average ozone season day in 1997) at 82 percent. The Transco Facility in Spartanburg County, South Carolina, is the only facility in South Carolina affected by this SIP revision. On April 27, 2004, SC DHEC issued a construction permit, number 2060–0179–CD, to Transco. The permit requires Transco to reduce its NO_X emissions by 4,010 tons per ozone season. To achieve this result, Transco performed combustion modifications, engine mapping, and unit overhauls to thirteen of its fourteen IC engines. Transco subsequently monitored all of its engines during the 2006 ozone season to verify that its modifications were effective. Transco's permit requires it to monitor one engine in each NO_X emission group on a rotating basis during each ozone season. IC Engine Group 1 includes engines 1 through 6; Group 2 includes engines 7 through 9; Group 3 includes engines 10 and 11; and Group 4 includes engines 12 and 13. Incorporation of the Transco construction permit 2060–0179–CD into the South Carolina SIP achieves all of the necessary NO_X reductions to meet Phase II of the NO_X SIP Call requirements for South Carolina.

III. Final Action

EPA is approving the aforementioned changes to the South Carolina SIP. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 22, 2009 without further notice unless the Agency receives adverse comments by May 26, 2009.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 22, 2009 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 10, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart PP—South Carolina

■ 2. Section 52.2120(d) is amended by adding a new entry for ''Transcontinental Gas Pipeline Corporation Station 140'' to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED SOUTH CAROLINA SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Comments
Transcontinental Gas Pipeline Corporation Station 140.	2060–0179–CD	4/27/2004	4/23/2009 [Insert first page of publication].	This permit is incorporated in fulfillment of the NO_X SIP Call Phase II requirements for South Carolina.

* * * * *

[FR Doc. E9–9222 Filed 4–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2003–0074; FRL–8785–4]

RIN 2060–AG21

Performance Specification 16 for Predictive Emissions Monitoring Systems and Amendments to Testing and Monitoring Provisions

Correction

In final rule document E9–6275 beginning on page 12575 in the issue of Wednesday, March 25, 2009, make the following corrections:

Appendix B to Part 60 [Corrected]

1. On page 12582, in Appendix B to Part 60, Equation 11-23 should appear as follows:

$$C_0 = \frac{\left(S_2 \cdot S_4 - S_3^2\right)}{D}, \quad C_1 = \frac{\left(S_3 \cdot S_2 - S_1 \cdot S_4\right)}{D}, \quad C_2 = \frac{\left(S_1 \cdot S_3 - S_2^2\right)}{D},$$

$$C_3 = \frac{\left(nS_4 - S_2^2\right)}{D}, \quad C_4 = \frac{\left(S_1 \cdot S_2 - nS_3\right)}{D}, \quad C_5 = \frac{\left(nS_2 - S_1^2\right)}{D} \qquad \text{(Eq. 11-23)}$$

2. On the same page, in the same appendix, in the second column, in the third line after Equation 11-31, ''vdf'' should read ''v_{df}''.

3. On page 12585, in the same appendix, between Table 1–Factors for Calculation of Confidence and Tolerance Interval Half Ranges and amendatory instruction 4, insert a row of five stars as follows:

* * * * *

4. On page 12586, in the same appendix, in the third column, in paragraph 6.1.6, in the sixth line, ''eater'' should read ''greater''.

5. On page 12588, the table is corrected to read as set forth below:

ONGOING QUALITY ASSURANCE TESTS

Test	PEMS regulatory purpose	Acceptability	Frequency
* * *	* * *	* * *	
PEMS Training	All	If $F_{critical} \geq F$, $r \geq 0.8$	Optional after initial and subsequent RATAs
* * *	* * *	* * *	

6. On the same page, in the same appendix, in the first column, under heading 12.1 Nomenclature, the fourth definition is reprinted to read as follows:

''$\overline{d}$ = Arithmetic mean of differences for all runs''.

7. On the same page, in the same appendix, in the second column, under the same heading, the eighth definition is reprinted to read as follows:

''$\overline{PEMS}$ = Mean of the values provided by the PEMS at the normal operating range during the bias test.''

8. On the same page, in the same appendix, in the same column, under the same heading, the 12th definition is reprinted to read as follows:

''$\overline{RM}$ = Average RM value (or in the case of the RAA, the average portable analyzer value). In cases where the average emissions for the test are less than 50 percent of the applicable standard, substitute the emission standard value here in place of the average RM value''.

9. On page 12589, in the same appendix, in the third column, section ''*15.070*'' should read ''*15.0*''.

10. On page 12589, in the same appendix, the table title ''TABLE 16–1—T-VALUES FOR ONE-SIDED, 97.5 PERCENT CONFIDENCE INTERVALS FOR SELECTED SAMPLE SIZES*'' should read '' TABLE 16–1—t-VALUES FOR ONE-SIDED, 97.5 PERCENT CONFIDENCE INTERVALS FOR SELECTED SAMPLE SIZES*''.

11. On page 12590, in the same appendix, Table 16–2 should appear as follows:

Table 16-2. F-Values for Critical Value of F at the 95 Percent Confidence Level

d.f. for S^2_{RM}	d.f. for S^2_{PEMS} 1	2	3	4	5	6	7	8	9	10	11	12
1	161.4	199.5	215.7	224.6	230.2	234.0	236.8	238.9	240.5	241.8	243.0	243.9
2	18.51	19.00	19.16	19.25	19.30	19.33	19.35	19.37	19.38	19.50	19.40	19.41
3	10.13	9.552	9.277	9.117	9.014	8.941	8.887	8.845	8.812	8.786	8.763	8.745
4	7.709	6.944	6.591	6.388	6.256	6.163	6.094	6.041	5.999	5.964	5.935	5.912
5	6.608	5.786	5.410	5.192	5.050	4.950	4.876	4.818	4.773	4.735	4.703	4.678
6	5.987	5.143	4.757	4.534	4.387	4.284	4.207	4.147	4.099	4.060	4.027	4.000
7	5.591	4.734	4.347	4.120	3.971	3.866	3.787	3.726	3.677	3.637	3.603	3.575
8	5.318	4.459	4.066	3.838	3.688	3.581	3.501	3.438	3.388	3.347	3.312	3.284
9	5.117	4.257	3.863	3.633	3.482	3.374	3.293	3.230	3.197	3.137	3.102	3.073
10	4.965	4.103	3.709	3.478	3.326	3.217	3.136	3.072	3.020	2.978	2.942	2.913
11	4.844	3.982	3.587	3.357	3.204	3.095	3.012	2.948	2.896	2.854	2.817	2.788
12	4.747	3.885	3.490	3.259	3.106	2.996	2.913	2.849	2.796	2.753	2.717	2.687

Appendix A to Part 63 [Corrected]

12. On page 12591 in Appendix A to Part 63–Test Method, in the first column, immediately following paragraph 1.1, insert a row of five stars as follows:

* * * * *

[FR Doc. Z9–6275 Filed 4–22–09; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–827; MB Docket No. 09–22; RM–11516]

Television Broadcasting Services; Des Moines, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by KDMI License, LLC, the permittee of post-transition station KDMI–DT, to substitute DTV channel 19 for post-transition DTV channel 31 at Des Moines, Iowa.

DATES: This rule is effective April 23, 2009.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–22, adopted April 14, 2009, and released April 15, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document 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.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* 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). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Iowa, is amended by adding DTV channel 19 and removing DTV channel 31 at Des Moines.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–9337 Filed 4–22–09; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 74, No. 77
Thursday, April 23, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0261; Directorate Identifier 2009–CE–017–AD]

RIN 2120–AA64

Airworthiness Directives; DORNIER LUFTFAHRT GmbH Models Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking (NPRM); extension of the comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Excessive wear on a guide pin of a power lever has been detected during inspections. The total loss of the pin could cause loss of the flight idle stop and lead to inadvertent activation of the beta mode in flight. The inadvertent activation of beta mode in flight can result in loss of control of the airplane.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 26, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0261; Directorate Identifier 2009–CE–017–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on March 25, 2009 (74 FR 12737). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, we realized our interpretation of the initial compliance time was different than that in the MCAI and service bulletin based on differences between the FAA's regulatory authority and that of the State of Design. In particular, the FAA does not specifically mandate inspections at 9,600 hours time-in-service (TIS) and at 1,200-hour TIS intervals without issuing an AD. The intent of the MCAI was based on these inspection intervals being mandatory. Therefore, the following should be incorporated into the NPRM:

- Those airplanes that did not have the guide pins inspected within 9,600 hours TIS should be inspected within 100 hours TIS;
- Those airplanes with more than 1,200 hours TIS since the last inspection and that have not had the pins replaced since that inspection should have the inspection done again within 100 hours TIS;
- All airplanes should be inspected at intervals not to exceed 1,200 hours TIS, unless the pins are replaced; and
- Replacement of the pins would allow 9,600 hours TIS before a follow-on inspection.

Relevant Service Information

RUAG Aerospace Defence Technology has issued Dornier 228 Alert Service Bulletin ASB–228–279, dated December 19, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM.

As a result, we have determined that it is necessary to extend the comment period to provide additional opportunity for the public to comment on the proposed AD.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect 17 products of U.S. registry. We also estimate that it would take about 20 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $10 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $27,370, or $1,610 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

DORNIER LUFTFAHRT GmbH: Docket No. FAA–2009–0261; Directorate Identifier 2009–CE–017–AD.

Comments Due Date

(a) We must receive comments by May 26, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 76: Engine Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Excessive wear on a guide pin of a power lever has been detected during inspections. The total loss of the pin could cause loss of the flight idle stop and lead to inadvertent activation of the beta mode in flight. The inadvertent activation of beta mode in flight can result in loss of control of the airplane.

For the reasons described above, this new EASA Airworthiness Directive (AD) introduces a repetitive detailed inspection of the guide pins of the power and condition levers and requires the replacement of the pins that exceed the allowable wear-limits.

Actions and Compliance

(f) Do the following actions per the instructions in RUAG Aerospace Defence Technology Dornier 228 Alert Service Bulletin ASB–228–279, dated December 19, 2008:

(1) *Initial Inspection:* Unless already done within the last 1,200 hours TIS as of the effective date of this AD, inspect upon accumulating 9,600 hours on the guide pins of the power and condition levers or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.

(2) *Repetitive Inspections:* Inspect within 1,200 hours since the last inspection required by paragraph (f)(1) of this AD and thereafter at intervals not to exceed 1,200 hours TIS.

(3) *Replacement:* Replace the guide pins as follows:

(i) Before further flight, after any inspection required in paragraphs (f)(1) or (f)(2) of this AD, where any guide pin exceeds the acceptable wear-limits as defined in the service bulletin; and

(ii) Prior to any required inspection, you may install new power and condition levers guide pins instead of doing the inspections required in this AD. You must then inspect or install new pins upon accumulating 9,600 hours TIS and follow the repetitive inspection intervals of this AD if replacement is not made.

Note 1: If the hours TIS of the throttle box assembly is unknown, you may use the hours TIS of the airplane to determine the compliance time for the inspection.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved.

Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA AD No.: 2009–0031, dated February 18, 2009; and RUAG Aerospace Defence Technology Dornier 228 Alert Service Bulletin ASB–228–279, dated December 19, 2008, for related information.

Issued in Kansas City, Missouri, on April 16, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–9327 Filed 4–22–09; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–SC–0002–200535(b); FRL–8894–7]

Approval and Promulgation of Implementation Plans; South Carolina; NO_X SIP Call Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a source-specific State Implementation Plan (SIP) revision submitted by the South Carolina Department of Health and Environmental Control on April 14, 2005. This revision responds to EPA's regulation entitled, ''Interstate Ozone Transport: Response to Court Decisions on the Nitrogen Oxides (NO_X) SIP Call, NO_X SIP Call Technical Amendments, and Section 126 Rules,'' otherwise known as the ''NO_X SIP Call Phase II.'' This revision meets the requirements of the NO_X SIP Call Phase II, which requires South Carolina to submit NO_X SIP Call Phase II revisions necessary to achieve applicable, incremental reductions of NO_X, including emission reductions from large internal combustion engines. Transcontinental Gas Pipeline Corporation Station 140 (Transco) is the only facility in South Carolina affected by the NO_X SIP Call Phase II. The intended effect of this SIP revision is to reduce emissions of NO_X originating in the State of South Carolina to help attain and maintain the national ambient air quality standard for ozone. This action is being taken pursuant to section 110 of the Clean Air Act.

In the Final Rules Section of this **Federal Register,** EPA is approving the State's source-specific SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–SC–0002, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: ward.nacosta@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2005–SC–0002,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can also be reached via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register.**

Dated: April 10, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–9223 Filed 4–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0219; FRL–8894–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Michigan; Redesignation of the Detroit-Ann Arbor Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make a determination under the Clean Air Act (CAA) that the Detroit-Ann Arbor nonattainment area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Detroit-Ann Arbor area includes Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties. This determination is based on quality-assured ambient air quality monitoring data for the 2006–2008 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area.

EPA is proposing to approve a request from the State of Michigan to redesignate the Detroit-Ann Arbor area to attainment of the 8-hour ozone NAAQS. The Michigan Department of Environmental Quality (MDEQ) submitted this request on March 6, 2009. In proposing to approve this request EPA is also proposing to approve, as a revision to the Michigan State Implementation Plan (SIP), the State's plan for maintaining the 8-hour ozone NAAQS through 2020 in the area. EPA is proposing to approve the 2005 base year emissions inventory for the Detroit-Ann Arbor area as meeting the requirements of section 182(a)(1) of the CAA. EPA also finds adequate and is proposing to approve the State's 2020

Motor Vehicle Emission Budgets (MVEBs) for the Detroit-Ann Arbor area.

DATES: Comments must be received on or before May 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0219, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0219. 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 instructions on submitting comments, go to Section I this document, ''What Should I Consider as I Prepare My Comments for EPA?''

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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

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I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Proposing To Take?

EPA is proposing to take several related actions. EPA is proposing to make a determination that the Detroit-Ann Arbor nonattainment area has attained the 8-hour ozone standard and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Michigan's request to change the legal designation of the Detroit-Ann Arbor area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve Michigan's maintenance plan SIP revision for Detroit-Ann Arbor (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Detroit-Ann Arbor area in attainment of the ozone NAAQS through 2020. EPA is proposing to approve the 2005 base year emissions inventory for the Detroit-Ann Arbor area as meeting the requirements of section 182(a)(1) of the CAA. Additionally, EPA is proposing to approve the newly-established 2020 MVEBs for the Detroit-Ann Arbor area. The adequacy comment period for the MVEBs began on March 12, 2009, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/*

transconf/adequacy.htm). The adequacy comment period for these MVEBs ended on April 13, 2009. EPA will address any comments in the final rule. Please see section VII. B. of this rulemaking, ''Adequacy of Michigan's MVEBs,'' for further explanation on this process. We are proposing to find adequate and approve, the State's 2020 MVEBs for transportation conformity purposes.

III. What Is the Background for These Actions?

A. What Is the General Background Information?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the current 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56778), the Detroit-Ann Arbor area was designated as a moderate nonattainment area under the 1-hour ozone NAAQS. The area was subsequently redesignated to attainment of the 1-hour standard on March 7, 1995 (60 FR 12459). At the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005, the Detroit-Ann Arbor area was designated as attainment under the 1-hour ozone NAAQS.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million (ppm). On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in Title I, part D, 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas.

Under EPA's implementation rule for the 1997 8-hour ozone standard, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (i.e. the three-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Detroit-Ann Arbor area was designated as a subpart 2, 8-hour ozone moderate nonattainment area by EPA on April 30, 2004 (69 FR 23857, 23910–23911) based on air quality monitoring data from 2001–2003 (69 FR 23860).

Under section 181(a)(4) of the CAA, EPA may adjust the classification of an ozone nonattainment area to the next higher or lower classification if the design value for the area is within five percent of the cut off for that higher or lower classification. On September 22, 2004, EPA adjusted the classification of several nonattainment areas which had been designated and classified under subpart 2 on April 30, 2004. At that time, EPA adjusted the classification of the Detroit-Ann Arbor nonattainment area from moderate to marginal (69 FR 56697, 56708–56709).

40 CFR 50.10 and 40 CFR part 50, appendix I provide that the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. See 40 CFR part 50, appendix I, 2.3.

On March 6, 2009, MDEQ requested that EPA redesignate the Detroit-Ann Arbor area to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2006 through 2008, indicating the 8-hour NAAQS for ozone had been attained for the Detroit-Ann Arbor area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard, and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075. EPA has not yet promulgated area designations for this standard. While both the 1997 and 2008 8-hour ozone standards are currently in place, the actions addressed in this proposed rulemaking relate only to the 1997 8-hour ozone standard.

B. What Are the Impacts of the December 22, 2006, and June 8, 2007, United States Court of Appeals Decisions Regarding EPA's Phase 1 Implementation Rule?

1. Summary of Court Decision

On December 22, 2006, in *South Coast Air Quality Management Dist.* v. *EPA,* the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour ozone standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. *Id.,* Docket No. 04 1201. Therefore, several provisions of the Phase 1 Rule remain effective: Provisions related to classifications for areas currently classified under subpart 2 of Title I, part D, of the CAA as 8-hour nonattainment areas; the 8-hour attainment dates; and, the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS. The June 8, 2007 decision also left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8, 2007 decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8, 2007 decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation or prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the Detroit-Ann Arbor area is classified under subpart 2. The June 8, 2007, opinion clarifies that the Court did not vacate the Phase 1 Rule's provisions with respect to classifications for areas under subpart 2. The Court's decision, therefore, upholds EPA's classifications for those areas classified under subpart 2 for the 8-hour ozone standard.

3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Detroit-Ann Arbor area was an attainment area subject to a CAA section 175A maintenance plan under the 1-hour standard. The Court's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court, in its June 8, 2007 decision, clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Detroit-Ann Arbor area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measures (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus, the decision in *South Coast* should not alter requirements that would preclude EPA from proposing or finalizing the redesignation of this area.

IV. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from William G. Laxton, Director Technical Support Division, June 18, 1990;

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, November 30, 1993.

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and,

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

V. Why Is EPA Proposing To Take These Actions?

On March 6, 2009, Michigan requested redesignation of the Detroit-Ann Arbor area to attainment for the 8-hour ozone standard. EPA believes that the area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA.

VI. What Is the Effect of These Actions?

Approval of the redesignation request would change the official designation of the area for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Michigan SIP a plan for maintaining the 8-hour ozone NAAQS through 2020. The maintenance plan includes contingency measures to remedy future violations of the 8-hour NAAQS. It also establishes MVEBs of 106 tons per day (tpd) VOC and 274 tpd NO_X for Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties (SEMCOG Region) and 2.1 tpd VOC and 4.4 tpd NO_X for Lenawee County.

VII. What Is EPA's Analysis of the Request?

A. Attainment Determination and Redesignation

EPA is proposing to make a determination that the Detroit-Ann Arbor area has attained the 8-hour ozone standard and that the area has met all other applicable section 107(d)(3)(E) redesignation criteria. The basis for EPA's determination is as follows:

1. The Area Has Attained the 8-Hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make a determination that the Detroit-Ann Arbor area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and part 50, appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

MDEQ submitted ozone monitoring data for the 2006 to 2008 ozone seasons. MDEQ quality-assured the ambient monitoring data in accordance with 40 CFR 58.10, and recorded it in the AIRS database, thus making the data publicly available. The data meet the completeness criteria in 40 CFR part 50, appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each 3-year period. Monitoring data is presented in Table 1 below.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND THREE-YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS

County	Monitor	2006 4th high (ppm)	2007 4th high (ppm)	2008 4th high (ppm)	2006–2008 average (ppm)
Lenawee	Tecumseh 260910007	0.074	0.081	0.072	0.076
Macomb	New Haven 260990009	0.078	0.093	0.073	0.081
	Warren 260991003	0.078	0.091	0.072	0.080
Oakland	Oak Park 261250001	0.072	0.086	0.074	0.077
St. Clair	Port Huron 261470005	0.078	0.089	0.067	0.078
Washtenaw	Ypsilanti 261610008	0.076	0.077	0.069	0.074
Wayne	Allen Park 261630001	0.068	0.079	0.067	0.071
	E–7 Mile 261630019	0.078	0.092	0.078	0.082
	Linwood 261630016	0.069	.....	.....	.....
	SW High School 261630015	0.067	.....	.....	.....

In addition, as discussed below with respect to the maintenance plan, MDEQ has committed to continue to operate an EPA-approved monitoring network as necessary to demonstrate ongoing compliance with the NAAQS. MDEQ remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System in accordance with Federal guidelines. In summary, EPA believes that the data submitted by Michigan provide an adequate demonstration that the Detroit-Ann Arbor area has attained the 8-hour ozone NAAQS.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Michigan has met all currently applicable SIP requirements for purposes of redesignation for the Detroit-Ann Arbor area under section 110 of the CAA (general SIP requirements). We have also determined that the Michigan SIP meets all SIP requirements currently applicable for purposes of redesignation under part D of Title I of the CAA (requirements specific to marginal nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, we have determined that the Michigan SIP is fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). In making these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992, Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

a. The Detroit-Ann Arbor Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

i. Section 110 General SIP Requirements

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the

state after reasonable public notice and hearing, and that, among other things, it: includes enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provides for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provides for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; includes provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; includes criteria for stationary source emission control measures, monitoring, and reporting; includes provisions for air quality modeling; and, provides for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO_X SIP Call [1] and Clean Air Interstate Rule (CAIR) (70 FR 25162)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Michigan's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA. EPA has previously approved provisions of the Michigan SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.1170). Further, in submittals dated December 6, 2007, and September 19, 2008, Michigan confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard.

ii. Part D Requirements

EPA has determined that, with the approval of the base year emissions inventory discussed in section VII.C. of this rulemaking, the Michigan SIP will meet the applicable SIP requirements under part D of the CAA for the Detroit-Ann Arbor area. Under part D of the CAA, an area's classification determines the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

The Detroit-Ann Arbor area was classified as a marginal area under subpart 2, therefore the State must meet both the applicable requirements of subpart 1 and subpart 2 of part D. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176. The subpart 2 requirements applicable to the Detroit-Ann Arbor area are contained in section 182(a) (marginal nonattainment area requirements).

Subpart 1 Section 172 Requirements

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Detroit-Ann Arbor area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonably Available Control Measures (RACM) as expeditiously as practicable. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the areas attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment.

The reasonable further progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant because the Detroit-Ann Arbor area has demonstrated monitored attainment of the ozone NAAQS. (General Preamble, 57 FR 13564). In addition, because the Detroit-Ann Arbor area has attained the ozone NAAQS and is no longer subject to an RFP requirement, the section 172(c)(9) contingency measures are not applicable.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement was superseded by the inventory requirement in section 182(a)(1).

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more

[1] On October 27, 1998 (63 FR 57356), EPA issued a NO_x SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP call, MDEQ has developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Michigan's rules as fulfilling Phase I of the NO_X SIP Call on May 4, 2005 (70 FR 23029) and as fulfilling Phase II of the SIP Call on January 29, 2008 (73 FR 5101).

detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Michigan has demonstrated that the Detroit-Ann Arbor area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The PSD program was delegated to the State of Michigan on September 10, 1979, and amended on November 7, 1983, and September 26, 1988. In addition, on December 21, 2006, MDEQ submitted, as a revision to its SIP, State rules to implement the PSD program. On September 16, 2008, EPA conditionally approved the majority of Michigan's PSD program, and partially disapproved the subsection of Michigan's rule corresponding to 40 CFR 51.166(p). On September 30, 2008, MDEQ submitted a revision to the SIP correcting the deficiencies cited in the conditional approval. The Federal delegation of authority allows Michigan to continue to implement 40 CFR 51.166(p).

The State's PSD program will become effective in the Detroit-Ann Arbor area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Michigan SIP meets the requirements of section 110(a)(2).

Subpart 1 Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity), as well as to all other Federally-supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Michigan's general and transportation conformity SIPs on December 18, 1996 (61 FR 666079 and 61 FR 66609, respectively). Michigan has submitted onroad motor vehicle budgets for the SEMCOG portion of the Detroit-Ann Arbor area and Lenawee County of 106 tpd and 2.1 tpd VOC and 274 tpd and 4.4 tpd NOx, respectively, for the year 2020. The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

Subpart 2 Section 182(a) Requirements

As set forth in the September 4, 1992, and September 17, 1993, EPA guidance memoranda referenced in section IV of this action, ''What are the Criteria for Redesignation?,'' only those requirements which came due prior to Michigan's submittal of a request to designate the Detroit-Ann Arbor area must be fully approved into the SIP before or at the time EPA approves the redesignation of the area to attainment. These requirements are discussed below.

Base year emissions inventory. Section 182(a)(1) requires the submission of a base year emissions inventory. As part of Michigan's redesignation request for the Detroit-Ann Arbor area, the State submitted a 2005 base year emissions inventory. EPA is proposing to approve the 2005 base year inventory Michigan submitted with the redesignation request as meeting the section 182(a)(1) emissions inventory requirement.

Emissions statements. EPA approved Michigan's emission statement SIP, as required by section 182(a)(3)(B), on March 8, 1994 (59 FR 10752).

Thus, the Detroit-Ann Arbor area has satisfied all applicable requirements under section 110 and part D of the CAA.

b. The Detroit-Ann Arbor Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the Michigan SIP for the Detroit-Ann Arbor area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See page 3 of the September 4, 1992, John Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Michigan has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to the Detroit-Ann Arbor County area under the 1-hour ozone standard. In this action, EPA is proposing to approve Michigan's 2005 base year emissions inventory for the Detroit-Ann Arbor area as meeting the requirement of section 182(a)(1) of the CAA. With the exception of Michigan's PSD SIP, which is discussed above, no Detroit-Ann Arbor area SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA finds that Michigan has demonstrated that the observed air quality improvement in the Detroit-Ann Arbor area is due to permanent and enforceable reductions in emissions resulting from implementation of the

SIP, Federal measures, and other State-adopted measures.

In making this demonstration, the State has calculated the change in emissions between 2005 and 2007. Michigan used the 2005 nonattainment area base year emissions inventory required under section 182(a)(1) of the CAA as the nonattainment inventory for redesignation purposes. The State developed an attainment inventory for 2007, one of the years the Detroit-Ann Arbor area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Detroit-Ann Arbor and upwind areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

i. VOC Controls. Michigan developed a rule to limit VOC emissions from consumer and commercial products. This rule was approved by EPA on October 26, 2007 (72 FR 60781). Michigan also adopted a lower Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in the Detroit-Ann Arbor area. EPA approved the SIP revision on January 31, 2007 (72 FR 4432).

ii. NO_X rules. MDEQ developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Michigan's rules as fulfilling Phase I of the NO_X SIP Call on May 4, 2005 (70 FR 23029), and as fulfilling Phase II of the SIP Call on January 29, 2008 (73 FR 5101).

iii. Federal Emission Control Measures. Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include: the National Low Emission Vehicle (NLEV) program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards. In addition, in 2004, EPA issued the Clean Air Non-road Diesel Rule (69 FR 38958 (July 29, 2004)). EPA expects this rule to reduce off-road diesel emissions through 2010, with emission reductions starting in 2008.

iv. Control Measures in Upwind Areas. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X. The reduction in NO_X emissions has resulted in lower concentrations of transported ozone entering the Detroit-Ann Arbor area. Emission reductions resulting from regulations developed in response to the NO_X SIP call are permanent and enforceable.

b. Emission Reductions

Michigan is using 2005 for the nonattainment inventory and 2007 for the attainment inventory. MDEQ provided a 2005 base year inventory to the Lake Michigan Air Directors Consortium (LADCO). The main purpose of LADCO is to provide technical assessments for and assistance to its member states on problems of air quality. LADCO's primary geographic focus is the area encompassed by its member states (Illinois, Indiana, Michigan, Ohio, and Wisconsin) and any areas which affect air quality in its member states. The base year inventory was processed by LADCO to develop summer day emissions for use in regional air quality analyses and attainment demonstration modeling. The point source data was obtained from the Michigan Air Emissions Reporting System. Area source emissions were taken from the 2005 emissions inventory developed by MDEQ to comply with the Consolidated Emission Reporting Rule for the EPA National Emissions Inventory (NEI). Nonroad mobile emissions were generated for LADCO using EPA's National Mobile Inventory Model (NMIM), with the following exceptions: recreational motorboat populations and spatial surrogates were updated; emissions estimates were developed for aircraft, commercial marine vessels, and railroads, three nonroad categories not included in NMIM; and, onroad mobile emissions were calculated by the Southeast Michigan Council of Governments (SEMCOG) using the MOBILE6.2 emissions model.

For the 2007 attainment year inventory, point source emissions were taken from the Michigan Air Emissions Reporting System. Onroad mobile emissions were calculated by SEMCOG using the MOBILE6.2 emissions model. For the remaining categories, MDEQ used the 2005 inventory described above along with 2002, 2009, and 2018 emissions inventories developed by LADCO to interpolate point, area, and nonroad mobile emissions for 2007. For each combination of county and pollutant, a linear regression analysis was performed using the values from the established inventories for 2002, 2005, 2009, and 2018. From the best-fit line established by the regression analysis, values for 2007 were obtained.

Using the inventories described above, Michigan's submittal documents changes in VOC and NO_X emissions from 2005 to 2007 for the Detroit-Ann Arbor area. Emissions data are shown in Tables 3 through 5 below.

TABLE 3—DETROIT-ANN ARBOR AREA VOC AND NO_X EMISSIONS FOR NONATTAINMENT YEAR 2005

[tpd]

	Point		Area		Onroad		Nonroad		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Livingston	0.66	1.89	11.92	1.00	5.00	16.20	9.61	4.38	27.19	23.47
Macomb	9.62	2.30	38.72	2.36	16.50	40.60	23.12	19.27	87.96	64.53
Monroe	11.16	104.83	9.85	0.93	5.20	16.40	9.56	7.69	35.77	129.85
Oakland	9.80	3.10	55.34	4.19	34.00	88.90	46.35	25.52	145.49	121.71
St. Clair	5.55	68.97	5.20	0.67	4.70	11.60	11.35	7.83	26.80	89.07
Washtenaw	1.42	3.82	17.23	0.97	10.30	30.90	12.47	9.99	41.42	45.68
Wayne	24.27	63.11	82.11	5.38	50.40	130.80	39.97	45.09	196.75	244.38
Lenawee	1.21	0.37	8.89	0.73	2.70	5.30	4.37	3.54	17.17	9.94
Area Total	63.69	248.39	229.26	16.23	128.80	340.70	156.80	123.31	578.55	728.63

TABLE 4—DETROIT-ANN ARBOR AREA VOC AND NO_X EMISSIONS FOR ATTAINMENT YEAR 2007

[tpd]

	Point		Area		Onroad		Nonroad		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Livingston	0.86	2.55	8.94	0.79	4.40	13.50	9.07	3.97	23.27	20.81
Macomb	10.72	2.39	36.09	3.87	13.80	33.10	21.96	17.00	82.57	56.36
Monroe	9.41	65.79	9.92	0.73	4.50	13.60	9.02	6.91	32.85	87.03
Oakland	9.03	3.36	55.39	6.07	28.50	72.60	44.15	22.85	137.07	104.88
St. Clair	4.99	65.99	6.92	0.89	3.90	9.50	10.86	7.08	26.67	83.46
Washtenaw	1.82	3.55	16.70	1.47	8.80	25.60	11.88	8.93	39.20	39.55
Wayne	21.67	65.19	79.20	8.58	41.80	105.90	38.63	40.27	181.30	219.94
Lenawee	1.28	0.35	6.05	0.55	2.10	4.40	4.13	3.32	13.56	8.62
Area Total	59.78	209.17	219.21	22.95	107.80	278.20	149.70	110.33	536.49	620.65

TABLE 5—COMPARISON OF DETROIT-ANN ARBOR AREA 2005 AND 2007 VOC AND NO_X EMISSIONS

[tpd]

	VOC			NO_X		
	2005	2007	Net change (2005–2007)	2005	2007	Net change (2005–2007)
Point	63.69	59.78	−3.91	248.39	209.17	−39.22
Area	229.26	219.21	−10.05	16.23	22.95	6.72
Onroad	128.80	107.80	−21.00	340.70	278.20	−62.50
Nonroad	156.80	149.70	−7.10	123.31	110.33	−12.98
Total	578.55	536.49	−42.06	728.63	620.65	−107.98

Table 5 shows that the Detroit-Ann Arbor area reduced VOC emissions by 42.06 tpd and NO_X emissions by 107.98 tpd between 2005 and 2007. Based on the information summarized above, Michigan has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175a of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with its request to redesignate the Detroit-Ann Arbor nonattainment area to attainment status, Michigan submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the area through 2020.

a. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: the attainment VOC and NO_X emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The MDEQ developed an emissions inventory for 2007, one of the years Michigan used to demonstrate monitored attainment of the 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 4, above.

c. Demonstration of Maintenance

Along with the redesignation request, Michigan submitted a revision to the 8-hour ozone SIP to include a maintenance plan for the Detroit-Ann Arbor area, in compliance with section 175A of the CAA. This demonstration shows maintenance of the 8-hour ozone standard through 2020 by assuring that current and future emissions of VOC and NO_X for the Detroit-Ann Arbor area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Michigan is using emissions inventories for the years 2009 and 2020 to demonstrate maintenance. Onroad mobile source emissions were estimated by SEMCOG using MOBILE6.2. For the 2020 inventory, MDEQ used the 2005 inventory described above along with 2002, 2009, and 2018 emissions inventories developed by LADCO to interpolate emissions estimates for the remaining source sectors. For each combination of county and pollutant, a linear regression analysis was performed using the values from the established inventories for 2002, 2005, 2009, and 2018. From the best-fit line

established by the regression analysis, values for 2020 were obtained. Emissions estimates are presented in Table 6 below.

TABLE 6—COMPARISON OF 2007—2020 VOC AND NO_X EMISSIONS

[tpd]

	VOC				NO_X			
	2007	2009	2020	Net change 2007–2020	2007	2009	2020	Net change 2007–2020
Point	59.78	52.48	59.37	−0.41	209.17	182.56	225.34	16.17
Area	219.21	211.95	219.56	0.35	22.95	26.04	27.50	4.55
Onroad	107.80	95.10	50.30	−57.50	278.20	226.40	69.30	−208.90
Nonroad	149.70	131.21	102.00	−47.70	110.33	100.80	62.29	−48.04
Total	536.49	490.74	431.23	−105.26	620.65	535.80	384.43	−236.22

The emission projections show that MDEQ does not expect emissions in the Detroit-Ann Arbor area to exceed the level of the 2007 attainment year inventory during the maintenance period. In the Detroit-Ann Arbor area, MDEQ projects that VOC and NO_X emissions will decrease by 105.26 tpd and 236.22 tpd, respectively.

As part of its maintenance plan, the State elected to include a ''safety margin'' for the area. A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The Detroit-Ann Arbor area attained the 8-hour ozone NAAQS during the 2006–2008 time period. Michigan used 2007 as the attainment level of emissions for the area. In the maintenance plan, MDEQ projected emission levels for 2020. For the Detroit-Ann Arbor area, the emissions from point, area, nonroad, and mobile sources in 2007 equaled 536.49 tpd of VOC. MDEQ projected VOC emissions for the year 2020 to be 431.23 tpd of VOC. The SIP submission demonstrates that the Detroit-Ann Arbor area will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 105.26 tpd of VOC for 2020. By this same method, 236.22 tpd (*i.e.,* 620.65 tpd less 384.43 tpd) is the safety margin for NO_X for 2020. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network

Michigan currently operates eight ozone monitors in the Detroit-Ann Arbor area. MDEQ has committed to continue to operate an EPA-approved monitoring network as necessary to demonstrate ongoing compliance with the NAAQS. MDEQ remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System in accordance with Federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Detroit-Ann Arbor area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. Michigan's plan for verifying continued attainment of the 8-hour standard in the Detroit-Ann Arbor area consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. MDEQ will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602) to track future levels of emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Michigan has adopted a contingency plan for the Detroit-Ann Arbor area to address possible future ozone air quality problems. The contingency plan adopted by Michigan has two levels of response, depending on whether a violation of the 8-hour ozone standard is only threatened (Action Level Response) or has occurred (Contingency Measure Response).

An Action Level Response will be triggered when a two-year average fourth-high monitored daily peak 8-hour ozone concentration of 0.085 ppm or higher is monitored within the maintenance area. An Action Level Response will consist of Michigan performing a review of the circumstances leading to the high monitored values. MDEQ will conduct this review within six months following the close of the ozone season. If MDEQ determines that contingency measure implementation is necessary to prevent a future violation of the NAAQS, MDEQ will select and implement a measure that can be implemented promptly.

A Contingency Measure Response will be triggered by a violation of the standard (a three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration of 0.085 ppm or greater). When a Contingency Measure Response is triggered, Michigan will select one or more control measures for implementation. The timing for implementation of a contingency

measure is dependent on the process needed for legal adoption and source compliance, which varies for each measure. MDEQ will expedite the process of adopting and implementing the selected measures, with a goal of having measures in place as expeditiously as practicable and within 18 months. EPA is interpreting this commitment to mean that the measure will be in place within 18 months.

MDEQ included the following list of potential contingency measures in the maintenance plan:

i. Reduced VOC content in architectural, industrial, and maintenance (AIM) coatings rule;

ii. Auto body refinisher self-certification audit program;

iii. Reduced VOC degreasing/solvent cleaning rule;

iv. Diesel retrofit program;

v. Reduced idling program;

vi. Portable fuel container replacement rule; and,

vii. Food preparation flame broiler control rule.

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, Michigan commits to submit to the EPA an updated ozone maintenance plan eight years after redesignation of the Detroit-Ann Arbor area to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175(A) of the CAA, Michigan has committed to retain the VOC and NO_X control measures contained in the SIP prior to redesignation. Michigan also commits to submitting to EPA any contingency measures adopted under the section 175A maintenance plan.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Michigan for the Detroit-Ann Arbor area meets the requirements of section 175A of the CAA.

B. Adequacy of Michigan's MVEBs

1. How Are MVEBs Developed and What Are the MVEBs for the Detroit-Ann Arbor Area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard. These emission control strategy SIP revisions (*e.g.*, reasonable further progress SIP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the part of the SIP that addresses emissions from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was codified in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM 2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Detroit-Ann Arbor area's maintenance plan contains new VOC and NO_X MVEBs for the year 2020. The availability of the SIP submission with these 2020 MVEBs was announced for public comment on EPA's Adequacy Web site on March 12, 2009, at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2020 MVEBs for the Detroit-Ann Arbor area closed on April 13, 2009. EPA will address any comments in the final rule.

EPA, through this rulemaking, is proposing to find adequate and approve the MVEBs for use to determine transportation conformity in the Detroit-Ann Arbor area because EPA has determined that the area can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. In developing MVEBs for the Detroit-Ann Arbor Area, MDEQ has established separate MVEBS for the SEMCOG region (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties) and for Lenawee County. MDEQ has determined the 2020 MVEBs for the SEMCOG region to be 106 tpd for VOC and 274 tpd for NO_X. MDEQ has determined the 2020 MVEBs for Lenawee County to be 2.1 tpd for VOC and 4.4 tpd for NO_X. These MVEBs exceed the onroad mobile source VOC and NO_X emissions projected by MDEQ for 2020, as summarized in Table 6 above (''onroad'' source sector). MDEQ decided to include safety margins (described further below) of 58.2 tpd for VOC (57 tpd and 1.2 tpd for the SEMCOG region and Lenawee County, respectively) and 211.1 tpd for NO_X (208 tpd and 3.1 tpd for the SEMCOG region and Lenawee County, respectively) MVEBs to provide for mobile source growth. Michigan has

demonstrated that the Detroit-Ann Arbor area can maintain the 8-hour ozone NAAQS with mobile source emissions of 108.1 tpd of VOC (the sum of 106 tpd for the SEMCOG region and 2.1 tpd for Lenawee County) and 278.4 tpd for NO_X (the sum of 274 tpd for the SEMCOG region and 4.4 tpd for Lenawee County), including the allocated safety margins, since emissions will still remain under attainment year emission levels.

2. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 6, the Detroit-Ann Arbor area emissions are projected to have safety margins of 105.26 tpd for VOC and 236.22 tpd for NO_X in 2020 (the difference between the attainment year, 2007, emissions and the projected 2020 emissions for all sources in the Detroit-Ann Arbor area). Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

The MVEBs requested by MDEQ contain safety margins for mobile sources smaller than the allowable safety margins reflected in the total emissions for the Detroit-Ann Arbor area. The State is not requesting allocation of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the State is requesting MVEBs that exceed the projected onroad mobile source emissions for 2020 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

C. 2005 Base Year Emissions Inventory

As discussed above, section 182(a)(1) of the CAA requires areas classified as marginal and above to submit a base year emissions inventory. As part of Michigan's redesignation request for the Detroit-Ann Arbor area, the State submitted a 2005 base year emissions inventory. This inventory is discussed above and summarized in Table 3. EPA is proposing to approve this 2005 base year inventory as meeting the section 182(a)(1) emissions inventory requirement.

VIII. What Action Is EPA Taking?

EPA is proposing to make a determination that the Detroit-Ann Arbor area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the Detroit-Ann Arbor area. EPA's proposed approval of the maintenance plan is based on Michigan's demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. After evaluating Michigan's redesignation request, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve the redesignation of the Detroit-Ann Arbor area from nonattainment to attainment for the 8-hour ozone NAAQS. The final approval of this redesignation request would change the official designation for the Detroit-Ann Arbor area from nonattainment to attainment for the 8-hour ozone standard. EPA is proposing to approve the 2005 base year emissions inventory for the Detroit-Ann Arbor area as meeting the requirements of section 182(a)(1) of the CAA. Finally, EPA also finds adequate and is proposing to approve the State's 2020 Motor Vehicle Emission Budgets (MVEBs) for the Detroit-Ann Arbor area.

IX. Statutory and Executive Order Reviews

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

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

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 13, 2009.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–9217 Filed 4–22–09; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards: Exemption From Cost Accounting Standards for Contracts Executed and Performed Entirely Outside the United States, Its Territories, and Possessions

AGENCY: Office of Management and Budget (OMB), Office of Federal Procurement Policy.

ACTION: Notice of request for information.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board (CASB), invites public comments and information on a provision that provides an exemption from CAS for contracts and subcontracts that are executed and performed entirely outside the United States, its territories, and possessions (overseas exemption).

DATES: Responses must be in writing and must be received by May 26, 2009.

ADDRESSES: Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit their responses electronically to ensure timely receipt. Submit your responses, identified by: CAS 2009 Overseas Exemption, by one of the following methods:

—*Federal eRulemaking Portal: http://www.regulations.gov.* Simply type ''CAS 2009 Overseas Exemption'' (without the quotes) in the Comment or Submission search box, click Go, and follow the online instructions for submitting responses.

—*E-mail:* Electronic responses may also be submitted to *casb2@omb.eop.gov.* Be sure to include your identifying information: Your name, title, organization, and reference case ''CAS 2009 Overseas Exemption.''

—*Facsimile:* Responses may also be submitted via facsimile to 202–395–5105. Be sure to include your identifying information.

—*Mail:* If you must submit your responses via regular mail, please mail them to: Office of Federal Procurement Policy, 725 17th Street, NW., Room 9013, Washington, DC 20503, ATTN: Raymond J. M. Wong. Be sure to include your identifying information. Be aware that due to the screening of U.S. mail to this office, there will be several weeks' delay in the receipt of mail. Respondents are strongly encouraged to submit responses electronically to ensure timely receipt.

Please note that all public responses received will be posted in their entirety, including any personal and/or business confidential information provided, after the close of the public comment period at *http://www.whitehouse.gov/omb/procurement_index_casb/* and *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Raymond J. M. Wong, Director, Cost Accounting Standards Board (telephone: 202–395–6805).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

Rules, Regulations and Standards issued by the Cost Accounting Standards Board (Board, CAS Board, or CASB) are codified at 48 CFR Chapter 99. The OFPP Act, at 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standards (CAS or Standards), complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard (*e.g.,* promulgation of a Staff Discussion Paper (SDP)).
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a Final Rule.

The CASB notes that the overseas exemption at 48 CFR 9903.201–1(b)(14) is not subject to the four-step process required by 41 U.S.C. 422(g)(1) because it is not a cost accounting standard. Thus, there is no requirement for the CASB to follow the four-step process for this promulgation. The CASB is soliciting public responses, comments and information in a process that may lead to a change in the CAS regulations with respect to the overseas exemption.

B. Background and Summary

The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board, is today publishing a request for information with respect to the exemption from CAS at 48 CFR 9903.201–1(b)(14). That exemption (the overseas exemption) provides that ''contracts and subcontracts to be executed and performed entirely outside the United States, its territories, and possessions'' are exempt from all CAS requirements. The OFPP Act, at 41 U.S.C. 422(g)(1), requires the Board to consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed rule prior to the promulgation of any new or revised CAS or rule.

Section 823 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 requires the CASB to: (1) Review the applicability of CAS to contracts and subcontracts which would be subject to CAS, but for the fact that they are executed and performed entirely outside the United States, and (2) determine whether the Government would benefit from the application of CAS to such contracts and subcontracts. A report is due to Congress 270 days (by mid-July 2009) after the date of enactment (October 14, 2008) explaining what, if anything, will be done to revise the overseas exemption.

The purpose of this request for information is to solicit public comments and information with respect to the CASB's review of whether the overseas exemption from CAS at 48 CFR 9903.201–1(b)(14) should be retained, eliminated, or revised, and if revised, how should it be revised. ''Contracts and subcontracts to be executed and performed entirely outside the United States * * *'' can be executed and performed by a variety of entities with different legal statuses including, but not limited to: A U.S. concern, a foreign concern authorized to do business in the United States, a foreign concern (not authorized to do business in the United States) which is a related party to a U.S. concern, and foreign concerns with various other attributes that could affect their legal status. The focus of this request for information is with respect to contracts that would otherwise be subject to CAS, but for the fact that the contract is exempted because it is executed and performed entirely overseas. Thus, the affected contractors are likely to be U.S. concerns and other concerns authorized to do business in the United States.

Respondents are encouraged to identify, comment and provide information on any issues that they believe are important to the subject.

C. Public Comments

Interested persons are invited to participate by providing their input, data, views or arguments with respect to this request for information, including, but not limited to, the questions listed in the request for information. All responses must be in writing, and

submitted as instructed in the **ADDRESSES** section.

Lesley A. Field,

Acting Chair, Cost Accounting Standards Board.

Cost Accounting Standards Board Request for Information

48 CFR 9903.201–1(b)(14)

Exemption From Cost Accounting Standards for Contracts Executed and Performed Entirely Outside the United States

Background

Purpose

48 CFR 9903.201–1(b) is a list of categories of contracts and subcontracts that are exempt from CAS requirements (CAS exemptions). Paragraph (14) of this provision provides an exemption for ''[c]ontracts and subcontracts to be executed and performed entirely outside the United States, its territories, and possessions'' (overseas exemption). The purpose of this request for information is to explore whether this CAS exemption should be retained, eliminated or revised.

The History of the Exemption

The original CAS Board (CASB) was established by Section 2168 of the Defense Production Act of 1950 (DPA). Section 2163, ''Territorial application of Act,'' of the DPA provided that Sections 2061 through 2171 (which includes the authority for the CASB) ''shall be applicable to the United States, its Territories and possessions, and the District of Columbia'' (United States). Since the applicable DPA provisions were applicable only within the United States as defined, the CASB's rules, regulations and CAS were only applicable within the United States, as specifically defined, and thus, they were not applicable overseas.

On September 24, 1973, Defense Procurement Circular No. 115 amended ASPR (Armed Services Procurement Regulation) 3–1204 to provide for this CAS exemption in contracts as follows:

3–1204 Contract Clause. The Cost Accounting Standards clause set forth in 7–104.83 shall be inserted in all negotiated contracts exceeding $100,000, except when the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public or is set by law or regulation. In addition to the foregoing exceptions, the clause shall not be inserted in the following contacts:

* * * * *

(vi) contracts which are executed and performed in their entirety outside the United States, its territories and possessions [(overseas exemption)].

Additional historical background is provided in the SDP published at 70 FR 53977 (September 13, 2005) which previously invited public comments on whether the overseas exemption should be revised or eliminated.

In 1980, the CASB ceased to exist under the DPA. In the absence of the CASB, the Department of Defense (DOD) took over the responsibility for the administration of CAS. DOD administered CAS until the CASB was re-established in 1988 under the authority of the OFPP Act.

In 1991, the re-established CASB reviewed the rules and regulations applicable to the administration of CAS. FAR 30.201–1(14), the exemption from CAS for contracts and subcontracts executed and performed entirely outside the United States, its territories and possessions, was part of that review. The re-established CASB retained the overseas exemption and incorporated it into its current recodified rules and regulations at 48 CFR 9903.201–1 on April 17, 1992 (57 FR 14148.)

More recently, in response to the 2005 SDP regarding the overseas exemption, the CASB received three public comments in response. All the comments offered arguments for why the CASB should retain the exemption; none of the comments supported any revision to, or an elimination of, the overseas exemption. After reviewing and discussing the comments to the SDP, the CASB discontinued its review of the overseas exemption. (73 FR 8259, February 13, 2008.) While the CASB did not agree with all of the views expressed, it did agree with the conclusion not to delete or revise the overseas exemption.

Questions for Consideration

The CASB is soliciting information and comments on the overseas exemption from interested parties. In framing your responses, be aware that contracts and subcontracts that are executed and performed entirely outside of the United States can be executed and performed by entities with a variety of legal statuses. The focus of this request for information is with respect to contracts that would be otherwise subject to CAS, but for the exemption because the contract is executed and performed entirely overseas. Thus, the class of affected contractors is likely to be U.S. concerns and other concerns authorized to do business in the United States.

More specifically, the CASB is particularly interested in information and comments related to the following questions:

1. What is your experience with the overseas exemption:

a. As a procuring entity (*e.g.,* procurement office, higher tier contractor) awarding contracts/subcontracts; or

b. As the contractor/subcontractor claiming the applicability of the overseas exemption?

2. How often (number of actions, dollar amounts, by fiscal year) has the overseas exemption been claimed?

3. If the overseas exemption is eliminated, what problems will that cause you:

a. As a procuring entity (*e.g.,* procurement office, higher tier contractor) awarding contracts/subcontracts; or

b. As the contractor/subcontractor claiming the applicability of the overseas exemption?

4. How does the overseas exemption help, or not help, to implement the CASB's mandate ''to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the United States''?

5. What are the arguments for, and against, the requirement in the overseas exemption to require execution of the contract overseas?

6. What are the arguments for, and against, the requirement in the overseas exemption to require performance of the contract overseas?

[FR Doc. E9–9359 Filed 4–22–09; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 090206146–9332–01]

RIN 0648–AX32

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Port of Anchorage Marine Terminal Redevelopment Project

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received an application from the Port of Anchorage

(herein after ''POA'') and the U.S. Department of Transportation Maritime Administration (herein after ''MARAD'') for issuance of regulations governing the take of small numbers of marine mammals incidental to the Port's Marine Terminal Redevelopment Project (herein after ''MTRP''), Anchorage, Alaska. The MTRP includes expanding the current POA by 135 acres and replacing and expanding the current dock to accommodate additional berths. Construction activities which have the potential to harass marine mammals include in-water pile driving and demolition of the existing dock. Species which could potentially be taken from the MTRP include the beluga whale (*Delphinapterus leucas*), harbor seal (*Phoca vitulina*), harbor porpoise (*Phocoena phocoena*), and killer whale (*Orcinus orca*).

DATES: Comments and information must be postmarked no later than May 26, 2009.

ADDRESSES: You may submit comments by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- Hand delivery or mailing of paper, disk, or CD-ROM comments should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

Instructions: A copy of the application containing a list of references used in this document, Demolition Plan, Final Marine Mammal Monitoring Report for 2008, the Final 2008 Environmental Assessment (EA), and the Draft Supplemental Environmental Assessment (SEA) may be obtained by writing to the above address, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this proposed rule may also be viewed, by appointment, during regular business hours at the above address. To help NMFS process and review comments more efficiently, please use only one method to submit comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

All comments received are public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. To submit anonymous comments, enter N/A in the required fields.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, NMFS, 301–713–2289, ext 151.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce 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) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (I) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Authorization for incidental takings may be granted for up to 5 years 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 certain 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.''

On July 14, 2008, NMFS issued a one-year incidental harassment authorization (IHA) to the POA/MARAD for takes of marine mammals incidental to the MTRP (73 FR 41318, July 18, 2008). Intent to promulgate regulations was included in the March 18, 2008 **Federal Register** notice for the proposed IHA (73 FR 14443, March 18, 2008); however, on November 20, 2008, NMFS received an updated application from the POA/MARAD specifically for regulations. The application included, among other things, information on the demolition process of the existing dock, detailed take calculations, results from marine mammal monitoring conducted under the IHA, results of a more robust acoustic study, and additional mitigation. NMFS published a notice of receipt of application and solicitation for public comments on the application (73 FR 77013, December 18, 2008). NMFS is now inviting comments on the following proposed regulations for taking of marine mammals as described in this notice.

Summary of Request

On November 20, 2008, NMFS received an application from the POA/MARAD for regulations and subsequent Letters of Authorization (LOAs) to take, by Level B harassment only, marine mammals incidental to the MTRP. The POA/MARAD have been in discussions with NMFS Office of Protected Resources Permits Division and Alaska Regional Office (AKR), Anchorage, since inception of the MTRP (2003) to ensure compliance with the MMPA and to reduce impact to marine mammals and their habitat. In 2008, NMFS issued the POA/MARAD a one-year IHA authorizing incidental take of marine mammals from pile driving (73 FR 41318, July 18, 2008). The IHA, which expires on July 15, 2009, authorizes the take, by Level B harassment only, of 34 beluga whales, 20 harbor seals, 20 harbor porpoise, and 5 killer whales. To date, marine mammal observations (submitted by trained, NMFS approved observers on-site at the POA and a second independent scientific marine mammal monitoring team) indicate that the effects analysis in NMFS 2008 Environmental Assessment (EA) on the Issuance of an Incidental Harassment Authorization and Subsequent Rulemaking for Take of Small Numbers of Marine Mammals Incidental to the Port of Anchorage Terminal Redevelopment Project, Anchorage, Alaska is appropriate and justifiable as pile driving noise does not appear to impact beluga whale surface behavior (see Impacts to Marine Mammals). The POA/MARAD's LOA application, supporting documents, NMFS' 2008 EA and Supplemental EA (SEA) can be found on the NMFS Protected Resources Permits website at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Specified Activity

According to the application, the MTRP is designed to upgrade and expand the existing POA facilities by removing and replacing aging and obsolete structures and providing

additional dock and backland areas, without disruption of maritime service during construction. The POA serves 85 percent of the population within the State of Alaska by providing 90 percent of all consumer goods and is an economic engine for the State of Alaska. The rehabilitation and expansion of the POA is critical to improving national defense capabilities and provides additional land and facilities necessary to support military deployments during and after construction. The POA is one of nineteen nationally designated Strategic Ports with direct calls scheduled by the Department of Defense for critical deployments in-and-out of Alaska's military bases and training facilities (Fort Greely, Eielson Air Force Base, Fort Wainwright, Fort Richardson, and Elmendorf Air Force Base [EAFB]) to Iraq, Afghanistan, and other defense theaters around the globe. POA operations began in the early 1960s with little build-up in the past fifty years and is currently under-serving Alaska's transportation system as its primary hub.

Located within the Municipality of Anchorage (MOA) on Knik Arm in upper Cook Inlet, the existing 129–acre POA facility is currently operating at or above sustainable practicable capacity for the various types of cargo handled at the facility. In addition, the existing infrastructure and support facilities are substantially past their design life, have degraded to levels of marginal safety, and are in many cases functionally obsolete. The MTRP will replace, upgrade, and expand the current POA facility to address existing needs and projected future needs, allowing the POA to adequately support the economic growth of Anchorage and the State of Alaska through 2025 and beyond. Upon completion, the phased MTRP will add 135 acres of usuable land to the current 129 acre POA (total area of 264 acres). The completed marine terminal at the POA will include: seven modern dedicated ship berths; two dedicated barge berths; rail access and intertie to the Alaskan railbelt; roadway improvements; security and lighting improvements; slope stability improvements; drainage improvements; modern shore-side docking facilities; equipment to accommodate cruise passengers, bulk, break-bulk, roll on/roll off (RO-RO) and load on/load off (LO-LO) cargo, general cargo short-term storage, military queuing and staging, and petroleum, oils, and lubricants (POL) transfer and storage; and additional land area to support expanding military and commercial operations.

Creation of over 65 of the 135 unimproved acres have been completed to date in preparation of accepting new container cranes and relocating shipping operations by the year 2010: thus far, 26.8 acres were added in 2006; 22.4 acres were added in 2007; and 18.4 acres were added in 2008. Future efforts will add 8.4 acres in 2010; 14.15 acres will be added in 2011; 29.85 acres will be added in 2012; and 15.35 acres in 2013. NMFS and environmental organizations have worked with the POA/MARAD to ensure minimal impact to natural resources and were heavily involved in the U.S. Army Corps of Engineers (USACE) scoping process for issuance of the POA/MARAD's USACE Section 404/10 Permit POA–2003–502–N (located in Appendix B of the LOA application). As a result, numerous mitigation measures to protect natural resources, including beluga whales, habitat, and fish are contained in that USACE permit.

In a letter dated May 9, 2006, NMFS determined that non pile driving related in-water construction activities (i.e., construction of a dike, discharge, settlement and compaction of fill material, installation of utilities, and paving within a 27–acre intertidal area) would not result in takes of marine mammals and therefore did not require an MMPA authorization if certain operational procedures and mitigation measures were implemented by the POA/MARAD. In contrast, NMFS determined that an incidental take authorization was necessary for in-water pile driving operations and issued the aforementioned IHA in July 2008 after NMFS concluded that all required MMPA determinations were met. Marine mammal takes from in-water construction activities, specifically in-water pile driving and demolition of the existing dock structure, would be authorized by this proposed rulemaking.

The POA/MARAD have submitted a detailed schedule of in-water construction activities. Please refer to Table 1–1 and Section 1.3.1. in the application for a description. In general, pile driving would occur from April to October/November when sea ice is absent but could start earlier or later depending on presence of sea ice. Pile driving cannot occur during winter months due to the danger of floating sea ice. NMFS suggested this option to the POA early in discussions about the MTRP but it is clear installing piles during winter is hazardous to workers' safety and could damage material. The schedule in Table 1–1 of the application may change slightly based on unanticipated construction delays. Potential causes of schedule delay might include: changes in planned construction sequencing due to changes in commercial or military maritime operations, changes in USACE harbor dredging schedules to maintain navigation, longer than anticipated settlement and consolidation time for foundation soils or other unanticipated site conditions, national security requirements prohibiting or delaying construction access, delays in steel production or longer than anticipated delivery or availability of construction materials, changes in planned funding or financing, prolonged work stoppages due to presence and protection of marine mammals or other regulatory actions affecting construction schedules, prolonged shut downs due to inclement weather, or other force majeure causes.

Pile Driving

Open Cell Sheet Pile Installation

The new bulkhead waterfront structure will be comprised of conjoining face and tail sheet-pile cells, forming a row of U-shaped open cell sheet pile (OCSP) structures, with the face placed parallel to and approximately 400 ft (122 m) seaward of the existing dock face. The face of each OCSP cell is curved outward, creating a scalloped surface (see application for figures of sheet pile design). The finished marine terminal will abut and tie into the Flint Hills open cell sheet pile retaining wall currently on the adjacent Railroad property; however, the existing Flint Hills structure is not part of the MTRP.

Individual face sheets are approximately 20 inches wide horizontally, 0.5–inch thick, and up to a maximum of 90 ft in vertical length; 17 sheets are required for each cell face. At each junction between cells, a tail wall is constructed and anchored to the face sheets with a wye connector. The tail walls are spaced 27.5 ft apart. The arc along the U-shaped face is approximately 28 ft. The face sheets will be up to 80 ft in length in the areas with -35 ft berths and up to 90 ft long in the -45 ft berths. The tail wall sheets vary from 30 ft to 90 ft long, but generally are 70 ft for the primary tail walls and 30 ft for the tail wall extensions. Approximately 30 linear ft of OCSP wall could be constructed in a 10-hour period.

The face and immediately adjoining primary tail walls are installed using vibratory or impact pile driving procedures from either land-based or barge-based pile driving equipment. The cell is then filled to design elevations with the earthen material, allowing the tail wall extensions to be installed with

land-based equipment. The dock face will be constructed in areas that are completely ''submerged'' (below low tide). Primary tail walls are installed in areas that are below low tide and in areas that are tidally influenced or ''intertidal'' (in-water during high tide and out of the water during low tide), and areas completely out-of water. Only driving piles installed in-water in the submerged and intertidal zones has the potential for impacting marine mammals.

Two main methods used to install piles are impact and vibratory pile driving. An impact hammer is a large metal ram that is usually attached to a crane. A vertical support holds the pile in place and the ram is dropped or forced downward. The energy is then transferred to the pile which is driven into the seabed. The ram is typically lifted by mechanical, air steam, diesel, or hydraulic power sources. The POA/MARAD have indicated that an impact hammer similar to Delmag D30–42 diesel, 13,751 lb hammer with a maximum rated energy of 101 kilojoules (kj) will likely be used; however, this may be slightly altered based on the contractor. Driving piles using an impact hammer generally results in the greatest noise production; however, this noise is not constant and is considered as a ''multiple pulse'' source by NMFS. NMFS' current acoustic threshold for pulsed sounds (e.g., impact pile driving) is 180 and 190dB re 1 microPa for Level A harassment of cetaceans and pinnipeds, respectively, and 160 dB re 1 microPa for Level B harassment.

Vibratory hammers install piles by applying a rapidly alternating force to the pile by rotating eccentric weights about shafts, resulting in a downward vibratory force on the pile. Vibratory hammers are attached to the pile head with a clamp and are usually hydraulically powered. The vertical vibration in the pile disturbs or ''liquifies'' the soil next to the pile causing the soil particles to lose their frictional grip on the pile. The pile moves downward under its own weight plus the weight of the hammer. This method is very effective for non-displacement piles such as sheet piles, H-beams, and open-end pile or caissons. NMFS has established a 180/190dB threshold for Level A harassment; however, no Level B threshold is currently implemented across the board due to the immense variability in acoustic behavioral studies. In the 2008 IHA, NMFS established a threshold of 120dB for vibratory pile driving; however, acoustic studies in Knik Arm provide overwhelming evidence that background levels around the POA are consistently at or above this level, in absence of POA related construction. Therefore, NMFS proposes to implement a 125dB threshold for Level B harassment for vibratory pile driving.

The type of hammer used depends on subsurface conditions and the effort required to advance the sheet pile to final elevation. The difference between the top of adjacent sheets can be no more than 5 feet at any time. This means that the sheets will be methodically driven in a stair-step pattern and the hammer will move back and forth along the cell until all sheets are driven to depth. This stair-step driving pattern results in short periods of driving. For the vibratory hammer, driving is in progress from less than 1 to approximately 3 minutes followed by a minimum 1- to 5-minute period with no driving, while the vibratory hammer is moved and reset. When the impact hammer is being used, driving takes place from less than 1 to 20 minutes, followed by a period of no driving, while the hammer is moved and reset (between 1 and 15 minutes). Where driving conditions allow, two or three adjacent sheet piles may be driven simultaneously (the grips on the vibratory hammer allow one to three sheets to be driven at a time). Actual driving time is determined by local soil conditions. The estimated number of pile driving hours, by method, per year is outlined in Table 1. The POA/MARAD estimate that vibratory pile driving will be the main method of pile installation (75 percent of the time) but may use impact pile driving when substrate is too difficult for a vibratory hammer (25 percent of the time). The POA/MARAD's USACE permit and current IHA require that all piles be driven with the vibratory hammer and only use the impact hammer when vibratory methods are not sufficient to achieve proper depth.

TABLE 1: PILE DRIVING LOCATION, TIMELINE, AND ESTIMATED HOURS FOR THE PORT OF ANCHORAGE MARINE TERMINAL REDEVELOPMENT PROJECT.

Year	Location	Pile Type	Number of Piles	Hours of Vibratory Pile Driving	Hours of Impact Pile Driving
2009	Barge Berth North Extension	fender pile OCSP temporary pile	11 4,106 268	8 496 17	3 235 0
2010	North Extension South Extension	fender pile OCSP temporary pile fender pile	82 1,831 145 36	46 216 9 20	15 103 0 7
2011	North Replacement	OCSP temporary pile	2,718 145	325 9	155 0
2012	North Replacement South Replacement	OCSP temporary pile OCSP temporary pile	2,718 145 3,034 163	325 9 366 10	155 0 173 0
2013	North Replacement South Replacement	fender pile OCSP temporary pile	94 3,034 163	53 366 10	18 173 0
Prior to July 15, 2014	South Replacement	fender pile	41	23	8

TABLE 1: PILE DRIVING LOCATION, TIMELINE, AND ESTIMATED HOURS FOR THE PORT OF ANCHORAGE MARINE TERMINAL REDEVELOPMENT PROJECT.—Continued

Year	Location	Pile Type	Number of Piles	Hours of Vibratory Pile Driving	Hours of Impact Pile Driving
Post July 15, 2014	South Replacement	fender pile	41	23	8
TOTAL				2,331	1053

Demolition of the Existing Dock

Demolition of the existing, active dock is currently scheduled in two phases to begin in 2010 and could continue intermittently through 2013, depending on the demolition approach and sequencing selected. Phase 1 of dock demolition, scheduled for 2010/2011, will focus on the northern portion of the existing dock (approximately 175,000 sq ft) and includes Terminals 2 and 3. Phase 2 would include the southern portion of the dock (approximately 225,000 sq ft) which is scheduled for demolition during 2011/2012. Phase 2 includes Terminal 1 and the petroleum, oils, and lubricants (POL) Terminal 1 and 2. The existing dock is inside the footprint of the planned MTRP; therefore, all concrete debris from demolition would be in areas already planned to be filled in during the construction of the new dock. All demolition activities would be subject to appropriate marine mammal mitigation measures (see Mitigation section).

The existing dock encompasses approximately 400,000 sq ft of surface area and is comprised of an 18 to 24–inch thick steel reinforced concrete deck supported by over 4,000 steel piles. Select structural portions of the concrete deck are up to 3½ to 4 feet thick. Pile diameters range from 24 to 48 inches with a wall thickness of 7/16 inch and are filled with gravel. The existing dock structure includes three obsolete container cranes, a three-story combination administration building and warehouse at the southern portion of the dock, steel trestles, catwalks, fuel piping, and miscellaneous utility appurtenances. POA expansion activities will include the demolition of the existing dock structure to allow the placement of gravel fill to extend the functional wharf line approximately 400 feet beyond the existing dock face.

The Port submitted a demolition plan to NMFS that outlines three possible methods for demolition and mitigation measures for each option. These include (1) in-water demolition by mechanical means using chipping hammers, (2) out-of-water demolition using mechanical means and explosives, and (3) out-of-water demolition by mechanical means only. Demolition approaches for removal of the existing dock structures were reviewed with regard to technical feasibility, cost, and ability to minimize Level B harassment takes of marine mammals. Although the most economical and fastest approach includes combining in-water mechanical means and blasting during winter months, the potential adverse effects to marine mammals of blasting in-water would necessitate extensive mitigation. Therefore, in-water blasting has been eliminated from further consideration.

The specific method of choice cannot be determined at this time due to the need for flexibility in the construction bidding process and to facilitate integration of the demolition work into the other components of the MTRP, therefore, all three methods are proposed with appropriate, respective mitigation. A detailed description of methodology can be found in the POA/MARAD's Demolition Plan posted on the NMFS website listed above (see **ADDRESSES**) and are summarized here.

In-Water Demolition by Mechanical Means Only- Option 1

Option 1, dock demolition by mechanical means, requires breaking or sawing the existing concrete away from the steel support structure and cutting or breaking the steel piles in summer and winter. Concrete demolition would be accomplished using hydraulic chipping hammers, concrete cutter jaws and crushers, and shears mounted to large tracked excavators. Additional equipment would be used to grab, cut, or load salvaged steel during demolition activities. Demolition of the reinforced concrete deck would be performed by excavators working from the surface of the deck. Large excavators with hydraulic hammers or concrete jaws would chip or break the concrete away from the steel support structure and internal reinforcing steel. The concrete would be broken into small pieces and dropped by gravity to the sea floor below, well within the final MTRP footprint. The concrete debris on the sea floor would be encapsulated with clean fill material and left in place. Alternately, a subcontractor may choose to saw cut the concrete deck into sections and use cranes or large excavators to remove the sections and transport them to shore for use as aggregate elsewhere in the MTRP. Deck demolition work would begin at the furthest point (waterside) moving toward the shore, and then along access trestles until the final demolition areas are accessible from land. Metal reinforcing steel debris would be segregated and removed with additional excavators and loaded into trucks for removal and recycling. The concrete deck demolition and salvaging of reinforcing steel could occur during any tidal stage. Although this option is considered ''in-water,'' the chipping hammer would not operate beneath the water's surface as the deck of the dock is not below water during any tidal stage.

Steel piles would be cut or broken using heavy equipment as the concrete deck is removed or additional clean granular fill may be placed in the dock area, if necessary, to allow equipment access to remove the remaining steel piles from below the dock. During lower tides the steel piles would be cut using large track mounted excavators with shear attachments or simply bent and broken at least 10 feet below finish grade using excavators with buckets. An alternate access for removal of the steel pile would require use of a tug and barge to approach from the waterside and remove the steel pile after the deck demolition is complete. Salvaged portions of the piles would be removed for recycling. The concrete debris and remaining portions of steel pile would later be encapsulated with clean fill during the construction of the expanded wharf.

Option 1 could be accomplished either in the winter or in the summer, but not both, with demolition during the winter being the preferred option. Total demolition activities for Phase 1 of this option (northern portion) are anticipated to continue for

approximately 960 hours (60 hours/week x 16 weeks). Demolition of Phase 2 structures (southern portion) is anticipated to take approximately 1,320 hours (60 hours/week x 22 weeks). Concrete demolition activities would be conducted continuously throughout each day; however, steel pile demolition may be limited to low tide cycles for ground access. It is assumed that both portions of work would be performed concurrently, although a portion of the concrete deck must be demolished before steel pile demolition can begin, and steel pile demolition may be limited to low tide intervals.

If Option 1 is chosen, harassment to marine mammals could occur from chipping hammers transmitting sound into the water through the steel piles. Chipping is similar to vibratory pile driving in terms of sound type (i.e., non-pulse), but these hammers operate at 19% less horsepower (i.e., lower energy) than the vibratory hammer and therefore are quieter. In addition, because of the considerable structural mass of concrete that the vibrations would pass through prior to reaching the water, the energy is expected to attenuate to a minimal level. Other cutting tools, such as shears and cutter jaws, operate in short duration at low energy, and do not impart energy directly to the water column or sea floor. Despite demolition activities being quieter than pile driving, the POA/MARAD have proposed to implement the same harassment and safety zones as vibratory pile driving.

Out-of-Water Demolition by Mechanical and Blasting Means- Option 2

Option 2 is comprised of two parts: (1) construct a dike (which acts like a cofferdam) around the existing dock during the summer; and (2) demolish the dock in the winter. The construction of a granular fill dike along the outer limits of the proposed POA expansion area would isolate the existing dock from marine waters allowing demolition to be accomplished out-of-water with a 300–foot land barrier to demolition activities. The dike constructed would be inside the footprint of the area already planned and permitted to be filled in with soil to build the future new dock. The sequence of the filling operations would simply be modified to construct the dike first, demolish the dock, and then complete the remainder of the fill. Dike construction would not result in any additional dewatering or habitat loss.

De-watered dikes/cofferdams represent the most effective way of reducing sound created by impact pile-driving into the water column because the pile is completely decoupled from the surrounding water column. Phase 1 dike construction would begin in the spring to early summer 2011; Phase 2 dike construction would begin in spring or summer 2012.

This option would require the construction of approximately 2,600 linear feet (LF) of granular fill dike prior to Phase 1 demolition and approximately 2,300 LF prior to Phase 2. The dike would be constructed to an elevation above the highest anticipated tide elevation, would be up to 100 feet wide at the top with approximately 2:1 side slopes. The dike would be constructed of clean granular fill placed by off-road dump trucks and bulldozers and compacted with vibratory rollers, similar to fill activities currently under way. After completion of the dike the contained water will be removed to a depth sufficient to access the limits of the demolition area from below. The proposed dike would be constructed in accordance with current permit conditions with regard to fish protection and provide fish escapement and/or rescue and release from entrapment. Summer construction of the dike would be necessary for proper fill placement and compaction and is anticipated to take approximately five months. After dike completion, the dock will be set back approximately 300 feet inland from the water line.

Once the dike is completely constructed to accommodate a specific phase of demolition, the applicable concrete deck structure would then be demolished or partly demolished in sections using precision charges (blasting) to break or loosen the concrete. Blasting would expedite the demolition of the concrete structure and will allow for easier handling and removal of concrete and steel debris using mechanical equipment such as track mounted excavators and dump trucks working from an adjacent section of the deck structure or from below.

Blasting would be out-of-water and entail a series of controlled events or shots to demolish the deck in a predetermined sequence of sections. It is anticipated that the dock would be segregated into approximately 30 linear foot sections and that there will be one blasting event for each section (i.e., 30 blasting events total). Each section would be broken up by a single shot event comprised of approximately 150 to 300 charges depending on the size of the section. The section would be prepared by drilling a series of 1–1/4 to 3–inch holes in a gridlike fashion throughout the section footprint. Grid spacing will vary from 2 to 6 feet based on location and concrete thickness. An explosive charge would be placed in each hole, wired to the detonator and covered. Each hole would contain 1/2 to 1 pound (lb) of explosive (no more than 1 lb of explosive would be used for each hole). Additionally, no more than 1 lb of explosives would be detonated within an 8 millisecond (ms) time period.

On average, there would be one blasting event per day. Each blast is expected to last no more than 6 seconds. Between 50 and 75 blasting events are estimated for each demolition phase. The duration for mechanical means of demolition of concrete, reinforcing steel and pile, and salvaging is anticipated to be 720 hours (six 10-hour days for 3 months) for Phase 1 and 840 hours (six 10-hour days for 3.5 months) for Phase 2. Therefore, using 75 blasts for six-second durations, each phase of demolition would include up to 450 seconds (7.5 minutes) of blasting over a 3 to 3.5 month period of time (Phase 1 and Phase 2, respectively).

Noise generated at the immediate blast source during dock demolition activities is anticipated to be no greater than 110 dBA in air. This sound level is based upon the estimated charge size and configuration discussed above. The impulse sound is expected to dissipate rapidly from the source and all noise generated from blasting activities will conform to the City of Anchorage Noise Control Ordinance (see Appendix B in Demolition Plan). The Anchorage Noise Control Ordinance allows 100, 10, and 1 impulses (blast events) to sound limits of 125, 135, and 145 dBA, respectively, during a 24-hour period. Section 6.2.2 of the demolition plan discusses the anticipated work durations.

As standard blasting contractor practice, prior to the commencement of blast demolition, a controlled test blast will be performed on a portion (approximately 1/8) of the first section to verify the blast design and to monitor ground vibration, air overpressure, and water overpressure. Three hydrophones would be used to measure water overpressures outside of the dike structure and three geophones would be used to measure air overpressure along the mainland. Data obtained from the test blast will be extrapolated to model a full section blast. If data from the test blast indicate a potential for noncompliance, the blast design would be modified and a new test blast would be performed. Data will also be collected during each section blast to verify conformance with all applicable sound and air overpressure requirements and to determine if demolition activities require modification. All blasting activities

would follow the procedures of an approved blasting plan, the applicable marine mammal harassment mitigation requirements, and the requirements of a health and safety plan outlining the specific requirements for notifying proper authorities, proper signage and safety equipment to be used, personal protective equipment, aircraft, vehicle and pedestrian control, and pre-blast communication. If any marine mammals are sighted within the area of the POA, blasting would be suspended (see Mitigation section); therefore, no marine mammals would be harassed from blasting.

After a portion of the concrete deck is fully removed from the steel support piles, an excavator with a bucket and thumb or shear attachment would break or cut and remove the piles to a point at least 10 feet below the design finish grade in the area of the existing dock. The removed portion of each pile would be salvaged for recycling and the remaining portion would be left in place and encapsulated in fill. For safety reasons, blasting would not occur at the same time as the mechanical salvaging or pile driving work.

Out-of-Water Demolition by Mechanical Means Only- Option 3

Option 3 is similar to Option 2, except that blasting would not be a means used for demolition. Option 3 is comprised of two phases: (1) construct a dike around the existing dock in the summer; and (2) demolish the dock in the winter. Total demolition activities for Phase 1 and Phase 2 would be anticipated to continue for the same time as Option 1 (i.e., 960 and 1,320 hours, respectively). Dike construction for Option 3 would follow the same process described in Option 2 above. All mechanical activities (e.g., chipping) would be done out-of-water with a 300 ft. land barrier between the dock and the water; therefore, this method of dock demolition is not likely to release noise into the marine environment above NMFS harassment threshold levels.

Other Activities

The following activities are not expected to harass marine mammals as explained later in this document (see Effects to Marine Mammals section) but are part of the MTRP. Public comments received during the 30-day **Federal Register** comment period for the 2008 IHA and the notice of receipt of application for LOAs addressed these activities and therefore they are described here.

Dredging

In-water construction dredging is performed within the footprint of the OCSP structure prior to pile driving to remove soft sediments and provide a sound foundation for the steel retaining structure and fill. In some areas, additional construction dredging may be completed as needed to improve conditions for pile driving associated with installation of OCSP. Dredged materials will be transported approximately 3,000 ft offshore to the authorized disposal site currently used by USACE for harbor maintenance dredging. Dredged areas will be filled with clean granular fill using a barge or land-based methods within approximately seven days of dredging to prevent in-fill of the dredged areas with soft sediments. Construction dredge equipment will typically be standard-size, barge mounted, clamshell or hydraulic dipper dredge, with tugboat support for maneuvering and placement, and another barge and tugboat to transport dredged material to the disposal site. Alternative equipment may include a cutter-head hopper dredge. In 2006, NMFS determined that dredging associated with the MTRP did not warrant an incidental take authorization provided the POA/MARAD follow certain operational procedures.

Harbor dredging for ship navigation and channel maintenance located outside the construction footprint is completed by separate federal action (by USACE). The USACE Alaska District is authorized by Congress with federal oversight to maintain navigable conditions and continuous ship access to the POA at a nominal depth of -35 Mean Lower Low Water (MLLW) (35 ft below elevation zero); harbor maintenance dredging occurs regularly during the ice free season on a daily basis. USACE has also been authorized by Congress to widen the harbor area during POA construction to coincide with interim ship movements, to accommodate navigation at added berths, and deepen the harbor to -45 MLLW to accommodate larger vessels with deeper drafts. The estimated number of construction dredging hours, days and amount of cubic yards (cy) moved per year can be found in Section 2 of the application. USACE harbor maintenance dredging, transitional dredging, and harbor deepening are separate federal actions and are not part of this rulemaking; however, NMFS did address this federal action as part of its effects analysis under the NEPA.

Placement of Fill Material

Approximately 9.5 million cy of suitably engineered and clean granular fill and common fill material would be placed behind vertical steel or rock-retaining features. The POA and MARAD, in cooperation with the adjacent Eglin Air Force Base (EAFB), would continue to use only certified clean government-furnished fill material from two borrow sites on EAFB. Some fill material may also be obtained from existing commercial sources as needed. Fill extraction, transport, off-loading, and final placement activities will be monitored and inspected to verify proper adherence to detailed specifications and permit requirements. Fill material is screened to ensure compliance with stringent specifications for grain size and samples are laboratory tested to ensure all material placed is contaminant-free and certified as fully suitable for the intended purpose. Fill extraction and transport operations will be ongoing throughout the five-year construction period.

Common fill is placed in de-watered conditions where and when possible. Off-road trucks and bulldozers will deposit and spread the fill material up to and behind the OCSP face wall. Some fill may be imported from other sources, transported over water, and placed in-water at the MTRP site by dump scows (barges capable of discharging fill material through the bottom of the vessel). Following placement of fill, a land-based vibratory probe, constructed from an H-pile, and a vibratory pile driving hammer will be used to densify deep soils. The probe is driven into the fill at evenly spaced locations to vibrate and consolidate deep fill. Fill material placed above elevation +30 ft will be compacted in layers while being placed using conventional sheepsfoot or vibratory compaction equipment. Compaction and consolidation equipment will be used intermittently. Large armor rock is placed in some areas for permanent erosion control. Liner rock will be placed on the temporary slopes exposed to tide and wave action at the end of interim construction phases for erosion protection. As with dredging, in 2006, NMFS determined that fill compaction and rock placement would not result in harassment to marine mammals if certain operational procedures were met; therefore, an incidental take authorization was not warranted.

Action Area

Cook Inlet is a large tidal estuary that flows into the Gulf of Alaska, is roughly 20,000 km2, has 1,350 km of coastline

(Rugh et al. 2000), and is generally divided into upper and lower regions by the East and West Forelands. Cook Inlet is comprised of large expanses of glacial flour deposits and extensive tidal mudflats and has an average depth of approximately 100 m. NMFS' Final Cook Inlet Beluga Whale Subsistence Harvest Supplemental Environmental Impact Statement (SEIS) provides a detailed description of Cook Inlet's climate, geology, water quality, and physical properties and is incorporated herein by reference. In summary, Cook Inlet is a seismically active region susceptible to earthquakes with magnitudes 6.0 to 8.8; has some of the highest tides in North America, which are the driving force of surface circulation; and contains substantial quantities of mineral resources, including coal, oil, and natural gas. During winter months, sea, beach, and river ice are dominant physical forces within Cook Inlet. In upper Cook Inlet, sea ice generally forms in October to November, developing through February or March.

Northern Cook Inlet bifurcates into Knik Arm to the north and Turnagain Arm to the east. Knik Arm is generally considered to begin at Point Woronzof, 7.4 km southwest of the POA. From Point Woronzof, Knik Arm extends more than 48 km in a north-northeasterly direction to the mouths of the Matanuska and Knik Rivers. Over 90 percent of Knik Arm remains undeveloped and where development is prevalent, it is relatively confined to the lower portion of Knik Arm. The primary concern for development, as stated in the NMFS 2008 Conservation Plan for the Cook Inlet Beluga Whale (Delphinapterus leucas) (herein after ''Conservation Plan''), is that it may restrict passage of beluga whales along Knik Arm to important feeding areas. The MTRP footprint is restricted to the eastern side of Knik Arm with the new dock extending approximately 400 m seaward of the current dock.

Point MacKenzie, is located on the west side of Knik Arm approximately 6.7 km from the POA. At Cairn Point, located just north of the POA, Knik Arm narrows to about 2.4 km before widening to as much as 8 km at the tidal flats northwest of Eagle Bay at the mouth of Eagle River. Cairn Point is the selected marine mammal monitoring site for an independent observer team to monitor marine mammals during the MTRP due to its elevation above construction activities and uninterrupted northern and southern view of Knik Arm. This monitoring station is located on EAFB; a long-term access agreement is in place with the military authorizing the station.

Knik Arm consists of narrow channels flanked by large shallow tidal flats composed of sand, mud, or gravel, making it a poor acoustic environment (i.e., sound does not propagate far). Tides are semidiurnal, with two unequal high and low tides per tidal day (tidal day = 24 hours 50 minutes). Because of Knik Arm's predominantly shallow depths and narrow widths, tides near Anchorage are greater than in the main body of Cook Inlet. The tides at Anchorage can range about 40 ft, with an extreme observed high water of +34.6 ft and an extreme observed low water of -6.4 ft MLLW (NOAA 2008). Beluga whale movement is strongly correlated with the tides. Maximum current speeds in Knik Arm, observed during spring ebb tide, exceed 7 knots (12 ft/second), some of the fastest in the world.

Approximately 60 percent of Knik Arm is exposed at MLLW. The intertidal areas of Knik Arm are mudflats, both vegetated and unvegetated, which primarily consist of fine, silt-size glacial flour. Freshwater sources often are glacially born waters, which carry high-suspended sediment loads, as well as a variety of metals such as zinc, barium, mercury, and cadmium. Surface waters in Cook Inlet typically carry high silt and sediment loads, particularly during summer, making Knik Arm an extremely silty, turbid waterbody with low visibility through the water column. The Matanuska and Knik Rivers contribute the majority of fresh water and suspended sediment into the Knik Arm during summer months. Smaller rivers and creeks also enter along the sides of Knik Arm. Ship Creek, stocked with salmon twice each summer, serves as an important recreational fishing resource. Ship Creek flows into Knik Arm through the Anchorage industrial area; the mouth is approximately 0.6 km south of the southern end of the MTRP footprint and abuts the Flint Hills railroad area where a sheet pile wall currently exists.

There are prevalent, shallow intertidal and subtidal habitats directly surrounding the POA. Habitat surveys completed to date indicate that the area immediately around the POA supports a wide diversity of marine and anadromous fish species and provides migration, rearing, and foraging habitat. Recent surveys indicate that shallow waters along the tidal flats of Knik Arm are used by all five species of Pacific salmon, saffron cod, and a variety of prey species such as eulachon and longfin smelt (Pentec, 2004a, 2004b, 2005a, 2005b; Moulton, 1997). Many of these species are prone to recreational and commercial sport fishing and serve as prey for larger fish and marine mammals.

Essential Fish Habitat (EFH) is located within the action area. EFH means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. The NMFS and the North Pacific Fishery Management Council identified EFH in upper Cook Inlet for anadromous Pacific salmon; however, no salmon species that would be adversely affected by the MTRP are listed under the ESA. Designated EFH present in the vicinity of the POA is for both juvenile and adult life stages of Pacific cod, walleye pollock, sculpins, and eulachon (also called hooligan and candlefish). In addition, all streams, lakes, ponds, wetlands, and other water bodies that currently support or historically supported anadromous fish species (e.g., salmon) are considered freshwater EFH. Marine EFH for salmon fisheries in Alaska include all estuarine and marine areas utilized by Pacific salmon of Alaska origin, extending from the influence of tidewater and tidally submerged habitats to the limits of the U.S. Exclusion Economic Zone (EEZ). Details of EFH and the life stage of these species can be found in at *http://www.fakr.noaa.gov/habitat/efh.htm*. The NMFS AKR Habitat Conservation Division provided numerous conservation mitigation recommendations during the USACE's permit scoping process authorizing MTRP construction activities. In addition, as required by the USACE permit, NMFS will be involved with all habitat related compensatory restoration and conservation projects (see Impacts to Habitat section).

Acoustic Environment

Sound dissipates more rapidly in shallow waters and over soft bottoms (sand and mud). Much of upper Cook Inlet is characterized by its shallow depth and sand/mud bottoms, thereby making it a poor acoustic environment. Strong currents and winds in Knik Arm elevate ambient sound level compared to other portions of Cook Inlet. The development of Anchorage, an industrialized area, further increases background levels near the POA from commercial and recreation vessels, commercial, recreational and military air traffic, and airborne noise related to urbanized areas. For purposes of this document, all sound levels in this notice are provided as root mean square (rms) values and referenced to 1 microPa, unless otherwise noted.

Underwater acoustical studies conducted in Knik Arm reveal that the area around the POA is a noisy

environment, with average ambient sound levels near or above 120 dB (Blackwell and Greene 2002; Blackwell 2005; URS 2007; Science Fishery Systems 2009). Tides and wind are the most influential in creating high ambient levels, with vessel and air traffic further increasing underwater sound levels. The lower range of broadband (10 to 10,000 Hertz [Hz]) background sound levels, in the absence of pile driving, obtained during underwater measurements at Port MacKenzie, ranged from 115 dB to 133 dB (Blackwell 2005). Background sound levels in the absence of pile driving measured during the 2007 acoustic study at the MTRP site resulted in most sound pressure levels (SPLs) exceeding 120 dB with a maximum of 135 dB (URS 2007). Finally, a number of background noise recordings (n=25) were made during the 2008 acoustic study at the POA. Measurements ranged from 120 to 150 dB with a mean of 124 dB (Scientific Fisheries Systems, 2009). These measurements were not devoid of industrial sounds from maritime operations or on-going USACE maintenance dredging but pile driving from construction was not underway at the time of the study. Background levels were highest during the rising tide and during strong winds, especially when high winds generated breaking waves. Scientific Fisheries Systems (2009) recorded many instances of high background noise levels when wind speeds were at or above 3m/sec. Based on these data, noise levels around the POA are consistently near or above 120 dB with variability strongly correlated to wind and tide.

Marine Mammals Affected by the MTRP

Marine mammals potentially affected by the MTRP are thoroughly described in the proposed and final **Federal Register** notices for the 2008 IHA (73 FR 14443, March 18, 2007 and 73 FR 41318, July 15, 2008, respectively) and NMFS' 2008 EA. In summary, Cook Inlet is utilized by several species of marine mammals; however, most of these are confined to the lower Inlet and would not be affected by the MTRP. In Knik Arm, the Cook Inlet beluga whale is by far the most abundant marine mammal, especially during the non-winter months. Harbor seals, harbor porpoise, and killer whales are also found in the Inlet but they do not display a regular presence in Knik Arm. While Steller's sea lions (Eumetopias jubatus) are present in lower Cook Inlet, sightings in upper Cook Inlet are rare and there has never been a sighting reported in Knik Arm. Since 1999, only 4 Steller's sea lions have been reported in upper Cook Inlet. Two Steller's sea lions were sighted at the mouth of the Susitna River in 1999 and two adults were near the same locating in 2005 (B. Mahoney, pers. comm, June 20, 2008). Therefore, Steller's sea lions are not anticipated to be affected by the MTRP and will not be considered further. If, by chance, a marine mammal not authorized to be harassed is seen around the construction area, shut down would be required so as to avoid unlawful take.

Beluga Whales

Status and Abundance

Beluga whales are circumpolar in distribution and occur in seasonally ice-covered arctic and subarctic waters. Beluga whales occur in marine waters around most of Alaska, except the Southeast panhandle region and the Aleutian Islands. This species comprises five distinct stocks: Beaufort Sea, eastern Chukchi Sea, eastern Bering Sea, Bristol Bay, and Cook Inlet (Hill and DeMaster, 1998). Of these, the Cook Inlet stock is the only stock that would be affected by the MTRP. This stock is considered to be the most isolated, based on the degree of genetic differentiation between it and the four other stocks (O=Corry-Crowe et al., 1997), suggesting the Alaska Peninsula may be an effective barrier to genetic exchange (Hobbs et al., 2006). Also supporting this find, is the lack of observations of beluga whales along the southern side of the Alaska Peninsula (Laidre et al., 2000). Murray and Fay (1979) postulated that this stock has been isolated for several thousand years, an idea which has since been corroborated by genetic data (O=Corry-Crowe et al., 1997).

The Cook Inlet beluga whale population has declined significantly over the years. Historical data suggest this population once numbered around 1,300 (Calkins 1989). NMFS systematic aerial surveys documented a decline in abundance of nearly 50 percent between 1994 (653 whales) and 2008 (375 whales). Aerial annual abundance surveys conducted each June/July from 1999 to 2008 have resulted in abundance estimates of 367, 435, 386, 313, 357, 366, 278, 302, 375, and 375 whales for each year, respectively (Hobbs et al., 2000; Rugh et. al., 2005; NMFS, unpubl. data). These estimates result in an overall decline of the population of 1.5 percent from 1999 to 2008 (note: 1999 was the first year beluga harvest was regulated).

The Cook Inlet beluga whale was proposed for listing as endangered under the ESA on April 20, 2007 (72 FR 19854). On October 22, 2008, NMFS issued a final rule listing this population as endangered under the ESA (73 FR 69219). This listing status became effective on December 22, 2008. Other major documents NMFS has recently produced on this species include the Conservation Plan and the Final Subsistence Harvest SEIS referenced earlier in this document. These documents can be found at *http://www.fakr.noaa.gov/protectedresources/whales/beluga.htm*.

Distribution

Beluga whales generally occur in shallow, coastal waters, and while some populations make long seasonal migrations, Cook Inlet beluga whales reside in Cook Inlet year round. Data from satellite tagged whales documented that beluga whales concentrate in the upper Inlet at rivers and bays in the summer and fall, with a tendency to disperse offshore and move to mid-Inlet waters in the winter. Local knowledge and other historical evidence show that prior to the 1990s belugas were regularly seen in central and lower Cook Inlet waters, both nearshore and offshore (Calkins, 1983; Huntington 2000; Rugh et al., 2000). However, since the mid 1990s, distribution during the summer is confined to the upper Inlet with no sightings in the mid and lower Inlet. This constriction is likely a function of a reduced population seeking the highest quality habitat that offers the most abundant prey, most favorable feeding topography, the best calving areas, and the best protection from killer whale predation.

From April through November whales concentrate at river mouths and tidal flat areas, moving in and out with the tides (Rugh et al., 2000). In Knik Arm, beluga whales generally are observed arriving in May and often use the area all summer, feeding on the various salmon runs and moving with the tides. There is more intensive use of Knik Arm in August and through the fall, coinciding with the coho run. During high tides, beluga whales are generally concentrated around prime feeding habitats (also known as ''hotspots'') in the upper reaches of the Arm, an area unaffected by the MTRP. They often retreat to the lower portion of Knik Arm during low tides gathering in Eagle Bay and elsewhere on the east side of Knik Arm (approximately 15 miles north of Anchorage) and sometimes in Goose Bay on the west side of Knik Arm (across from Eagle Bay). Beluga whales will often travel between these two areas (upper reaches of the Arm and the Bays) with the tide daily for a season

before traveling farther south past Anchorage and out of Knik Arm.

Prey availability likely has the strongest influence on the distribution and relative abundance of beluga whales in Cook Inlet (Moore et al., 2000). There is repeated use of several areas of the upper Inlet for summer and fall feeding by beluga whales. The primary ''hotspots'' for beluga feeding areas include the Big and Little Susitna Rivers, Eagle Bay to Eklutna River, Ivan Slough, Theodore River, Lewis River, and Chickaloon River and Bay. Only one hotspot, Eagle Bay to Eklutna River, is located in Knik Arm approximately 15 miles north of the POA. Many of these areas are also popular fishing locations for humans. Beluga whales exhibit high site fidelity and may persist in an area with fluctuating fish runs or may tolerate certain levels of disturbance from boats or other anthropogenic activities in order to feed.

Feeding

Beluga whales are opportunistic feeders known to prey on a wide variety of animals. They eat octopus, squid, crabs, shrimp, clams, mussels, snails, sandworms, and fish such as capelin, cod, herring, smelt, flounder, sole, sculpin, lamprey, lingcod and salmon (Perez 1990; Haley 1986; Klinkhart 1966). Natives also report that Cook Inlet beluga whales feed on freshwater fish: trout, whitefish, northern pike, and grayling (Huntington, 2000), and tomcod during the spring (Fay et al., 1984). While beluga whales feed on a variety of prey, they focus on specific species when they are seasonally abundant. Increased foraging success results in a thick blubber layer that provides both energy and thermal protection. Native hunters in Cook Inlet report that beluga whale blubber is thinner in early spring than later in the summer. This suggests that their spring feeding in upper Cook Inlet, principally on fat-rich fish such as eulachon and salmon, is very important to the energetics of these animals. According to the Conservation Plan, Knik Arm is an important feeding area for beluga whales during much of the summer and fall, especially upper Knik Arm. Whales ascend to upper Knik Arm on the flooding tide, feed on salmon, then fall back with the outgoing tide to hold in water off and north of the Port of Anchorage.

From late spring and throughout summer most beluga stomachs sampled contained Pacific salmon corresponding to the timing of fish runs in the area. Anadromous smolt and adult fish concentrate at river mouths and adjacent intertidal mudflats (Calkins 1989). Five Pacific salmon species: Chinook, pink, coho, sockeye, and chum spawn in rivers throughout Cook Inlet (Moulton 1997; Moore et al. 2000). Calkins (1989) recovered 13 salmon tags in the stomach of an adult beluga found dead in Turnagain Arm. Beluga hunters in Cook Inlet reported one whale having 19 adult Chinook salmon in its stomach (Huntington 2000). Salmon, overall, represent the highest percent frequency of occurrence of the prey species in Cook Inlet beluga stomachs. This suggests that their spring feeding in upper Cook Inlet, principally on fat-rich fish such as salmon and eulachon, is very important to the energetics of these animals.

In the fall, as anadromous fish runs begin to decline, beluga whales return to consume fish species found in nearshore bays and estuaries (e.g., cod and bottom fish). Bottom fish include Pacific staghorn sculpin, starry flounder, and yellowfin sole. Stomach samples from Cook Inlet belugas are not available for winter months (December through March), although dive data from belugas tagged with satellite transmitters suggest whales feed in deeper waters during winter (Hobbs et al. 2005), possibly on such prey species as flatfish, cod, sculpin, and pollock.

Hearing

Beluga whales are characterized as mid-frequency odontocetes but are able to hear an unusually wide range of frequencies, covering most natural and man-made sounds. The hearing frequency range of this species is believed to be between 40 Hz–150 kHz with keen hearing at 10–100 kHz. Above 100 kHz, sensitivity drops off rapidly (Au, 1993) and below 16 kHz the decrease in sensitivity is more gradual at approximately 10 dB per octave (White et al., 1978; Awbrey et al., 1988). Awbrey (1988) measured the low-frequency (i.e., octave intervals between 125 Hz and 8 kHz) underwater hearing sensitivity of three captive beluga whales in a quiet pool. At 8 kHz, the average hearing threshold of the three animals was 65 dB. Below 8 kHz, sensitivity decreased at approximately 11 dB per octave. At 125 Hz, the average hearing threshold was 120.6 dB (i.e., the received level had to be 120.6 dB in order for the whale to hear the 125 Hz sound). Average MTRP construction related noises range between 0.1 and 15 kHz (see Table 6–2 in application).

Habitat Classification

NMFS has characterized beluga whale habitats into three categories, Type I-III, based on use and biological importance as part of its conservation strategy in the Conservation Plan. This habitat designation has been slightly modified from the 2006 Draft Conservation Plan, which described four habitat type designations, and is described in the 2008 EA. Type I habitat encompasses all of Cook Inlet northeast of a line three miles southwest of the Beluga River across to Pt. Possession. These areas are full of shallow tidal flats, river mouths or estuarine areas, and are important foraging, calving and/or nursery habitats. These areas are also important for other biological needs, such as molting or predator avoidance. Type I habitat hosts a concentrated population of beluga whales from spring to fall. The POA and the city of Anchorage are encompassed within the southern boundary of Type I habitat. Type II habitat includes areas of less concentrated spring and summer use, but known fall and winter use. This habitat is based on dispersed fall and winter feeding and transit areas in waters where whales typically occur in smaller densities or deeper waters. Type III habitat encompasses the remaining portion of Cook Inlet where belugas are infrequently observed, and areas which are not identified as Type I or II.

Knik Arm, including the action area, fall into the Type I classification habitat; however, dedicated marine mammal monitoring survey reports and opportunistic sightings indicate that whales are using this lower portion of Knik Arm primarily as a passageway to discrete prime feeding area in the upper reaches of Knik Arm, with only opportunistic feeding observed. The primary ''hotspots'' for beluga whale feeding areas, as identified in the Conservation Plan, include the Big and Little Susitna Rivers, Eagle Bay to Eklutna River, Ivan Slough, Theodore River, Lewis River, and Chickaloon River and Bay. Of these, only one, Eagle Bay to Eklutna River, lie north of the POA. Beluga whales exhibit high site fidelity and may persist in an area with fluctuating fish runs or may tolerate certain levels of disturbance from boats or other anthropogenic activities in order to feed.

Harbor Seals

Harbor seals are not listed as ''depleted'' under the MMPA or listed as ''threatened'' or ''endangered'' under the Endangered Species Act. They are important upper-trophic marine predators that occupy a broad range in Alaska from approximately 130° W. to 172° E. (over 3,500 km east to west) and from 61° N. to 51° N. (over 1,000 km north to south). Currently, harbor seals in Alaska are divided into three stocks: Bering Sea, GOA, and Southeast Alaska.

While new genetic information has lead to a reassessment of this delineation, this has not been finalized. Harbor seals which could be affected by the MTRP belong to the GOA stock. Based on aerial GOA and Aleutian Islands surveys, in 1996 and 1999 respectively, the current abundance estimate for this stock is 45,975 (CV = 0.04) with a minimum population estimate of 44,453 (Angliss and Outlaw, 2006). Sources of anthropogenic caused mortality for this stock include interactions with fishing gear (mean annual mortality is approximately 24 animals), subsistence hunting (mean annual harvest from 2000–2004 equals 795), and, to a lesser degree, illegal intentional killing.

Harbor seals haul out on rocks, reefs, beaches, and drifting glacial ice, and feed in marine, estuarine, and occasionally fresh waters (Fisher, 1952; Bigg, 1969, 1981). In Alaska, commonly eaten prey include walleye, pollock, Pacific cod, capelin, eulachon, Pacific herring, salmon, octopus, and squid. They are generally non-migratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction; however, some long-distance movements have been recorded from tagged animals with juveniles traveling farther than adults (Lowry et al., 2001).

The major haul-out sites for harbor seals are located in Lower Cook Inlet with the closest haul-out site to the POA approximately 40 kms (25 miles) south along Chickaloon Bay in the southern portion of Turnagain Arm. However, harbor seals are occasionally observed in Knik Arm and in the vicinity of the POA, primarily near the mouth of Ship Creek (NMML 2004; Rugh et al. 2004a, 2004b; LGL Alaska Research Associates, Inc. [LGL] Unpublished Data). From 2004–2005, 22 harbor seal sightings were reported over a 13-month period comprising 14,000 survey hours (LGL, unpubl data). From these surveys, it is estimated that harbor seals occur in a density of approximately 1.7 animals per month in Knik Arm. In 2008, only one harbor seal was sighted from July to November by dedicated NMFS approved marine mammal observers (MMOs).

Pinniped hearing is dependent upon the medium (i.e., air or water) in which they receive the sound. Most pinniped species have essentially flat audiograms from 1 kHz to 30 50 kHz with thresholds between 60 and 85 dB re 1 microPa (M hl, 1968; Kastak and Schusterman, 1995; review by Richardson et al., 1995; Terhune and Turnbull, 1995; Kastelein et al., 2005;). At frequencies below 1 kHz, thresholds increase with decreasing frequency (Kastak and Schusterman, 1998). For example, for a harbor seal, the 100–Hz threshold for hearing was 96 dB re 1 microPa (Kastak and Schusterman, 1995). Harbor seals' hearing thresholds in-water and in-air display the significant disparities between hearing capabilities with hearing 25 30 dB better underwater than in air (Kastak and Schusterman, 1994).

Harbor Porpoise

Harbor porpoises are not listed as ''depleted'' under the MMPA or listed as ''threatened'' or ''endangered'' under the Endangered Species Act. They are found within Cook Inlet but in low abundance, especially in Knik Arm. Currently, the population estimate for the Gulf of Alaska harbor porpoise stock is 41,854 with a minimum population estimate of 34,740 (Angliss and Outlaw, 2006). However, density of this species in Cook Inlet is only 7.2 per 1000 square kilometers (Dahlheim et al., 2000). The highest monthly count in upper Cook Inlet between April and October is 18 (Ramos et al., 2006). Interactions with fisheries and entanglement in gear is the prime anthropogenic cause of mortality for this stock (mean annual mortality of 67.8) (Angliss and Outlaw, 2006). Harbor porpoises are not killed for subsistence reasons.

Harbor porpoises have a wide hearing range and the highest upper-frequency limit of all odontocetes studied. They have a hearing range of 250 Hz–180 kHz with maximum sensitivity between 16–140 kHz. There is no available data on high frequency cetacean reactions to impulsive sounds (e.g., impact pile driving); however, numerous studies have been conducted in the field (Culik et al., 2001; Olesiuk et al., 2002; Johnston, 2002) and laboratory (Kastelein et al., 1995, 1997, 2000) for non-pulse sounds. The results of these studies demonstrate the harbor porpoise is quite sensitive to a wide range of human sounds at very low exposure levels: approximately 90- 120 dB re: 1 microPa. However, most of these studies involved acoustic harassment devices (e.g., pingers) in the range of 10 kHz which is 6–7 kHz greater than most industrial sounds, including pile driving.

Killer Whales

Killer whales in the Gulf of Alaska are divided into two ecotypes: resident and transient. Killer whales are relatively common in lower Cook Inlet (at least 100 sightings from 1975 to 2002), but in the upper Inlet, north of Kalgin Island, sightings are infrequent; 18 sightings have been reported from 1976–2003 with an average of 1 per year since the mid 1990s (Sheldon et al. 2003). Transient killer whales, the only ecotype sighted in Knik Arm, likely belong to the Gulf of Alaska, Aleutian Islands, Bering Sea Transient Stock. This stock is not listed as depleted under the MMPA or threatened or endangered under the ESA. Based on the 2006 NMFS stock assessment reports, the minimum population estimate for the Gulf of Alaska, Aleutian Islands, and Bering Sea transient stock of killer whales is 314 animals based on the count of individuals using photo-identification. Based on the rarity of killer whale sightings in Knik Arm, NMFS is proposing to authorize up to 5 take per year of this species.

Killer whales are considered the only natural predator of Cook Inlet beluga whales. Most observed killer whale/beluga interactions have occurred in the upper Inlet; however, these events appear to be random and are not considered an influential factor on beluga whale distribution (Hobbs et al., 2006). A decrease in killer whale prey comprised of seals and sea lions in the Gulf of Alaska could result in more killer whales moving from the southern portion of the Inlet to the northern portion in search of beluga prey.

The hearing of killer whales is well developed and this species exhibits complex underwater communication structure. They have hearing ranges of 0.05 to 100 kHz which is lower than many other odontocetes. Peak sensitivity is around 15 kHz. Interestingly, mammal-eating killer whales (i.e., transients) limit their vocal communication and often travel in silence. This is in contrast to the very vocal fish eating (i.e., resident) killer whale pods who are constantly vocalizing. The difference for this behavior is that fish do not possess the advanced hearing capabilities as the marine mammals, who can hear or eavesdrop on mammal eating killer whale calls and escape from being prey (Deecke et al. 2005).

Harassment Isopleth Calculations

In recent years, investigations into the role anthropogenic noise plays on impacting marine mammals (both behaviorally and physically) have increased dramatically. NMFS is in the process of developing guidelines for determining thresholds for acoustic harassment based on the best available science. In the interim, NMFS generally considers 180 and 190 dB as the level at which cetaceans and pinnipeds, respectively, could be subjected to Level A (injurious) harassment, and Level B (behavioral) harassment is considered to have occurred when marine mammals are exposed to pulsed sounds (e.g.,

impact pile driving) at or above 160 dB, but below injurious thresholds. For purposes of these proposed regulations, NMFS considers 125 dB to be the level at which Level B harassment from non-pulsed sounds (e.g., vibratory pile driving, chipping) could occur. The shift to 125 dB from the threshold of 120 dB used for the 2008 IHA is based on overwhelming evidence that noise levels around the POA are consistently near or above 120 dB due to wind and currents (Blackwell, 2005; URS, 2007; Scientific Fishery Systems, 2009), as described in the Acoustic Environment section of this document. In other words, a sound that is as loud as or below ambient/background levels is likely not discernable to marine mammals and therefore, is not likely to have the potential to harass a marine mammal.

The POA/MARAD's LOA application used preliminary ''worst-case'' measurements from the acoustic study to determine harassment level isopleths. In January 2009, NMFS received a report detailing the findings from the 2008 acoustical survey and supplemental information in response to NMFS' questions on the report in February 2009. After review of these documents, NMFS determined that the Level B harasssment isopleths identified in the application are not appropriate because NMFS' harassment thresholds, as described above, are based on rms values while the application identified isopleth distances based on peak values measured during impact pile driving and did not consider all measurements made during vibratory pile driving.

It is apparent that noise levels in lower Knik Arm around the POA are highly variable and strongly correlated with wind and tide. The 2008 survey collected sounds measurements over 14 days with varying results, both during and in absence of pile driving. The acoustic data were presented to NMFS in the following manner: (1) based on empirical measurements made at various locations during various types of pile driving, source levels were estimated; (2) from these estimated source levels, distances to the 180/190, 160, and 125 dB isopleths were calculated assuming a transmission loss of 20 log; and (3) background levels (in absence of pile driving) were provided from 25 recordings.

According to supplemental information provided by the POA/MARAD, the worst-case measured sound levels from impact pile driving was during face wall sheet pile installation. Sound levels measured 148 dB at 355m, which equals a source level of 200 dB (Table 2). Based on this source level and given a 20 log transmission loss, the 160 dB isopleth would be 97 m. However, due to variability between the 2007 study, which identified the 160 dB isopleth to be 350m, NMFS is proposing to maintain the 350m isopleth distance for impact pile driving as contained in the IHA as this is more conservative. For vibratory pile driving, NMFS considered the average estimated source level of 187 dB, as described in the 2008 acoustic report, to calulate the 125 dB isopleth at 1,300 m. This isopleth distance is augmented by Blackwell (2005) who found that pile driving sound levels at Port MacKenzie did not change significantly between the 1300 m (4265 feet) and 1900 m (6234 feet) stations, which suggests that beyond approximately 1300 m, background sounds contributed more to received levels than vibratory pile driving. According to the supplemental information provided by the POA/MARAD, the 2008 survey also found that at various distances from 1 to 4 km, recording devices failed to pick up vibratory pile driving noise. Therefore, NFMS considers the 1,300 m Level B harassment isopleth for vibratory pile driving to be appropriate.

TABLE 2—LEVEL A AND B HARASSMENT ISOPLETH DISTANCES BASED ON FINAL ACOUSTIC MONITORING DATA (SCIENTIFIC FISHERY SYSTEMS 2009)

Summary of Acoustic Measurements and Estimated Source Levels and Isopleth Distances

Description	Worst-Case Measured Level (dB rms)	Frequency Range (Hz)	Calculated Source Level	Calculated Distance to 190 dB rms (m)	Calculated Distance to 180 dB rms (m)	Calculated Distance to 160 dB rms (m)	Calculated Distance to 125 dB rms (m)
Sheet pile- face wall, average vibratory	N/A	100–4000	187 dB	N/A	<10m	N/A	1,300 m
Sheet pile- face wall, impact (deep hydrophone)	148 dB at 355m	8000–10,000	200 dB	3.1	9.7	97	N/A
Sheet pile- face wall, impact (shallow hydrophone)	157dB at 78m	10–200; 6,000	195 dB	1.8	5.7	57	N/A
Sheet pile- tail wall, vibratory	120dB at 107m	200–400	161 dB	N/A	N/A	1.1	60
Sheet pile- tail wall, impact	139 dB at 268m	2,000–7,000	188 dB	N/A	2.4	23.8	N/A
Wye pile, vibratory	139dB at 149m	2,500–4,000	182 dB	N/A	1.3	13.2	747
Wye pile, impact	148dB at 155m	8,000–10,000	195 dB	1.7	5.4	54.1	N/A
Temporary pipe pile, vibratory	144dB at 35m	200–4,500	175 dB	N/A	N/A	5.6	312
Hairpin, impact	143dB at 106m	Not available	183 dB	N/A	1.4	14.2	N/A

Take Calculations

As discussed above, monitoring of marine mammal presence, behavior, group composition, etc., specifically for the MTRP began in 2005 and will continue 1-year post construction. Surveys purposely began 2 years before in-water work to estimate frequency at which beluga whales use the area around the POA and for what biological function (e.g., traveling, feeding, etc.) pre-disturbance. From 2005–2007, theodolite tracking and grid cell mapping were used to track whales. This system allowed documentation of whale group location and movements on a coarse scale (500 by 500 m grids) allowing the number of belugas present within the MTRP footprint, within a 1 x 6 km2 area around the POA (defined as the nearshore area), as well as within the entire visible area, to be calculated. A detailed description of those results can be found in the **Federal Register** documents prepared for issuance of the IHA and the associated EA. In summary, beluga whales were sighted during all months the MTRP will be conducting in-water activities (April-November) but most frequently in the nearshore area (i.e., the nearshore area had the highest density of whales when compared to other visible parts of the Arm), around low tide, and during the months of August and September, coinciding with salmon runs. These data augment those of the Hobbs et al. (2005) satellite tag study.

To estimate the number of beluga whales taken by harassment level sounds from pile driving, the application uses the following parameters to calculate takes: (1) nearshore density data from the 2005–2007 POA surveys (Funk et al., 2005, Ramos et al., 2006, Cornick and Kendall 2007); (2) estimated pile driving hours per year (for both impact and vibratory driving); (3) harassment isopleth distances based on preliminary results from the 2008 acoustic study; and (4) proposed mitigation requirements (e.g., no pile driving 2 hours either side of low tide). That is, the estimated number of beluga whales that could potentially be exposed to noise levels above the NMFS thresholds is calculated by multiplying the average nearshore density per month by the number of hours pile driving per month and then multiplied by the area of noise exposure. A low-tide correction factor was then applied as impact pile driving would take place during this time. The numbers of beluga whales were rounded up to the nearest whole number per month. The tables outlining number of beluga whales taken by year and type of pile driving can be found in Chapter 6 of the application.

The area of noise exposure in km2 is calculated based upon the calculated harassment isopleth radii, as determined in the application, for each pile type and installation technique to the appropriate NMFS noise exposure threshold (160 dB for impact and 125 dB for vibratory pile driving). For simplification reasons, the calculated exposure area is equal to the area of a semi-circle (A = 3.14r2/2) radiating out from the pile location. However, this could be conservative as it assumes that noise from pile driving would radiate out spherically when, in fact, empirical measurements from the 2008 acoustic study indicate a directionality of noise propagation from pile driving (i.e., the loudest sound is straight out from the source, not up or down the Arm) (SFS, 2008).

According to the application, the calculated number of beluga whales that could be exposed to noise from in-water vibratory pile driving for each month was determined from preliminary acoustic data and ranges from 4 to 22 in 2009; 3 to 13 in 2010; 2 to 14 in 2011; 3 to 28 in 2012, 3 to 19 in 2013; and 1 to 3 in 2014. The total number for each year ranges from 10 in 2014 to 76 in 2012 (see Table 6.4 in application). In total, based on calculations in the application, 43 whales (11.8%) - 78 whales (21.4%) per year could potentially be taken by pile driving operations assuming the population remains stable. However, the take estimates in the application are an overestimate from the actual number of whales that will actually be exposed to harassment level noise for the following reasons: (1) sound from pile driving is likely directional and not spherical; (2) the number of beluga whales potentially passing through the exposure area is based on the highest nearshore density but assumes density is distributed evenly throughout the entire area of noise exposure; (3) the POA/MARD have, and will likely continue, to implement shut down procedures even when not required by regulations; and (4) isopleth distances in the application were based on peak values (NMFS threshold levels are based on rms values) and did not consider all recordings; therefore, they are much larger than NMFS determined harassment (see Harassment Isopleth Calculations). Taking these factors into account, the POA/MARAD are requesting and NMFS is proposing, to authorize the harassment of up to 34 beluga whales per year (9 percent), the current take level authorized in the 2008 IHA. Should the annual authorized take number be reached during the in-water work construction season, all pile driving and in-water chipping for demolition must be shut-down if a beluga whale is sighted approaching designated harassment or safety zones.

Given that other marine mammals potentially affected by the POA's MTRP (i.e., harbor seals, harbor porpoise, and killer whales) are only sporadically sighted in lower Knik Arm, no calculated take estimates were derived. Based on scientific and anecdotal sighting data, NMFS is proposing to authorize the harassment of up to 20 harbor seals, 20 harbor porpoises, and 5 killer whales per year. These takes represent essentially 0 percent of harbor seals and harbor porpoises as the population sizes of these affected stocks are 45,975 and 34,740, respectively. The taking of 5 killer whales represent 1.5% of the population of killer whales potentially found in upper Cook Inlet which has a stock size of 314 individuals. These proposed takes represent small numbers relative to the affected species and stocks.

Impacts to Marine Mammals

In general, noise associated with coastal development has the potential to harass marine mammals present around the specific action area. Marine mammals use sound for vital life functions, and introducing sound into their environment could be disrupting to those behaviors. Sound (hearing and vocalization/echolocation) serves four main functions for odontocetes (toothed whales and dolphins). These include: (1) providing information about their environment; (2) communication; (3) enabling remote detection of prey; and (4) enabling detection of predators. Pinnipeds also use sound for these functions except they can not echolocate like odontocetes and therefore rely on sight and vibrassae for prey detection and information about their environment. The distances to which sounds are audible depend on source level and frequency, ambient noise levels, physical habitat characteristics (e.g., water temperature, depth, substrate type), and sensitivity of the receptor (Richardson et al., 1995). Impacts to marine mammals exposed to loud sounds include possible mortality (either directly from the noise or indirectly based on the reaction to the noise), injury and/or disturbance ranging from severe (e.g., permanent abandonment of vital habitat) to mild (e.g., startle). As stated, pile driving and in-water chipping (for demolition of the existing dock) could cause behavioral harassment; however, physical injury is not anticipated due to the nature of the

operations and mitigation measures (see Mitigation section). No Level A harassment (injury) or mortality is expected to occur.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very loud sounds. As stated previously, NMFS considers the Level A in-water harassment threshold to be 180/190 dB for cetaceans and pinnipeds, respectively. The threshold for Level B harassment from pulsed noise (e.g, impact pile driving) is 160 dB and, specific to the MTRP, 125 dB from non-pulsed noise (e.g., vibratory pile driving, chipping).

Several aspects of the planned monitoring and mitigation measures for the MTRP are designed to detect marine mammals occurring near pile driving and demolition activities, and to avoid exposing them to sound that could potentially cause hearing impairment (e.g., mandatory shut down zones) and minimize disturbance (e.g., shut down if allocated takes used, for large groups and groups with calves). In addition, marine mammals will be given a chance to leave the area during ''soft start'' and ''ramp-up'' procedures to avoid exposure to full energy pile driving. In those cases, the avoidance responses of the animals themselves will reduce or eliminate any possibility of hearing impairment. Hearing impairment is measured in two forms: temporary threshold shift and permanent threshold shift.

Permanent Threshold Shift (PTS)

When permanent threshold shift (PTS) occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges. PTS consists of non-recoverable physical damage to the sound receptors in the ear and is therefore classified as Level A harassment (injury) under the MMPA. There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from temporary threshold shifts (TTS)-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by 40 dB (i.e., 40 dB of TTS) (Southall et al., 2007). PTS has never been measured in marine mammals despite some hearing threshold studies exposing beluga whales to pulses up to 208 dB (Finneran et al., 2002), 28 dB louder than NMFS' current Level A harassment threshold. Based on TTS studies (discussed below), proposed mitigation measures, and source levels for the MTRP, NMFS does not expect that marine mammals will be exposed to levels that could elicit PTS (i.e., no Level A harassment is anticipated).

Temporary Threshold Shift (TTS)

Temporary (auditory) threshold shift (TTS) is a slight, recoverable loss of hearing sensitivity. TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). The course and time of recovery generally depend on the amount of exposure to noise and the amount of shift incurred (Natchigall et al., 2003). Generally, the greater the threshold shift, the longer the recovery period (Mills et al., 1979). Southall et al. (2007) considers a 6 dB TTS (i.e., baseline thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS-onset. Auditory fatigue (i.e., TTS) in mid-frequency cetaceans has been measured after exposure to tones, impulsive sounds, and octave-band noise. Because it is non-injurious, NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B Harassment may occur.

While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran et al., 2002).

Laboratory experiments investigating TTS onset for belugas have been conducted for both pulse and non-pulse sounds. Finneran et al. (2000) exposed a trained captive beluga whale to a single pulse from an explosion simulator. No TTS threshold shifts were observed at the highest received exposure levels (approximately 199 dB; 179 dB re 1 μPa2–s [SEL]); however, amplitudes at frequencies below 1 kHz were not produced accurately to represent predictions for the explosions. Another study was done using seismic waterguns with a single acoustic pulse (Finneran et al., 2002). Measured TTS was 7 and 6 dB in the beluga at 0.4 and 30 kHz, respectively, after exposure to intense single pulses at approximately 208 dB (186 dB re 1 microPa2–s [SEL]). Schludt et al. (2000) demonstrated temporary shifts in masked hearing thresholds for belugas occurring generally between 192 and 201 dB (192–201 dB re 1 μPa2–s [SEL]) after exposure to intense, non-pulse, 1–s tones at 3, 10, and 20 kHz. TTS onset occurred at mean sound exposure level of 195 dB (195 dB re 1 microPa2- s [SEL]). At 0.4 kHz, no subjects exhibited shifts after exposures up to SPLs of 193 dB (195 dB re 1 microPa2- s [SEL]). Natchigall et al. (2003) measured TTS averaging 11 dB when exposed to sounds with a 7.5 kHz center frequency. No shifts were obtained at 165 dB or 171 dB (198 to 200 re 1 microPa2–s [SEL]), but when a fatiguing noise at 179 dB was presented, the animal showed the first TTS of 10.4 dB above baseline. Full auditory recovery occurred within 45 minutes following noise exposure. To date, no studies relating TTS onset to pile driving sounds have been conducted for any cetacean species.

Because noise from pile driving would not be a one-time exposure, as with most human development and exploration activities, a time component must be incorporated into any effects analysis. Experiments with marine mammals show a nearly linear relationship between sound exposure level and duration of exposure: the longer an animal is exposed, the lower the level required to produce TTS (Kastak & Schusterman, 1999; Schlundt et al., 2000; Nachtigall et al., 2003). Beluga whales could be exposed to vibratory pile driving noise lasting from less than 1 minute up to approximately 3 minutes or up to 20 minutes for impact driving (averaging 1.5 minutes for vibratory and 6 minutes for impact pile driving). The hammers must then be re-set creating, at a minimum, a 1–15 minute break. Using auditory evoked potentials (AEP) methods, Natchigall et al. (2004) repeated his 2003 study and found TTS of approximately 4 to 8 dB following nearly 50 minutes of exposure to the same frequency noise (center frequency 7.5 kHz) at 160 dB (193–195 dB re 1 microPa2–s [SEL]). TTS recovery occurred within minutes or tens of minutes. Based on data from the aforementioned studies, the fact that pile driving would only occur for a short intervals of time, and animals would not be exposed to sound levels at or above 180 dB due to proposed mitigation, NMFS anticipates that TTS, if it does occur, would not last more

than a few minutes and would likely not result in impacts to vital life functions such as communication and foraging.

Demolition Effects

Demolition of the existing dock will require use of mechanical equipment such as hydraulic chipping hammers (in-water or out-of-water) and possibly the use of explosives (out-of-water only). The POA/MARAD have submitted a demolition plan outlining three options, as described above, for dock removal and proposed mitigation for each (available on the NMFS Permits website). Because the chosen method will not be decided until 2010, all three options, with associated mitigation, are included in the proposed rulemaking.

Mechanical means of removing the dock is a component in all three options. The POA/MARAD have indicated that if the in-water dock demolition method is chosen (Option 1), it will likely occur during the winter, when beluga whales are least abundant, or in summer, but not in both seasons. Information on noise levels associated with the use of chipping hammers is currently not available for the unique waters of Knik Arm; however, the chipping hammer operates at 19% less horsepower than the vibratory hammers used during pile driving. Therefore, it can be assumed that sound transmission from this activity is less than that of pile driving. In addition, because of the considerable structural mass of concrete that the vibrations would pass through prior to reaching the water, the energy is expected to attenuate to a minimal level. Due to the lack of empirical acoustic propagation data, the POA/MARAD have requested, and NMFS is proposing, to implement the same harassment and safety radii as vibratory pile driving. Based on this precautionary approach, considering the chipping hammer works at 19 percent reduced energy and the concrete will absorb some sound, NMFS has preliminarily determined that marine mammals would not be exposed to levels inducing Level A harassment and behavioral harassment would be minimized, if not eliminated, due to implementing a 200 m shut-down zone.

Option 2 in the demolition plan involves blasting, albeit out-of-water. Because no in-water blasting is proposed, applying NMFS' harassment threshold criteria for this activity is not appropriate. Instead, the POA/MARAD and NMFS have considered sound transmission through the water's surface from out-of-water detonations.

Little information is available for over-water sound levels from explosives near shore (out-of-water); however, two studies conducted by the California Department of Transportation (Caltrans) have measured in-water sound transmission resulting from out-of-water blasting.

In 2003, Caltrans collected measurements of underwater SPLs during out-of-water controlled blasting operations as part of the construction of bridge pier footings on Yerba Buena Island for the San Francisco Oakland Bay Bridge, East Span Seismic Safety Project (Caltrans, 2004). In-water SPLs were measured during out-of-water blasts for two different piers approximately, from the centerline, 80 m (262 ft) and 30 m (98 ft) from the shoreline. Results varied at each pier for each blast; however, in general, SPLs measured at 10- 20 m ranged from 170 to 183 dB (based on a 35 millisecond (msec) time constant) for the pier 80 m from the shoreline and 177 to 198 dB [189 to 212 dB(peak)] for the pier 30 m from shore. It should be noted that rms SPLss reported using the 35–msec time constant was found to be 3–5 dB higher than ''true'' rms SPL measured over the duration of the impulse, which is about 1 to 2 seconds in duration; therefore, the SPLs provided above should be considered conservative. Data from blasting events at both piers indicated that underwater SPLs appeared to increase as blasting was conducted at lower elevations; putting the blast closer to the water.

Dewatered cofferdams represent the most effective way of reducing construction/ demolition created noise into the water column because all operations are completely decoupled from the surrounding water column. The POA/MARAD would create a dike which acts like a cofferdam as in the Caltrans project. The out-of-water blasting at the POA would occur 91m (300 ft) from shore and the blasts would be confined (unlike Caltrans); therefore, sound levels in water would likely be similar or less than the results from the Caltrans pier located 80m from the shoreline but likely not greater. Based on Caltran results, no Level A harassment is likely to occur and the POA/MARAD have agreed, as suggested by NMFS, to not conduct any blasting if any marine mammal, is within visible range of the POA. MMOs would begin scanning for marine mammals thirty minutes prior to detonation with high power binoculars and the naked eye. Should any marine mammal be sighted, blasting will be delayed. Therefore, NMFS anticipates no harassment from out-of-water blasting will occur.

Non-auditory Physiological Effects

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. Due to proposed mitigation measures (e.g., mandatory shut downs) marine mammals would not be exposed to sound at or above 180 dB and likely less than that as sound studies indicate the 180/190 dB threshold is approximately 0–20 m from pile driving and NMFS is proposing a 200m shut down zone. Therefore, it is not expected that severe physiological effects from exposure to sound would be expected; however, a hormonal stress response is possible. Romano et al. (2004) demonstrated that belugas exposed to seismic water gun and (or) single pure tones (SPLs up to 201 dB) resembling sonar pings showed increased stress hormone levels of norepinephrine, epinephrine, and dopamine. While RLs would not be as strong as the ones in that study, a stress response would not be unexpected. Studies have also demonstrated that reactions of animals to sounds could result in physical injury. It has recently been reported that stranded deep diving marine mammals displayed physical attributes similar to the bends (e.g., in vivo gas bubble formation) (Ferndandez et al., 2005, 2006). Marine mammals may experience these symptoms if surfacing rapidly from deep dives in response to loud sounds. However, because Knik Arm is a shallow water estuary, marine mammals found there are not considered deep divers, and due to proposed mitigation measures, non-auditory physiological impacts, other than stress, are not expected.

Several aspects of the planned monitoring and mitigation measures for the MTRP are designed to detect marine mammals occurring near pile driving and to avoid the chance of them being exposed to sound levels which could result in injury or mortality (see Mitigation section). NMFS does not expect Level A harassment to occur.

Behavioral Effects

Behavioral responses of marine mammals to noise are highly variable and depend on a suite of internal and external factors which in turn results in varying degrees of significance (NRC, 2003; Southall et al., 2007). Internal factors include: (1) individual hearing sensitivity, activity pattern, and motivational and behavioral state (e.g., feeding, traveling) at the time it recieves the stimulus; (2) past exposure of the

animal to the noise, which may lead to habituation or sensitization; (3) individual noise tolerance; and (4) demographic factors such as age, sex, and presence of dependent offspring. External factors include: (1) non-acoustic characteristics of the sound source (e.g., if it is moving or stationary); (2) environmental variables (e.g., substrate) which influence sound transmission; and (3) habitat characteristics and location (e.g., open ocean vs. confined area). The marine mammal species or stock that could be most affected from the MTRP is the beluga whale. There are no consistent observed threshold levels at which beluga whales, and marine mammals in general, respond to an introduced sound. Beluga whale responses to sound stimuli have been noted to be highly dependent upon behavioral state and motivation to remain or leave an area. Few field studies involving stationary industrial sounds have been conducted on beluga whales. Reactions of belugas in those studies varied. For example, in Awbrey and Stewart (1983) (as summarized in Southall et al., 2007), recordings of noise from SEDCO 708 drilling platform (non-pulse) were projected underwater at a source level of 163 dB. Beluga whales less than 1.5 km from the source usually reacted to onset of the noise by swimming away (RLs approximately 115.4 dB). In two instances groups of whales that were at least 3.5 km from the noise source when playback started continued to approach (RLs approximately 109.8 dB). One group approached within 300 m (RLs approximately 125.8 dB) before all or part turned back. The other group submerged and passed within 15m of the projector (RL approximately 145.3 dB). Richardson et al. (1990), as summarized in Southall et al., 2007, played back drilling platform sounds (source level: 163 dB) while approximately 100 belugas were in the area of several hundred to meters to several hundred kilometers. No obvious reactions were noted; however, moderate changes in behavior from three groups swimming within 200 m of the sound projector were observed.

TTS experiments have also documented behavioral responses by trained belugas. These responses included reluctance to return to experimental stations when exposed to watergun pulse sounds projected 4.5m from the subject at approximately 185.3 dB (171 dB re 1 μPa2–s [SEL]) (Finneran et al., 2002) and behavioral changes when exposed to sounds from the explosion simulator at approximately 200 dB (177 dB re 1 μPa2–s [SEL]) (Finneran et al., 2000). In a non-pulse exposure experiment (i.e., 1 s tones), belugas displayed altered behavior when exposed to 180 196 dB (180–196 dB re 1 μPa2–s [SEL]) (Schlundt et al., 2000).

Masking of whale calls or other sounds potentially relevant to whale vital functions may occur. Southall et al. (2007) defines auditory masking as the partial or complete reduction in the audibility of signals due to the presence of interfering noise with the degree of masking depending on the spectral, temporal, and spatial relationships between signals and masking noise as well as the respective received levels. Masking occurs when the background noise is elevated to a level which reduces an animal's ability to detect relevant sounds. Belugas are known to increase their levels of vocalization as a function of background noise by increasing call repetition and amplitude, shift to higher frequencies, and change structure of call content (Lesage et al., 1999; Scheifele et al., 2005; McIwem, 2006). Another adaptive method to combat masking was demonstrated in a beluga whale which reflected its sonar signal off the water surface to ensonify to an object on which it was trained to echolocate (Au et al., 1987). Due to the low frequencies of construction noise, intermittent nature of pile driving, and the ability of belugas to adapt vocally to increased background noise, it is anticipated that masking, and therefore interruption of behaviors such as feeding and communication, will be minimized.

Many marine mammals, including beluga whales, perform vital functions (e.g., feeding, resting, traveling, socializing) on a diel (i.e., 24 hr) cycle. Repeated or sustained disruption of these functions is more likely to have a demonstrable impact than a single exposure (Southall et al., 2007). However, it is possible that marine mammals exposed to repetitious construction sounds from the proposed construction activities will become habituated and tolerant after initial exposure to these sounds, as demonstrated by beluga vessel tolerance (Richardson et al., 1995, Blackwell and Green, 2002). Habituation is found to be common in marine mammals faced with introduced sounds into their environment. For example, bowhead whales (Balaena mysticetus) have continued to use pathways where drilling ships are working (RLs: 131 dB) so that they can continue their eastward migration (Richardson et al., 1991). In addition, harbor porpoise, dolphins, and seals have become habituated to acoustic harassment deterrent devices such as pingers and ''seal bombs'' after repeated exposure (Mate and Harvey, 1987; Cox et al., 2001).

The monitoring program implemented by the POA/MARAD, with guidance and approval from NMFS, is designed to determine acute behavioral reactions of marine mammals in response to MTRP activities as well as implement shut down mitigation measures. To do this, marine mammal observers (MMOs) are stationed at the Port of Anchorage near pile driving operations to make observations and call to hammer operators of presence of marine mammals and if shut down is required. From July to November 2008, MMOs were on site all days in-water pile driving occurred (6–7 days per week). Reports indicate that 431 beluga whales (231 adults, 101 juveniles, 43 calves, 56 unknown age) and 1 harbor seal were sighted by MMOs stationed at the POA from July- November 2008. Of the 431 whales sighted, 267 entered into the harassment or safety zone; however, pile driving was not always taking place due to either non-mandatory, early shut-down or in-water pile driving not being conducted. This trend of using the east side of Knik Arm is consistent with marine mammal survey reports from 2005–2007. The POA/MARAD have consistently shut down operations if whales were sighted within or approaching the POA; therefore, only 8 beluga whales have entered into the designated harassment zones when pile driving was actually occurring. Traveling was the most common behavior detected followed by possibly feeding and resting/milling, also augmenting data collected from 2005–2007.

Out of 59 group sightings totaling 431 beluga whales, only 3 groups demonstrated an observed change in behavior. On all 3 occasions, the group split in two due to presence of a barge or a boat. Beluga whales were not observed to change swim speeds and while heading sometime did change, this could not be attributed directly to pile driving.

In addition to the goals above, the monitoring plan is designed to determine how this multi-year project is affecting beluga whale abundance and habitat use in this area in the long term. In accordance with conditions in the current IHA and the POA/MARAD's USACE 404(b) Permit, an independent MMO team is located atop Cairn Point and reports on (1) the frequency at which beluga whales are present in the MTRP footprint; (2) habitat use, behavior, direction of travel, and group composition; and (3) observed reactions or changes in behavior of marine

mammals in response to in-water activities occurring at the time of sighting. This team is present eight hours per day/four days per week, during two tide cycles per observation day and will continue through the MTRP and 1-year post construction. Marine mammal monitoring around the POA began in 2004 for the Knik Arm Crossing Project and continued into 2005 through the present for the MTRP. This scientific monitoring program will continue until 1–yr post completion of the new POA terminal. To investigate possible impacts other than acute behavioral changes, data from the 2008 monitoring reports gathered by the scientific monitoring team were averaged with the total whales sighted per hour from 2004–2006 for August and September and 2004–2007 for October and November. For all months, except October, the average number of whales sighted per hour was higher when the 2008 data were added. While the October average in 2008 was higher than 2005 and 2006, it was not higher than 2004 and 2007. Overall sighting rate by .09 whales/hour when compared to those two years. Additionally, the monitoring reports from MMOs on-site (i.e., those that implement mitigation shut-down procedures) consistently reported that whales did not change behavior when pile driving was occurring. Whales were often reported to be swimming at slow or normal speeds and behaviors were categorized, from the most common, as traveling, suspected feeding, or milling. The final monitoring report summarizing sightings from both MMOs stationed at the POA and the independent observer team at Cairn Point from July to November can be found on the NMFS Permits website (see **ADDRESSES**).

There were no available data on beluga whale responses to pile driving before in-water pile driving began for the MTRP; therefore, NMFS used the best available science which investigated similar sounds involving mid frequency cetaceans to assess potential impacts to beluga whales when exposed to pile driving during its impacts analysis for issuance of the IHA in 2008. In general, scientific literature suggests the following reactions are the most common in such cases: altered headings, increased swimming rates, changes in dive, surfacing, respiration, and feeding patterns, and changes in vocalizations. NMFS acknowledges these reactions are possible; however, also notes that, to date, all monitoring reports show no apparent behavioral reaction of Cook Inlet beluga whales to pile driving. There could be a number of reasons for this, including, but not limited to: (1) Cook Inlet beluga whales have demonstrated a tolerance to commercial vessel traffic and industrialization around the POA and therefore, may simply be habituated to such noise; (2) Cook Inlet is a naturally noisy environment due to strong winds and tides; (3) pile driving is intermittent in nature and a stationary source which may alleviate stress and reactions; and (4) the mitigation measures set by NMFS and implemented by the POA/MARAD are appropriate and effective to minimize harassment. The POA/MARAD are currently undertaking a study to investigate the vocal repertoire of beluga whales in response to pile driving as changes in vocalization patterns can not be determined from sighting data. Opportunistic sightings reports (often reported by tug/vessel crew, POA workers, and the public) and those from MMOs under the current IHA describe accounts of beluga whales vocalizing around tugs/barges as it resonates through the hulls, swimming near and around ships, and feeding around working vessels/newly filled land. While animals will be exposed to greater than background noise levels from pile driving, background sound levels in Knik Arm are already higher than most other marine and estuarine systems due to strong currents and eddies, recreational vessel traffic, and commercial shipping traffic entering and leaving the POA (Blackwell and Greene, 2002; Scientific Fishery Systems, 2008). Again, to date, all monitoring reports indicate no change in frequency, habitat use, or behavior of whales exposed to pile driving activities.

As in the 2008 IHA, NMFS is proposing to implement the following mitigation measure into regulations to ensure that exposure to pile driving does not result in decreased reproductive success or survivorship: shut down if a beluga whale calf or group with a calf is sighted approaching or within the harassment isopleths. Scientific literature suggests that mammal calves are believed to be more susceptible to anthropogenic stressors (e.g., noise) than adults. Frankel and Clark (1998) investigated the relative importance of natural factors such as demographic composition of humpback whale pods in response to low frequency (75Hz with a 30Hz bandwidth) M-sequenced source signal transmitted from a 4–element hydrophone array (elements were placed at depths of 10, 20, 40, and 80m). They determined that two natural variables, the number of adults in a pod and the presence of a calf, had the greatest effect upon whale behavior in response to playbacks. Pods with calves had higher blow rates, longer times at the surface, and a higher ratio of time at the surface to time submerged. The presence of a calf; however, did not affect whale speed, whale bearings, or relative orientation to the playback vessel. While no data on the vocal responses of beluga whales mother/calf pairs in response to anthropogenic sound are available, Van Parijs and Corkeron (2001) determined that Indo-Pacific humpback dolphin mother/calf pairs increased vocal behaviors when vessel passed with 1.5 m more than groups without calves. The authors concluded that mother/calf pairs appear to be more disturbed than animals of other social/age classes and that mother/calf pairs exhibit an increased need to establish vocal contact after such disturbance. McIwem (2006) suggested that pile driving operations should be avoided when bottlenose dolphins are calving as lactating females and young calves are likely to be particularly vulnerable to such sound. Based on these studies, NMFS has determined that the aforementioned mitigation measure will further ensure a negligible impact on beluga whales.There is no evidence to suggest that construction or other maritime activities (shipping, maintenance dredging) at the POA are affecting beluga whale use as evidenced by their relatively consistent seasonal abundance, use patterns, including the presence of calves in the area since 2004 (Funk et al., 2005; Ramos et al. 2006; Markowitz and McGuire, 2007; Cornick and Kendall, 2008; Cornick and Saxon-Kendall, 2009; ICRC, 2009). Monitoring reports indicate that beluga whales are primarily transiting through the POA area while opportunistically foraging, and POA/MARAD construction activities are not blocking this transit or displacing belugas from Knik Arm. Furthermore, NMFS does not anticipate that more serious effects (e.g., neurological effects, organ/tissue damage) would occur. Proposed mitigation measures would require shut down if a marine mammal is seen approaching within 200m of the pile driver or chipping hammer. Given that the 180 and 190 dB isopleths are within 20m, NMFS considers this shut down zone more than adequate to eliminate chance of physiological impairments. In addition, there is no evidence of injuries occurring in marine mammals exposed to sound from pile driving and there have been no direct studies of the potential for pile driving to elicit any of those effects. Therefore, no Level A

harassment (injury) is expected nor would any be authorized. For these and the other reasons listed above, the MTRP is expected to have a negligible impact on Cook Inlet beluga whales.

Impacts to Other Marine Mammals

Harbor seals, harbor porpoise, and killer whales could also potentially be impacted from the MTRP; however, these species rarely occur in upper Cook Inlet, hence exposure to harassment level sounds from the MTRP would be minimal and therefore have a negligible impact. If present, hauled out harbor seals may flush into the water from in-air noise, disturbing their resting and warming behaviors. In addition, some may be displaced or alter dive patterns if in water during pile driving. However, reactions may be minimized by the fact that seals in the area haul out in the presence of other anthropengic noise (e.g., aircraft/shipping/vehicular traffic, crane operations, etc.) and are likely habituated to noise around the POA. Blackwell et al., 2004 investigated disturbance to hauled-out ringed seals during pile driving at Northstar Island. Unweighted peak and rms SPLs and SELs in air were 112 dB re 20 mPa2–s and 96 dB re 20 mPa2–s, and 90 dB re 20 mPa2–s, respectively. During 55 hrs of observation, 23 observed seals exhibited little or no reaction to any industrial noise except approaching Bell 212 helicopters. Ringed seals swam in open water near the island throughout construction activities and as close as 46 m from the pipe-driving operation. It is hypothesized that the seals around Northstar Island were habituated to industrial sounds.

Harbor porpoise and killer whale behavioral reactions would likely be similar to those discussed in published literature (e.g., change in direction, diving behavior, etc.). Harbor porpoises have specialized hearing in higher frequency ranges outside of most industrial sounds; therefore, noise in lower frequency ranges must be louder in order to be heard. However, while construction will emit low frequency sounds outside of harbor porpoise peak sensitivity range, these animals have elicited behavioral responses to simulated wind turbine noise, also outside peak sensitivity range (max. Energy between 30–800 Hz; spectral density source levels of 128 dB at 80 and 160Hz) (Koschinski et al., 2003). During this study, animals were sighted at greater ranges during playbacks of simulated wind turbine noise and observed animals more frequently used echolocation signals. NMFS has determined that similar reactions may occur; however, due to the low abundance and rare occurrence of harbor porpoise and killer whales in Knik Arm and the intermittent nature of pile driving, any impacts from noise on their behavior is expected to be minimal and therefore negligible.

Impacts to Fish and Marine Mammal Habitat

The primary beluga whale habitat related concern for coastal development (not specific to the POA), as stated in the Conservation Plan, is restricting beluga whale passage along Knik Arm. The new dock face will extend approximately 400 ft from the current dock. No structures will be constructed which expand across the Arm or beyond the new dock location; therefore, it is not expected that beluga whales' access to the primary hotspots will be limited. To date, NMFS approved observers have reported that beluga whales continue to use areas within the MTRP footprint and are not behaviorally reacting to exposure to pile driving noise. Additionally, habitat use has remained unchanged. Pre-MTRP construction, marine mammal surveys along Knik Arm and pre in-water pile driving surveys report that traveling followed by opportunistic feeding were the primary beluga whale behaviors around the POA. Reports required under the 2008 IHA show the same trend in whale behavior. In addition, NMFS researchers observed beluga whales feeding off the newly filled North Backlands area further indicating that POA/MARAD expansion construction is not eliminating foraging opportunities. Based on these data and the fact MMOs are not observing acute behavioral reactions to pile driving, NMFS anticipates that beluga whales would not alter their behavior in a way that prevents them from entering and/or transiting throughout Knik Arm.

The primary aquatic habitat resource losses associated with the MTRP are the loss and degradation of intertidal and nearshore habitat, including essential fish habitat (EFH). Loss of habitat will adversely affect fish since the area to be filled is a nursery area, and placing fill in waters where fish are present can kill, injure, and isolate fish in the discharge area. Beluga whales' diet is primarily comprised of fish, therefore, this habitat loss could result in impacts to beluga whales. Fish habitats, including EFH, in upper Cook Inlet have not been studied comprehensively, but the studies completed to date indicate that the area immediately around the MTRP supports a wide diversity of marine and anadromous fish species, in particular providing migrating, rearing, and foraging habitat (Houghton et al., 2005). Intertidal and nearshore subtidal waters are used by juvenile and adult salmonids for refuge from the strong currents, as a migration corridor for adult salmonids, and as rearing and migratory habitat for several streams that drain into Knik Arm. Therefore, the elimination of this habitat and alteration of hydrology would adversely impact fish, especially juveniles and smolt taking refuge in the area to be filled; however, based on the following reasons, these changes are not likely to appreciably reduce prey availability to marine mammals, particularly beluga whales.

The project area is located approximately 2000 feet (609.4 m) north of the mouth of Ship Creek, a stocked creek, and the proposed action would remove most of the remaining intertidal and shallow subtidal waters north of the mouth to Cairn Point. If a decrease in fish abundance occurs to a certain degree, this could likely result in decreased foraging opportunities for belugas and increased beluga energy expenditure to find prey. However, juvenile chinook salmon sampled between Cairn Point and Point Woronzof were primarily of Ship Creek hatchery origin. Juvenile salmonids are reared at the hatchery for two years prior to release at the smolt stage. Smolts released from the hatchery are ready for out migration and it is believed that the smolts reside in the Ship Creek area for a limited period before migrating elsewhere in the Knik Arm and/or Cook Inlet estuaries. Because this creek is stocked, fish would be replenished from the hatchery. Furthermore, the area directly surrounding the Port is not considered a foraging hotspot, unlike the upper reaches of Knik Arm.

Further, design of the sheet pile wall may provide some refuge for fish which could enhance survival. The face of each sheet-pile cell is curved outward, creating a scalloped surface. Fender pile and fender-system structural components would protrude from the face of the sheet pile approximately eight feet, which would provide some limited fish refuge. In addition, the Port is evaluating various methods for constructing joint systems between OCSP cells that would provide open water areas along the face of the dock by leaving a space between the construction joints in the sheet pile wall. These breaks in the sheet pile wall profile would create alcoves with armor rock slopes of varying sizes and shapes that would provide refuge opportunities for salmonids. To offset direct habitat loss and degradation, the Port is required to carry out certain mitigation

procedures as condition in the Army Corps of Engineers' Permit No. POA–2003–502–N. For all construction seasons, including 2008, these include, but are not limited to: (1) no in water fill placement or pile driving activities shall occur within a one week period following smolt releases from the Ship Creek hatchery; (2) fill material shall consist of clean fill, free of unsuitable material (e.g., trash, debris, asphalt, etc.), and free of toxic pollutants; and (3) the Municipality of Anchorage, in collaboration with the Corps, would execute compensatory mitigation projects that will contribute toward offsetting the functional losses attributed to the Project. These projects would support salmon populations through restoration, enhancement, creation and/or preservation (listed in order of priority) of existing nearby estuarine and associated lower riparian habitats.

Public comments received on two **Federal Register** documents related to the MTRP- the proposed IHA issuance notice and notification of receipt for rulemaking/LOAs-identified concerns over other habitat related issues (i.e., pollution and increased dredging needs). NMFS analyzed these issues during its ''negligible impact'' determination decision process for the POA/MARAD's current IHA and the 2008 EA. This analysis is further supplemented here.

The Conservation Plan identifies pollution and dredging in relation to health and subsistence use of beluga whales. Exposure to pollution is a concern for many species which inhabit anthropogenically influenced areas. Pollutants may enter Cook Inlet via wastewater, runoff, and accidental petroleum and other product spills. The city of Anchorage and lower Knik Arm is the most highly industialized area of Cook Inlet; however, pollution levels in beluga whales are lower than those in other populations of beluga whales. As summarized in the Conservation Plan, beluga whale tissue samples have been analyzed for polychlorinated bipheny (PCBs), chlorinated pesticides (such as DDT), and heavy metals. PCBs and DDT may impair marine mammal health and reproductive abilities. Cook Inlet beluga whales had much lower concentrations of PCBs and DDT than Saint Lawrence river beluga whales and about 1/2 the concentration of those pollutants than other Arctic Alaska populations. Also examined were concentrations of various substances stored in the liver. Cadmium and mercury were lower in the Cook Inlet population than in the Arctic Alaska populations, while levels of methylmercury were similar to other Arctic Alaska populations. Copper levels were two to three times higher in the Cook Inlet animals than in the Arctic Alaska animals and similar to the Hudson Bay animals; however, the copper levels found in the livers of Cook Inlet belugas were not high enough to be a health issue (Becker et al., 2000).

As a result of POA expansion, dredging needs are altered from the current nominal depth of -35 ft MLLW to -45 ft MLLW and therefore NMFS has analyzed the potential for impact to marine mammals from this change in dredging needs in addition to POA/MARAD operated construction dredging. The Conservation Plan states that direct chemical analysis of dredging sediments found that compounds such as pesticides, PCBs, and petroleum hydrocarbons in Cook Inlet were well below detection limits while levels of arsenic, barium, chromium, and lead were well below management levels. Other compounds such as cadmium, mercury, and silver were not detected at all. In addition, hydrological models indicate that, overall, the POA expansion appears to have less potential for sedimentation than the existing port since the MTRP moves the dock face out into deeper water and into a higher flow regime area (Erbesole and Raad, 2004) leading to a possible decrease in dredging needs.

The POA/MARAD continue to operate under applicable federal, state, and local environmental laws and is conducting the port expansion process in the same manner. The POA/MARAD have obtained a USACE 404/10 Permit (August 2005/2007), Alaska Department of Environmental Conservation/Division of Water Quality Section 104 Permit (July 21, 2006), and Alaska Department of Natural Resources/Coastal Management Program Final Consistency Concurrence (July 7, 2006). These permits and concurrences were issued pertaining to water quality and other natural resources. In particular, the USACE permit contains numerous mitigation measures related to preventing and minimizing impact to wetlands and aquatic and aviary organisms from general development activities such as discharge, fill, and gravel extraction as well as establishes requirements to compensate for resources losses important to the human and aquatic environment. Many of these mitigation measures and conditions were suggested by NMFS, the EPA, US. Fish and Wildlife Service and other environmental agencies early in the MTRP's developmental stage.

Impacts to Subsistence Hunting

The subsistence beluga harvest transcends the nutritional and economic value of the whale and is an integral part of the cultural identity of the region's Alaska Native communities. Inedible parts of the whale provide Native artisans with materials for cultural handicrafts, and the hunting itself perpetuates Native traditions by transmitting traditional skills and knowledge to younger generations (NOAA 2007). However, due to dramatic decreases in Cook Inlet beluga whale populations, on May 21, 1999, a temporary moratorium on beluga whale harvest was set in place in 1999 (Public Law No. 106–31, section 3022, 113 Statute [Stat.] 57, 100) from such date until October 1, 2000. This moratorium was extended indefinitely on December 21, 2000 (Public Law No. 106–553, section 1(a) (2), 114 Stat. 2762). NMFS has entered into a co-management agreement for beluga whale subsistence harvest. No hunt has been conducted since 2005 and on October 15, 2008, NMFS published final regulations establishing long-term limits on the maximum number of Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence and handicraft purposes (73 FR 60976). These rules effectively state that no harvest will be conducted until 2012, at which time the possibility of a harvest will be re-evaluated based on beluga whale population trends.

NMFS anticipates that any harassment to marine mammals, including Cook Inlet beluga whales, would be short-term and be limited to changes in behavior and mild stress responses. NMFS does not anticipate that the authorized taking of affected species or stocks will result in changes in reproduction, survival, or longevity rates, impact population levels, or result in changes in distribution. Therefore, NMFS has preliminarily determined that the proposed regulations will not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

Mitigation

A goal of the Conservation Plan is to mitigate effects of anthropogenic activities, including noise and habitat degradation. The POA/MARAD's USACE permit contains numerous mitigation measures to reduce impacts on natural resources. MMPA authorizations also mitigate for impacts to marine mammals and habitat, mainly in the form of noise and exposure mitigation. Noise mitigation has been considered to safeguard marine

mammals and may fulfill two tasks: First, to avoid physical damage and death to marine animals; second, to avoid or reduce disturbance to marine animals and maintain the significance of an impact area for marine animals (Nehls et al., 2007). Mitigation measures in the current IHA would be in effect for regulations; however, the harassment zone for vibratory pile driving would extend to the 125 dB isopleth instead of the 120 dB isopleth. This small change is justified by the acoustic studies which reports that background levels in Knik Arm around the POA are consistently above 120d B and, even in absence of pile driving, it was difficult to obtain measurements at 120 dB across the Arm (see Acoustic Environment).

NMFS recommended numerous mitigation measures during the scoping process for issuance of the POA/MARAD's USACE permit. These conditions were incorporated into that permit. During the 2008 IHA application process, NMFS Permits Division added further conditions requiring pile driving shut down if beluga whale calves were sighted or if groups comprising 5 or more whales were sighted to minimize harassment potential and ensure that the MTRP would have a negligible impact on Cook Inlet beluga whales. NMFS requires monthly monitoring reports to ensure that pile driving activities are not resulting in behavioral reactions beyond those anticipated and requires reports from the scientific monitoring team atop Cairn Point to monitor for long term impact. These mitigation, monitoring, and reporting requirements support NMFS' negligible impact determination. For regulations, the proposed mitigation measures are as follows:

Scheduling of Construction Activities During Low Use Period of Beluga Whales Around the POA-Tidal Restrictions

Tides have been shown to be an important physical characteristic in determining beluga movement within Knik Arm. Most beluga whales are expected to be foraging well north of the POA during the flood and high tide. However, these northern areas are exposed during the ebb and low tide; therefore, animals move south toward Eagle Bay and sometimes as far south as the Knik Arm entrance to avoid being stranded on mudflats. Based on the beluga whale monitoring studies conducted at the POA since 2005, beluga whale sightings often varied significantly with tide height at and around the POA (Funk et al., 2005, Ramos et al., 2005, Markowitz and McGuire, 2007). Beluga whales were most often sighted during the period around low tide and, as the tide flooded, they typically moved into the upper reaches of the Arm. Opportunistic sighting data also support that highest beluga whale use near the POA is around low tide (NMFS, unpubl. data).

Due to this tidally influenced habitat use, impact pile driving, excluding work when the entire pile is out of the water due to shoreline elevation or tidal stage, shall not occur within two hours of either side of each low tide (i.e., from two hours before low tide until two hours after low tide). For example, if low tide is at 1 p.m., impact pile driving will not occur from 11 a.m. to 3 p.m. Vibratory pile driving will be allowed to commence/continue during this time because its characteristics (non-pulse sound type and lower source level) are expected to elicit less overt behavioral reactions.

Establishment of pile driving safety zones and shut-down requirements

NMFS acknowledges that shut-down of reduced energy vibratory pile driving during the ''stabbing'' phase of sheet pile installation may not be practicable due to concerns the sheet pile may break free and result in a safety and navigational hazard. Therefore, the following shut-down requirements apply to all pile driving except during the ''stabbing'' phase of the installation process.

Safety Zones

In 2008, the POA/MARAD contracted an outside company to determine reliable estimates of distances for 190 (pinniped Level A (injury) threshold), 180 (cetacean Level A threshold), 160 (impact pile driving Level B harassment threshold) and 125 dB (vibratory pile driving Level B harassment threshold) isopleths. Based on NMFS' analysis of the acoustic data, it has been determined that these isopleth distances are 10; 20; 350; and 1,300 m, respectively. Although the 190 and 180 dB isopleths are within 20m for both types of pile driving, NMFS is establishing a conservative 200m mandatory shut-down safety zone which would require the POA/MARAD to shut-down anytime a marine mammal enters this zone.

Shut-Down for Large Groups

To reduce the chance of the POA/MARAD reaching or exceeding authorized take and to minimize harassment to beluga whales, if a group of more than five beluga whales is sighted within the relevant Level B harassment isopleth, shut-down is required.

Shut-down for Calves

Marine mammal calves could be more susceptible to loud anthropogenic noise than juveniles or adults; therefore, presence of calves within any harassment isopleth will require shut-down. If a calf is sighted approaching or within any harassment zone, any type of pile driving will cease and not be resumed until the calf is confirmed to be out of the harassment zone and on a path away from such zone. If a calf or the group with a calf is not re-sighted within 15 minutes, pile driving may resume.

Heavy machinery shut-downs

For other in-water heavy machinery operations other than pile driving, if a marine mammal comes within 50 m of operations, they will cease and vessels will slow to a reduced speed while still maintaining control of the vessel and safe working conditions. Such operations include port operated dredges, water based dump-scows (barges capable of discharging material through the bottom), standard barges, tug boats to position and move barges, barge mounted hydraulic excavators or clamshell equipment used to place or remove material.

In-water pile driving and chipping weather delays

Adequate visibility is essential to beluga whale monitoring and determining take numbers. In-water pile driving will not occur when weather conditions restrict clear, visible detection of all waters within the Level B harassment zones or 200 m safety zone. Such conditions that can impair sightability and require in-water pile driving delays include, but are not limited to, fog and a rough sea state.

Exceedence of Take

If maximum authorized take is reached or exceeded for the year for any marine mammal species, any marine mammal entering into the Level B harassment isopleths will trigger mandatory shut-down.

Use of Impact Pile Driving

In-water piles will be driven with a vibratory hammer to the maximum extent possible (i.e., until a desired depth is achieved or to refusal) prior to using an impact hammer.

Soft Start to Pile Driving Activities

A ''soft start'' technique will be used at the beginning of each pile installation to allow any marine mammal that may be in the immediate area to leave before pile driving reaches full energy. The soft start requires contractors to initiate

noise from vibratory hammers for 15 seconds at reduced energy followed by 1-minute waiting period. The procedure will be repeated two additional times. If an impact hammer is used, contractors will be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a one minute waiting period, then two subsequent 3 strike sets (NMFS, 2003). If any marine mammal is sighted within the 200 m safety zone prior to pile-driving, or during the soft start, the hammer operator (or other authorized individual) will delay pile-driving until the animal has moved outside the 200 m safety zone. Furthermore, if any marine mammal is sighted within or approaching a Level B harassment zone prior to beginning pile driving, operations will be delayed until the animals move outside the zone in order to minimize harassment. Pile-driving will resume only after a qualified observer determines that the marine mammal has moved outside the 200m safety or Level B harassment zone, or after 15 minutes have elapsed since the last sighting of the marine mammal within the safety zone.

Demolition Mitigation

Table 7–1 in the Demolition Plan outlines all mitigation measures for each proposed option as described in the Specified Activities section of this document. Should chipping in-water be the chosen method for demolition (i.e., Option 1), the POA/MARAD will abide by the safety and harassment radii established for vibratory pile driving, despite the chipping hammer working at 19 percent reduced energy than that of a vibratory hammer. Therefore, NMFS considers this harassment and safety zone to be conservative. Other mitigation including poor weather delays, large group shut-downs, calf shut-downs will also be implemented for in-water chipping. Marine mammal observers will begin searching for animals 30 minutes prior to the start of all in-water chipping operations.

If Option 2 is chosen, no blasting will occur if a marine mammal is located anywhere within any visible area around the Point. Although no blasting will occur in-water, no detonation will occur if a marine mammal is sighted anywhere within the visible area. As with pile driving and chipping, blasting will be delayed if weather does not allow for adequate sighting conditions. Starting one-half hour prior to each out-of-water blasting event, MMOs at the MTRP site will systematically scan the POA and Knik Arm waters as far as the eye can see, by unaided eyed and high-powered binoculars, for signs of marine mammals. If marine mammals are observed, blasting will be suspended and will not resume until the animal has left the view area or has not been re-sighted for 15 minutes.

For in-water heavy-machinery operations, including dike construction, in-water fill placement, crushing, shearing, marine vessel operation, and steel recovery, a safety zone of 50 m would be established. That is, if a marine mammal comes within 50 m of the machinery, operations cease and vessels slow to a reduced speed while still maintaining control of the vessel and safe working conditions to avoid physical injury.

Notification of Commencement and Marine Mammal Sightings

The POA/MARAD shall formally notify the NMFS' Permits Division and AKR prior to the seasonal commencement of pile driving and shall provide monthly monitoring reports of all marine mammal sightings once pile driving begins. The POA/MARAD shall continue the formalized marine-mammal sighting and notification procedure for all POA users, visitors, tenants, or contractors prior to and after construction activities. The notification procedure shall clearly identify roles and responsibilities for reporting all marine mammal sightings. The POA/MARAD will forward documentation of all reported marine mammal sightings to the NMFS.

Public Outreach

The POA/MARAD shall maintain whale-notification signage in the waterfront viewing areas near the Ship Creek public boat launch and within the secured port entrance that is visible to all POA users. This signage shall continue to provide information on the beluga whale notification procedures for reporting beluga whale sightings to the NMFS.

Proposed Monitoring

Marine mammal monitoring for mitigation implementation will be conducted by trained, dedicated observers at the POA during all times in-water pile driving is taking place and thirty minutes before pile driving commences to ensure no marine mammals are within the Level B harassment or shut down zones. All marine mammal sightings will be documented on NMFS approved marine mammal sighting sheets.

Marine Mammal Monitoring

Monitoring for marine mammals will take place concurrent with all pile driving activities and 30 minutes prior to pile driving commencement. One to two trained observer(s) will be placed at the POA at the best vantage point(s) practicable to monitor for marine mammals and will implement shut-down/delay procedures when applicable by calling for shut-down to the hammer operator. The observer(s) will have no other construction related tasks while conducting monitoring. Each observer will be properly trained in marine mammal species detection, identification and distance estimation and will be equipped with binoculars. At the time of each sighting, the pile hammer operator must be immediately notified that there are beluga whales in the area, their location and direction of travel, and if shut-down is necessary.

Prior to the start of seasonal pile driving activities, the POA/MARAD will require construction supervisors and crews, the marine mammal monitoring team, the acoustical monitoring team (described below), and all MTRP managers to attend a briefing on responsibilities of each party, defining chains of command, discussing communication procedures, providing overview of monitoring purposes, and reviewing operational procedures regarding beluga whales.

In addition to the POA/MARAD's trained marine mammal observers responsible for monitoring the harassment zones and implementing mitigation measures, an independent beluga whale monitoring team, consisting of one to two land based observers, shall report on (1) the frequency at which beluga whales are present in the project footprint; (2) habitat use, behavior, and group composition near the POA and correlate those data with construction activities; and (3) observed reactions of beluga whales in terms of behavior and movement during each sighting. It is likely that these observers will monitor for beluga whales 8 hours per day/ 4 days per week but scheduling may change. These observers will work in collaboration with the POA/MARAD to immediately communicate any presence of beluga whales or other marine mammals in the area prior to or during pile driving. The POA/MARAD will keep this monitoring team informed of all schedules for that day (e.g., beginning vibratory pile driving at 0900 for 2 hours) and any changes throughout the day.

Acoustic Monitoring

The POA/MARAD shall install hydrophones (or employ other effective methodologies to the maximum extent possible) necessary to detect and localize passing whales and to

determine the proportion of beluga whales missed from visual surveys. This study will be coordinated with NMFS and the independent beluga whale monitoring program to correlate construction and operationally generated noise exposures with beluga whale presence, absence, and any altered behavior observed during construction and operations.

Reporting

The POA/MARAD are responsible for submitting monthly marine mammal monitoring reports that include all POA observer marine mammal sightings sheets from the previous month and proposes to continue this requirement. The sighting sheets have been approved by NMFS and require the following details, if able to be determined: group size, group composition (i.e., adult, juvenile, calf); behavior, location at time of first sighting and last sighting; time of day first sighted, time last sighted; approach distance to pile driving hammer; and note if shut-down/delay occurred and for how long. If shut-down or delay is not implemented, an explanation of why will be provided (e.g., no in-water work, outside of harassment zone, entered harassment zone but shut-down restriction requirements not met (e.g., no beluga whale calves, small group, ''stabbing'' phase)). In addition, the report will note what type of pile driving and other activities were occurring at and during time of each sighting and location of each observer. The monthly report, due to NMFS OPR and AKR no later than the 10th of the following month, will include all sighting sheets from the previous two months. The independent beluga whale monitoring team shall supply their monthly reports to NMFS; however, a time frame for submitting these reports is not specified.

Adaptive Management

In accordance with 50 CFR 216.105(c), regulations for the proposed activity must be based on the best available information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review. NMFS has and will continue to conduct June/July aerial surveys to estimate Cook Inlet beluga whale population size. Should these surveys find a dramatic increase or decrease in population size, NMFS may amend the number of whales authorized to be taken appropriately.

If, during the effective dates of the regulations, new information is presented from monitoring, reporting, or research, regulations may be modified, in whole, or in part after notice and opportunity of public review, as allowed for in 50 CFR 216.105(c). In addition, LOAs shall be withdrawn or suspended if, after notice and opportunity for public comment, the Assistant Administrator finds, among other things, the taking allowed in having more than negligible impact on the species or stock or an unmitigable adverse impact on the availability of the species or stock for subsistence uses, as allowed for in 50 CFR 216.106(e). That is, should substantial changes in beluga whale population occur, or monitoring and reporting show that the MTRP is having more than a negligible impact on marine mammals, then NMFS reserves the right to modify regulations and/or withdrawal or suspend LOAs after public review.

Preliminary Determinations

Based on the proposed activity, implementing mitigation and monitoring (both visual and acoustical), the best scientific information available, and data contained in the POA/MARAD's monitoring reports submitted under the IHA, NMFS has preliminarily determined that the MTRP will have a negligible impact on affected marine mammals species or stocks and will not have an unmitigible adverse impact on their availability for taking for subsistence uses.

ESA

Since issuance of the 2008 IHA, Cook Inlet beluga whales have become listed as endangered under the ESA. In accordance with Section 7 of this Act, the POA/MARAD have requested formal consultation with NMFS. In addition, NMFS Permits Division has also requested consultation with NMFS Endangered Species Division for issuance of regulations which may adversely affect beluga whales. Consultation will be completed before NMFS issues final regulations.

NEPA

NMFS has, through NOAA Administrative Order (NAO) 216–6, established agency procedures for complying with NEPA and the implementing regulations issued by the Council on Environmental Quality. As previously discussed, NMFS prepared an EA for issuance of the 2008 IHA and the proposed regulations. The EA addresses both short and long term impacts from the duration of the construction and impacts from operations (e.g., increased commercial vessel traffic). However, because the POA/MARAD have supplied more information on take numbers, acoustic environment, and the demolition process, NMFS has prepared a draft supplemental EA to further analyze the impacts of the MTRP on affected marine mammal species. One comment received during the 30-day public comment period on the application suggested that NMFS defer publication of a proposed incidental take rule until it completes a supplemental EA. It is NMFS practice to complete all NEPA requirements before issuing regulations and will continue to do so. The draft supplemental EA will be available on the NMFS Permits website upon publication of this notice.

Request for Comments

NMFS is soliciting comments on its proposal to issue 5-year regulations and subsequent LOAs to allow the taking of marine mammals, including beluga whales, incidental to MTRP related activities. NMFS addressed public comments in its **Federal Register** Notice of Issuance (73 FR 41318, July 18, 2008) for the IHA and requests that these comments and responses be reviewed before submitting any additional comments. NMFS is particularly interesting in comments addressing the following topics: information addressing the potential effect of repeated exposure to construction noise or other stressful stimuli on marine mammal reproduction, recruitment, and survivorship rates; additional or alternative proposed mitigation measures; information regarding cetacean habituation to acoustic stimuli, and information on potential habitat impacts as it relates to marine mammals. In addition, NMFS requests comments on potential subsistence use impacts. Prior to submitting comments, NMFS recommends reviewing the POA/MARAD's LOA application, demolition plan, NMFS' 2008 EA and 2009 Draft SEA on the NMFS' Permits website (see ADDRESSES) and NMFS' response to public comments in the **Federal Register** Notice of Issuance for the 2008 IHA as those documents contain information relevant to this action.

Classification

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant. Pursuant to section 605(b) of 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 proposed rule, if adopted, would not

have a significant economic impact on a substantial number of small entities. Two entities will be subject to the requirements in the proposed rulemaking: the U.S. Department of Transportation Maritime Administration (MARAD) and the Port of Anchorage. The MARAD is an agency of the federal government, which is not a small governmental jurisdiction, small organization, or small business. The Port of Anchorage is owned by the Municipality of Anchorage, which, according to the U.S. Census Bureau, had an estimated population in 2007 of approximately 279,000. Therefore, it is not a small governmental jurisdiction, small organization, or small business.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: April 15, 2009

Samuel D. Rauch,

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

For reasons set forth in the preamble, NMFS proposes to amend 50 CFR Chapter II by adding Part 217 to read as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

Subparts A-T—[Reserved]

Subpart U—Taking of Marine Mammals Incidental to the Port of Anchorage Marine Terminal Redevelopment Project

Sec.
217.200 Specified activity and specified geographical region.
217.201 Effective dates.
217.202 Permissible methods of taking.
217.203 Prohibitions.
217.204 Mitigation.
217.205 Requirements for monitoring and reporting.
217.206 Applications for Letters of Authorization.
217.207 Letters of Authorization.
217.208 Renewal of Letters of Authorization.
217.209 Modifications of Letters of Authorization.

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

Subparts A-T—[Reserved]

Subpart U—Taking of Marine Mammals Incidental to the Port of Anchorage Marine Terminal Redevelopment Project

§ 217.200 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in § 217.202(b) by the Port of Anchorage and the U.S. Department Maritime Administration (MARAD), and those persons it authorizes to engage in in-water pile driving operations and in-water chipping at the Port of Anchorage, Alaska.

§ 217.201 Effective dates.

Regulations in this subpart are effective from July 15, 2009, through July 14, 2014.

§ 217.202 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106 and 217.207 of this chapter, the Port of Anchorage and MARAD, and persons under their authority, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 217.200, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The taking of marine mammals under a Letter of Authorization is limited to the incidental take, by Level B harassment only, of the following species under the activities identified in § 217.200(a): Cook Inlet beluga whales (*Delphinapterus leucas*), harbor seals (*Phoca vitulina*), harbor porpoises (*Phocoena phocoena*), and killer whales (*Orcinus orca*).

§ 217.203 Prohibitions.

Notwithstanding takings contemplated in § 217.202(b) and authorized by a Letter of Authorization issued under §§ 216.106 and 217.207 of this chapter, no person in connection with the activities described in § 217.200 may:

(a) Take any marine mammal not specified in § 217.202(b);

(b) Take any marine mammal specified in § 217.202(b) other than by incidental, unintentional Level B harassment;

(c) Take a marine mammal specified in § 217.202(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 217.207 of this chapter.

§ 217.204 Mitigation.

(a) When conducting operations identified in § 217.200(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 217.207 of this chapter must be implemented. These mitigation measures are:

(1) Through monitoring described under § 217.205, the Holder of a Letter of Authorization will ensure that no marine mammal is subjected to a SPL of 180 dB re: 1 microPa or greater. If a marine mammal is detected within or approaching 200m prior to in-water pile driving or chipping, those operations shall be immediately delayed or suspended until the marine mammal moves outside these designated zones or the animal is not detected within 15 minutes of the last sighting.

(2) If a beluga whale is detected within or approaching the area subjected to SPLs at or above 160 dB prior to in-water impact pile driving, operations shall be delayed or suspended until the whale moves outside these designated zones or the animal is not detected within 15 minutes of the last sighting.

(3) If a beluga whale is detected within or approaching the area subjected to SPLs at or above 125 dB prior to in-water vibratory pile driving or chipping, operations shall be delayed or suspended until the whale moves outside these designated zones or the animal is not detected within 15 minutes of the last sighting.

(4) A ''soft start'' technique shall be used at the beginning of each day's in-water pile driving activities or if pile driving has ceased for more than one hour to allow any marine mammal that may be in the immediate area to leave before piling driving reaches full energy. For vibratory hammers, the soft start requires the holder of the Letter of Authorization to initiate noise from the hammers for 15 seconds at reduced energy followed by 1-minute waiting period and repeat the procedure two additional times. If an impact hammer is used, the soft start requires an initial set of three strikes from the impact hammer at 40 percent energy, followed by a one minute waiting period, then two subsequent 3 strike sets.

(5) In-water pile driving or chipping shall not occur when conditions restrict clear, visible detection of all waters within harassment zones. Such conditions that can impair sightability include, but are not limited to, fog and rough sea state.

(6) In-water impact pile driving shall not occur during the period from two hours before low tide until two hours after low tide.

(7) The following measures apply to all in-water pile driving, except during the ''stabbing'' phase, and all in-water chipping associated with demolition of the existing dock:

(i) No in-water pile driving (impact or vibratory) or chipping shall occur if any marine mammal is located within 200m of the hammer in any direction. If any marine mammal is sighted within or approaching this 200m safety zone, pile-driving or chipping must be suspended until the animal has moved outside the 200m safety zone or the animal is not resighted within 15 minutes.

(ii) If a group of more than 5 beluga whales is sighted within the Level B harassment isopleths, in-water pile driving or chipping shall cease. If the group is not re-sighted within 15 minutes, pile driving or chipping may resume.

(iii) If a beluga whale calf or group with a calf is sighted within or approaching a harassment zone, in-water pile driving and chipping shall cease and shall not be resumed until the calf or group is confirmed to be outside of the harassment zone and moving along a trajectory away from such zone. If the calf or group with a calf is not re-sighted within 15 minutes, pile driving or chipping may resume.

(8) If maximum authorized take is reached or exceeded, any marine mammal entering into the harassment or safety isopleths will trigger mandatory in-water pile driving shut down.

(9) For Port of Anchorage operated in-water heavy machinery work other than pile driving or chipping (i.e., dredging, dump scowles, tug boats used to move barges, barge mounted hydraulic excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 50 m, those operations will cease and vessels will reduce to the slowest speed practicable while still maintaining control of the vessel and safe working conditions.

(10) In the event the Port of Anchorage conducts out-of-water blasting, detonation of charges will be delayed if a marine mammal is detected anywhere within a visible distance from the detonation site.

(11) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 217.205 Requirements for monitoring and reporting.

(a) The Holder of a Letter of Authorization issued pursuant to §§ 216.106 and 217.207 of this chapter for activities described in § 217.200(a) is required to cooperate with NMFS, and any other Federal, state or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, NMFS, by letter, e-mail, or telephone, at least 2 weeks prior to commencement of seasonal activities and dock demolition possibly involving the taking of marine mammals. If the activity identified in § 217.200(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 217.202(b), the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by e-mail or telephone (301–713–2289), within 24 hours of the discovery of the injured or dead animal.

(b) The Holder of a Letters of Authorization must designate qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization, to:

(1) Conduct visual marine mammal monitoring at the Port of Anchorage beginning 30 minutes prior to and during all in-water pile driving or chipping and out-of-water blasting.

(2) Record the following information on NMFS-approved marine mammal sighting sheets whenever a marine mammal is detected:

(i) Date and time of initial sighting to end of sighting, tidal stage, and weather conditions (including Beaufort Sea State);

(ii) Species, number, group composition (i.e., age class), initial and closest distance to pile driving hammer, and behavior (e.g., activity, group cohesiveness, direction and speed of travel, etc.) of animals throughout duration of sighting;

(iii) Any discrete behavioral reactions to in-water work;

(iv) The number (by species) of marine mammals that have been taken;

(v) Pile driving, chipping, or out of water blasting activities occurring at the time of sighting and if and why shut down was or was not implemented.

(3) Employ a marine mammal monitoring team separate from the on-site marine mammal observers (MMOs), to characterize beluga whale abundance, movements, behavior, and habitat use around the Port of Anchorage and observe, analyze, and document potential changes in behavior in response to in-water construction work. This monitoring team is not required to be present during all in-water pile driving operations but will continue monitoring one-year post in-water construction. The on-site MMOs and this marine mammal monitoring team shall remain in contact to alert each other to marine mammal presence when both teams are working.

(c) The Holder of a Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) The Holder of a Letter of Authorization shall submit a monthly report to NMFS' Headquarters Permits, Education and Conservation Division and the Alaska Region, Anchorage for all months in-water pile driving or chipping takes place. This report must contain the information listed in paragraph (b)(2) of this section.

(e) An annual report must be submitted at the time of application for renewal of the Letter of Authorization.

(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports;

(2) Assess the impacts to marine mammals from the port expansion project; and

(3) Assess the cumulative impacts on marine mammals.

§ 217.206 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 217.200(a) (the Port of Anchorage and MARAD) must apply for and obtain either an initial Letter of Authorization in accordance with § 217.207 or a renewal under § 217.208.

(b) The application must be submitted to NMFS at least 60 days before the expiration of the initial or current Letter of Authorization.

(c) Applications for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) The date(s), duration, and the specified geographic region where the activities specified in § 217.200 will occur; and

(3) The most current population estimate of Cook Inlet beluga whales and the estimated percentage of marine mammal populations potentially affected for the 12-month period of

effectiveness of the Letter of Authorization;

(4) A summary of take levels, monitoring efforts and findings at the Port of Anchorage to date.

(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with § 217.206 and, if adequate and complete, issue a Letter of Authorization.

§ 217.207 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 § 217.208.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking; and

(2) Requirements for mitigation, monitoring and reporting, including, but not limited to, means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses.

(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), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of an application for a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 217.208 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 217.207 of this chapter for the activity identified in § 217.200(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 217.206 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 217.205(d) and (e), and the Letter of Authorization issued under § 217.207, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 217.204 and 217.205 and the Letter of Authorization issued under §§ 216.106 and 217.207 of this chapter, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(4) A determination by NMFS that the number of marine mammals taken during the period of the Letter of Authorization will be small, that the total taking of marine mammals by the activities specified in § 217.200(a), as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for subsistence uses.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 217.208 of this chapter indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request.

(c) Notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 217.209 Modifications of 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 217.207 of this chapter 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 § 217.208, 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 § 217.202(b), a Letter of Authorization issued pursuant to §§ 216.106 and 217.207 of this chapter 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. E9–9369 Filed 4–22–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 080229341–9330–02]

RIN 0648–XF89

Endangered and Threatened Wildlife and Plants: Proposed Endangered, Threatened, and Not Warranted Status for Distinct Population Segments of Rockfish in Puget Sound

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

ACTION: Proposed rule; 12–month petition finding; request for comments.

SUMMARY: We, the NMFS, have completed Endangered Species Act (ESA) status reviews for five species of rockfish (*Sebastes* spp.) occurring in Puget Sound, Washington, in response to a petition submitted by Mr. Sam Wright of Olympia, Washington, to list these species in Puget Sound as threatened or endangered species. We reviewed best available scientific and commercial information on the status of these five stocks and considered whether they are in danger of extinction throughout all or a significant portion of their ranges, or are likely to become endangered within the foreseeable future throughout all or a significant portion of their ranges. For bocaccio (*S. paucispinis*), we have determined that the members of this species in the Georgia Basin are a distinct population segment (DPS) and are endangered throughout all of their range. We propose to list this bocaccio DPS as endangered. We have determined that yelloweye rockfish (*S. ruberrimus*) and canary rockfish (*S. pinniger*) in the Georgia Basin are DPSs and are likely to become endangered within the foreseeable future throughout all of their range. We propose to list the Georgia Basin DPSs of yelloweye and canary rockfish as threatened. We determined that populations of greenstriped rockfish (S. elongatus) and redstripe rockfish (*S. proriger*) occurring in Puget Sound Proper are DPSs but are not in danger of extinction throughout all or a significant portion of their ranges or likely to become so in the foreseeable future. We find that listing the greenstriped rockfish Puget Sound Proper DPS and the redstripe rockfish Puget Sound Proper DPS is not warranted at this time.

Any protective regulations determined to be necessary and

advisable for the conservation of threatened yelloweye and canary rockfish under ESA section 4(d) would be proposed in a subsequent **Federal Register** notice. We solicit information to inform these listing determinations and the development of proposed protective regulations and designation of critical habitat in the event these species are listed.

DATES: Comments on this proposal must be received by June 22, 2009. A public hearing will be held promptly if any person so requests by June 8, 2009. Notice of the location and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

ADDRESSES: You may submit comments by any of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Submit written comments to Chief, Protected Resources Division, Northwest Region, National Marine Fisheries Service, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

INSTRUCTIONS: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The rockfish petition, draft status report, and other reference materials regarding this determination can be obtained via the Internet at: *http://www.nwr.noaa.gov/* or by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Northwest Region, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Eric Murray, NMFS, Northwest Region (503) 231–2378; or Dwayne Meadows, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2007, we received a petition from Mr. Sam Wright of Olympia, Washington, to list stocks of bocaccio, canary rockfish, yelloweye rockfish, greenstriped rockfish, and redstripe rockfish in Puget Sound as endangered or threatened species under the ESA and to designate critical habitat. We declined to initiate a review of the species' status under the ESA, finding that the petition failed to present substantial scientific or commercial information to suggest that the petitioned actions may be warranted (72 FR 56986; October 5, 2007). On October 29, 2007, we received a letter from Sam Wright presenting information that was not included in the April 2007 petition, and requesting that we reconsider our October 5, 2007, decision not to initiate a review of the species' status. We considered the supplemental information provided in the letter and the information submitted previously in the April 2007 petition as a new petition to list these species and to designate critical habitat. The supplemental information included additional details on the life histories of bocaccio and greenstriped rockfish supporting the case that individuals of these species occurring in Puget Sound may be unique. There was also additional information on recreational harvest indicating significant declines of rockfish abundance. On March 17, 2008, we provided notice of our determination that the petition presented substantial scientific information indicating that the petitioned action may be warranted and requested information to assist with a status review to determine if these five species of rockfish in Puget Sound warranted listing under the ESA (73 FR 14195). Copies of the April and October 2007 petitions and our October 2007 and March 2008 petition findings are available from NMFS (see **ADDRESSES**, above).

ESA Statutory, Regulatory, and Policy Provisions

The ESA defines species to include subspecies or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(16); 50 CFR 424.02 (k)). The U.S. Fish and Wildlife Service and NMFS have adopted a joint policy describing what constitutes a DPS of a taxonomic species (61 FR 4722; February 7, 1996). The joint DPS policy identifies two criteria for making DPS determinations: (1) The population must be discrete in relation to the remainder of the taxon (species or subspecies) to which it belongs; and (2) the population must be significant to the remainder of the taxon to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) ''It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation≥; or (2) ''it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D)'' of the ESA.

If a population segment is found to be discrete under one or both of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) ''persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.''

The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532 (6) and (20)). The statute requires us to determine whether any species is endangered or threatened because of any of the following factors: the present or threatened destruction of its habitat, overexploitation, disease or predation, the inadequacy of existing regulatory mechanisms, or any other natural or manmade factors (16 U.S.C. 1533). We are to make this determination based solely on the best available scientific information after conducting a review of the status of the species and taking into account any efforts being made by states or foreign governments to protect the species. The steps we follow in implementing this statutory scheme are to review the status of the species, analyze the threats facing the species, assess whether certain protective efforts mitigate these threats, and then make our best determination about the species' future persistence.

Status Review

To assist in the status review, we formed a Biological Review Team (BRT) comprised of Federal scientists from our Northwest and Southwest Fisheries Science Centers. We also requested

technical information and comments from State and Tribal co-managers in Washington, as well as from scientists and individuals having research or management expertise pertaining to rockfishes in the Pacific Northwest. We asked the BRT to review the best available scientific and commercial information, including the technical information and comments from co-managers, scientists and others, first to determine whether the five species of rockfish warrant delineation into one or more DPSs, using the criteria in the joint DPS policy. We then asked the BRT to assess the level of extinction risk facing any DPSs they identified, describing their confidence that the species is at high risk, moderate risk, or not at risk of extinction. We described a species with high risk as one that is at or near a level of abundance, productivity, and/or spatial structure that places its persistence in question. We described a species at moderate risk as one that exhibits a trajectory indicating that it is more likely than not to be at a high level of extinction risk in the foreseeable future, with the appropriate time horizon depending on the nature of the threats facing the species. In evaluating the extinction risk, we asked the BRT to describe the threats facing the species, according to the statutory factors listed under section 4(a)(1) of the ESA.

The BRT used structured decision making to guide its consideration of the questions presented. To allow for expressions of the level of uncertainty, the BRT adopted a ''likelihood point'' method. Each BRT member distributed 10 ''likelihood points'' among DPS scenarios and risk categories. This approach has been widely used by NMFS BRTs in previous DPS determinations (e.g., Pacific Salmon, Southern Resident Killer Whale). The BRT presented its findings in a draft status review report (hereafter ''draft status report'') for the five species of rockfish (Drake *et al.*, 2008). Information from the draft status report and findings of the BRT inform our proposed determinations.

Distribution and Life-History Traits of Rockfishes

Rockfishes are a diverse group of marine fishes (about 102 species worldwide and at least 72 species in the northeastern Pacific (Kendall, 1991)) and as a group are among the most common of bottom and mid-water dwelling fish on the Pacific coast of North America (Love *et al.*, 2002). Adult rockfish can be the most abundant fish in various coastal benthic habitats, such as kelp forests, rocky reefs, and rocky outcrops in submarine canyons at depths greater than 300 m (980 feet) (Yoklavich, 1998). The life history of rockfishes is different than that of most other bony fishes. Whereas most bony fishes fertilize their eggs externally, fertilization and embryo development in rockfishes is internal, and female rockfish give birth to live larval young. Larvae are found in surface waters and may be distributed over a wide area extending several hundred miles offshore (Love *et al.*, 2002). Larvae and small juvenile rockfish may remain in open waters for several months. The dispersal potential for larvae varies by species depending on the length of time larvae remain in the pelagic environment (i.e., ''pelagic larval duration'') and the fecundity of females (i.e., the more larval propagules a species produces, the greater the potential that some larvae will be transported long distances). Dispersal potential may also be influenced by the behavior of pre-settlement fish. For example, diel, tidal, or vertical migration can affect dispersal.

Larval rockfish feed on diatoms, dinoflagellates, tintinnids, and cladocerans, and juveniles consume copepods and euphausiids of all life stages (Sumida and Moster, 1984). Survival and subsequent recruitment of young rockfishes exhibit considerable interannual variability (Ralston and Howard, 1995). Juveniles and subadults may be more common than adults in shallow water and are associated with rocky reefs, kelp canopies, and artificial structures such as piers and oil platforms (Love *et al.*, 2002). Adults generally move into deeper water as they increase in size and age (Garrison and Miller, 1982; Love, 1996), and many species exhibit strong site fidelity to rocky bottoms and outcrops (Yoklavich *et al.*, 2000).

Adults eat bottom and mid-water dwelling invertebrates and small fishes, including other species of rockfish associated with kelp beds, rocky reefs, pinnacles, and sharp drop-offs (Love, 1996; Sumida and Moser, 1984). Many species of rockfishes are slow-growing, long-lived (50 140 years; Archibald *et al.*, 1981), and late maturing (6 12 yrs; Wyllie-Echeverria, 1987).

Environmental History and Features of Puget Sound

Puget Sound is a fjord-like estuary located in northwest Washington State and covers an area of about 2,330 km^2 (900 sq miles), including 4,000 km (2500 miles) of shoreline. Puget Sound is part of a larger inland system, the Georgia Basin, situated between southern Vancouver Island and the mainland coasts of Washington State and British Columbia. This extensive system is a series of interconnected basins separated by shallow sills. Puget Sound can be subdivided into five major basins: (1) North Puget Sound, (2) Main Basin, (3) Whidbey Basin, (4) South Puget Sound, and (5) Hood Canal. In this Notice, we use the term ''Puget Sound'' or ''greater Puget Sound'' to refer to these five basins. Each of the basins differs in features such as temperature regimes, water residence and circulation, biological conditions, depth profiles and contours, processes, species, and habitats (Drake *et al.*, 2008). We use the term ''Puget Sound Proper'' in this Notice to refer to all of these basins except North Puget Sound (Figure 1).

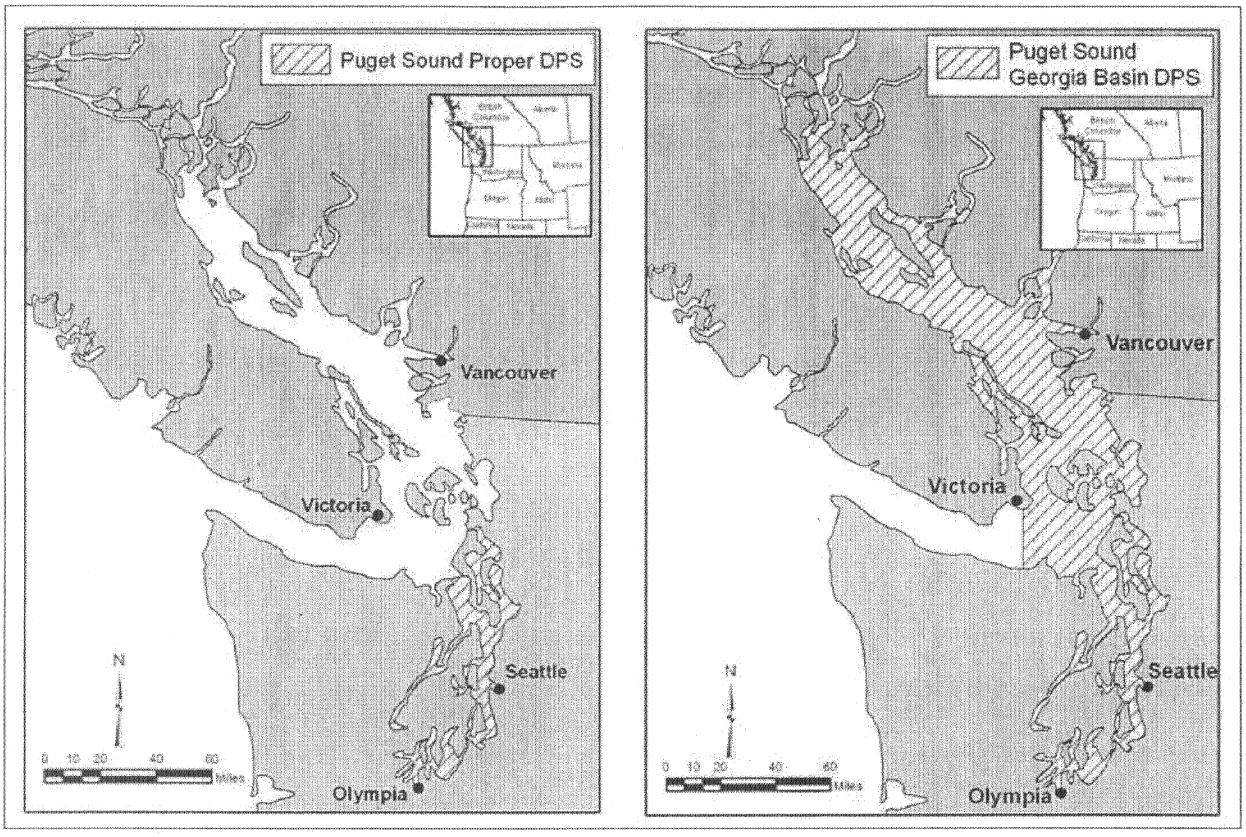

Figure 1. Approximate geographic boundaries for Puget Sound Proper and the Georgia Basin. The Strait of Georgia is the hatched area within Canada in the map on the right. The Figure is for purposes of illustration only and should not be used to identify precise boundaries.

In the Puget Sound system, net seaward outflow in the upper portion of the water column is driven by winter rainfall and summer snowmelt, and net landward inflow of high salinity ocean water occurs in the deeper portion of the water column (Masson, 2002; Thomson, 1994). Shallow sills within Puget Sound substantially reduce the flushing rate of freshwater, sediments, nutrients, contaminants, and many organisms. Concentrations of nutrients (i.e., nitrates and phosphates) are consistently high throughout most of the greater Puget Sound, largely due to the flux of oceanic water into the basin (Harrison *et al.*, 1994) and input of nutrients from freshwater runoff (Embrey and Inkpen, 1998).

Coastal areas within Puget Sound generally are characterized by high levels of rainfall and river discharge in the winter, while inland mountains are characterized by heavy snowfall in the winter and high snowmelt in late spring and early summer. Puget Sound's shorelines range from rocky sea cliffs to coastal bluffs and river deltas. Most of Puget Sound's shorelines are coastal bluffs, which are composed of erodable gravel, sand, and clay deposited by glaciers over 15,000 years ago (Downing, 1983; Shipman, 2004). Extensive development of coastal bluffs along the Sound has led to the widespread use of engineered structures designed to protect upland properties, railroads, and roads. These modifications have increased rapidly since the 1970s, with demonstrated negative impacts on the health of the ecosystem (Thom *et al.*, 1994).

Characteristics of the physical habitat such as depth, substrate, wave exposure, salinity, and gradient largely determine the plants and animals that can use particular areas of Puget Sound and the entire Georgia Basin. Eight major nearshore habitats have been characterized and quantified: rocky reefs, kelp beds, mixed sediment intertidal beaches, saltmarsh, tide flats, subtidal soft sediments, eelgrass beds, and open water/pelagic habitats (Dethier, 1990; Levings and Thom, 1994; NMFS, 2007). The shallow nearshore areas of Puget Sound contain eelgrass and seaweed habitats that support many marine fish and invertebrate populations at some time during their life cycle. Kelp beds and eelgrass meadows cover the largest area; floating kelps are found primarily over hard substrate along the Strait of Juan de Fuca and San Juan Islands, whereas eelgrass beds are estimated to cover 200 km^2 (77 mi^2) throughout Puget Sound, with the exception of South Sound (Nearshore Habitat Program, 2001; Mumford, 2007). Other major habitats include subaerial and intertidal wetlands (176 km^2)(68 mi^2), and mudflats and sandflats (246 km^2)(95 mi^2). In pelagic areas, the euphotic zone (zone that receives enough light for photosynthesis) extends to about 20 m (66 feet) depth in the relatively clear regions of North Puget Sound, and to 10 m (33 feet) depth in the more turbid waters of the South Sound basin. Most of the bottom of Puget Sound is comprised of soft sediments, ranging from coarse sands to fine silts and clays. Rocky reefs, composed of bedrock or a

mixture of boulder and cobble substrates, are often characterized by strong currents and tidal action and support benthic suspension feeders and multiple species of fish, including several species of rockfish (Sebastes spp.). Approximately 95 percent of the rocky reef habitat in greater Puget Sound is located in North Puget Sound (Palsson *et al.*, 2008).

The human population in the greater Puget Sound region has increased rapidly over the last 2 decades. In 2005, the area housed approximately 4.4 million people, a 25 percent increase from 1991. According to the State Office of Management, the population is expected to grow to 4.7 to 6.1 million residents by 2025 (OFM, 2005).

Freshwater, marine, nearshore, and upland habitats throughout the greater Puget Sound region have been affected by a variety of human activities, including agriculture, heavy industry, timber harvest, and the development of sea ports and residential property (Sound Science, 2007).

Environmental History and Features of the Strait of Georgia

The Strait of Georgia is that portion of the Georgia Basin that lies in Canada (Figure 1). The coastal drainage of the Strait of Georgia is bounded to the west and south by the Olympic and Vancouver Island mountains and to the north and east by the Cascade and Coast mountains. At sea level, the Strait has a mild maritime climate and is dryer than other parts of the coast because of the rain shadow effect of the Olympic and Vancouver Island mountains.

The Strait of Georgia has a mean depth of 156 m (420 m maximum) and is bounded by narrow passages (Johnstone Strait and Cordero Channel to the north and Haro and Rosario straits to the south) and shallow submerged sills (minimum depth of 68 m (223 feet) to the north and 90 m (295 feet) to the south). The Strait of Georgia covers an area of approximately 6,800 km^2 (2625 sq miles)(Thomson, 1994), is approximately 220 km (137 miles) long, and varies from 18.5 to 55 km (12 to 34 miles) in width (Tully and Dodimead, 1957; Waldichuck, 1957). Both southern and northern approaches to the Strait of Georgia are through a maze of islands and channels, the San Juan and Gulf islands to the south and a series of islands to the north that extend for 240 km (149 miles) to Queen Charlotte Strait (Tully and Dodimead, 1957). Both northern channels (Johnstone Strait and Cordero Channel) are from 1.5 to 3 km (0.9 to 1.9 miles) wide and are effectively two-way tidal falls, in which currents of 22–28 km/hr (12–15 knots) occur at peak flood (Tully and Dodimead, 1957).

Freshwater inflows are dominated by the Fraser River, which accounts for roughly 80 percent of the freshwater entering the Strait of Georgia. Fraser River run-off and that of other large rivers on the mainland side of the Strait are driven by snow and glacier melt, and their peak discharge period is generally in June and July. Discharges from rivers that drain into the Strait of Georgia off Vancouver Island (such as the Chemainus, Cowichan, Campbell, and Puntledge rivers) peak during periods of intense precipitation, generally in November (Waldichuck, 1957).

Circulation in the Strait of Georgia occurs in a general counter-clockwise direction (Waldichuck, 1957). Tides, winds, and freshwater run-off are the primary forces for mixing, water exchange, and circulation. Tidal flow enters the Strait of Georgia predominantly from the south, creating vigorous mixing in the narrow, shallow straits and passes of the Strait of Georgia. The upper, brackish water layer in the Strait of Georgia is influenced by large freshwater run-off, and salinity in this layer varies from 5 to 25 practical salinity units (psu). Deep, high-salinity (33.5 to 34 psu), oceanic water enters the Strait of Georgia from the Strait of Juan de Fuca. The surface outflowing and deep inflowing water layers mix in the vicinity of the sills, creating the deep bottom layer in the Strait of Georgia. The basic circulation pattern in the southern Strait of Georgia is a southerly outflow of low-salinity surface water through the Rosario and Haro Straits (Crean *et al.*, 1988), with the northerly inflow of high salinity oceanic water from the Strait of Juan de Fuca at the lowest depths.

Marine habitat present in the Strait of Georgia includes two of the same types present in Puget Sound (kelp beds and eel grass beds) and five new habitat types. Total area of each habitat type is: estuarine marshes (3.82 km^2 (1.47 mi^2)), sandflats (90.4 km^2 (34.9 mi^2)), mudflats (155.1 km^2 (59.9 mi^2), rock-gravel 93.4 km^2 (36.1 mi^2)), kelp beds (313.8 km^2 (121.2 mi^2), eel grass beds (659 km^2 (254 mi^2)), and intertidal algae (93.4 km^2 (36.1 mi^2)) (Levings and Thom, 1994).

Although much of the land draining into the Strait of Georgia is sparsely populated, the densely populated cities of Vancouver and Victoria are located here. Environment Canada (2005) reports that the population of the Georgia Basin has doubled between 1970 and 2005. As in Puget Sound, human development of the area has caused ecosystem stress, including degraded water quality and loss of marsh and eel grass habitat (Transboundary Georgia Basin-Puget Sound Environmental Indicators Working Group, 2002). Filling, diking, water quality changes, and watershed modification have led to decreases in the amount of all habitat types (Levings and Thom, 1994).

Life History, Biology, and Status of the Petitioned Species

The life history, biology, and status of the petitioned species, summarized below, are described in detail in the draft status report (Drake *et al.*, 2008) and Palsson *et al.* (2008).

Bocaccio

Bocaccio range from Punta Blanca, Baja California, to the Gulf of Alaska off Krozoff and Kodiak Islands, Alaska (Chen, 1971; Miller and Lea, 1972). Within this range, they are most common from Oregon to northern Baja California (Love *et al.*, 2002). Bocaccio are elongate, laterally compressed fish with very large mouths (Love *et al.*, 2002). Their appearance often varies among individuals, with several common color variations. They are most frequently found between 50 and 250 m (160 and 820 feet) depth, but may be found as deep as 475 m (1,560 feet) (Orr *et al.*, 2000).

Copulation and fertilization occur in the fall, generally between August and November. Bocaccio larvae have relatively high dispersal potential, with a pelagic larval duration of approximately 155 days (Shanks and Eckert, 2005) and fecundity ranging from 20,000 to over 2 million eggs, considerably more than many other rockfish species (Love *et al.*, 2002). Larvae and pelagic juveniles tend to be found close to the surface, occasionally associated with drifting kelp mats. Most bocaccio remain pelagic for 3.5 months prior to settling to shallow areas, although some may remain pelagic as long as 5.5 months. Several weeks after settlement, fish move to deeper waters in the range of 18 30 m (60 100 feet) where they are found on rocky reefs (Carr, 1983; Feder, 1974; Johnson, 2006; Love, 2008). Adults inhabit waters from 12 478 m (40 1570 feet) depth but are most common at depths of 50–250 m (Feder, 1974; Love, 2002). While generally associated with hard substrata, adults do wander into mud flats. Bocaccio are also typically found well off the bottom (as much as 30 m (98 feet)) (Love *et al.*, 2002). Approximately 50 percent of adults mature in 4 to 6 years (MBC, 1987).

Large adult bocaccio have more movement potential than smaller, more

sedentary species of rockfishes, but their occurrence in the Georgia Basin seems to be limited to certain areas. Bocaccio made up 8 9 percent of the Puget Sound recreational catch in the late–1970s (Palsson *et al.*, 2008), with the majority of fish caught in the areas around Point Defiance and the Tacoma Narrows in the South basin. Bocaccio have always been rare in the North Puget Sound surveys of the recreational shery (Drake *et al.*, 2008). In the Strait of Georgia, bocaccio have been documented in some inlets, but records are sparse, isolated, and often based on anecdotal reports (COSEWIC, 2002). Although the relationship between bocaccio habitat preference and distribution in the Georgia Basin is not fully understood, the available information indicates that they are frequently found in areas lacking hard substrate. This may be due to their pelagic behavior (willingness to occupy areas higher in the water column) or availability of prey items.

Adults are difficult to age, but are suspected to live as long as 54 years (Drake *et al.*, 2008). Bocaccio have low productivity because successful recruitment requires rare climatic and oceanic conditions. Tolimeri and Levin (2005) estimate that these conditions occur only about 15 percent of the time.

Bocaccio larvae are planktivores that feed on larval krill, diatoms, and dinoflagellates. Pelagic juveniles are opportunistic feeders, taking fish larvae, copepods, krill, and other prey. Larger juveniles and adults are primarily piscivores, eating other rockfishes, hake, sablefish, anchovies, lanternfishes, and squid. Chinook salmon, terns, and harbor seals are known predators of smaller bocaccio (Love *et al.* 2002). The main predators of adult bocaccio are marine mammals (COSEWIC, 2002).

Yelloweye Rockfish

Yelloweye rockfish range from northern Baja California to the Aleutian Islands, Alaska, but are most common from central California northward to the Gulf of Alaska (Clemens and Wilby, 1961; Eschmeyer *et al.*, 1983; Hart, 1973; Love, 1996). They are among the largest of the rockfishes, up to 11 kg (25 pounds), and easily recognizable by their bright yellow eyes and red-orange color (Love *et al.*, 2002). Yelloweye rockfish occur in waters 25 to 475 m (80 to 1,560 feet) deep (Orr *et al.*, 2000), but are most commonly found between 91 to 180 m (300 to 590 feet) depth (Love *et al.*, 2002). Yelloweye rockfish are among the longest lived of rockfishes, living up to at least 118 years (Love, 1996; Love *et al.*, 2002; O'Connell and Funk, 1987). Yelloweye rockfish juveniles settle primarily in shallow, high relief zones, crevices, and sponge gardens (Love *et al.*, 1991; Richards *et al.*, 1985). As they grow and move to deeper waters, adults continue to associate with rocky, high relief areas (Carlson and Straty, 1981; Love *et al.*, 1991; O'Connell and Carlisle, 1993; Richards *et al.*, 1985). Yelloweye rockfish can be found infrequently in aggregations, but are generally solitary, demersal residents with small home ranges (Coombs 1979; DeMott, 1983; Love *et al.*, 2002).

Yelloweye rockfish are less frequently observed in South Puget Sound than North Puget Sound (Miller and Borton, 1980), likely due to the larger amount of rocky habitat in North Puget Sound. Yelloweye rockfish are distributed throughout the Strait of Georgia in northern Georgia Basin including areas around the Canadian Gulf Islands and the numerous inlets along the British Columbia coast (Yamanaka *et al.*, 2006). Their distribution in these areas most frequently coincides with high relief, complex rocky habitats (Yamanaka *et al.* 2006).

Approximately 50 percent of adults are mature by 41 cm (16 inches) total length (about 6 years) (Love, 1996). Yelloweye rockfish store sperm for several months until fertilization occurs, commonly between the months of September and April, though fertilized individuals may be found in most months of the year, depending on where they are observed (Wyllie- Echeverria, 1987). Fertilization periods tend to get later as one moves from south to north in their range (DeLacy *et al.*, 1964; Hitz, 1962; Lea *et al.*, 1999; O'Connell 1987; Westrheim, 1975). Estimates of pelagic larval duration are not available for yelloweye rockfish, though we expect that it would be similar to or lower than that for bocaccio or canary rockfish (116 155 days; Varanasi, 2007). Fecundity ranges from 1.2 to 2.7 million eggs, considerably more than many other rockfish species (Love *et al.*, 2002). In Puget Sound, yelloweye rockfish are believed to fertilize eggs during the winter to summer months, giving birth early spring to late summer (Washington *et al.*, 1978). Although yelloweye rockfish are generally thought to spawn once a year (MacGregor, 1970), a study in Puget Sound offered evidence of at least two spawning periods per year (Washington *et al.*, 1978).

Yelloweye rockfish are opportunistic feeders, targeting different food sources during different phases of their life history, with the early life stages having typical rockfish diets as described for bocaccio above. Because adult yelloweye attain such large sizes, they are able to handle much larger prey, including smaller yelloweye, and are preyed upon less frequently (Rosenthal *et al.*, 1982). Typical prey of adult yelloweye rockfishes include sand lance, gadids, flatfishes, shrimps, crabs, and gastropods (Love *et al.*, 2002; Yamanaka *et al.*, 2006). Predators of yelloweye rockfish include salmon and orcas (Ford *et al.*, 1998; Love *et al.*, 2002).

Canary Rockfish

Canary rockfish range between Punta Colnett, Baja California, and the Western Gulf of Alaska (Boehlert, 1980; Mecklenburg *et al.*, 2002). Within this range, canary rockfish are most common off the coast of central Oregon (Richardson and Laroche, 1979). Adults are primarily orange with a pale grey or white background (Love *et al.*, 2002). Canary rockfish primarily inhabit waters 50 to 250 m (160 to 820 feet) deep (Orr *et al.*, 2000), but may be found up to 425 m (1,400 feet) depth (Boehlert, 1980). They can live to be 84 years old (Drake *et al.*, 2008). Canary rockfish were once considered fairly common in the greater Puget Sound area (Holmberg, 1967).

Female canary rockfish produce between 260,000 and 1.9 million eggs per year with larger females producing more eggs. Along the Pacific Coast, the relationship between egg production and female size does not seem to vary with geography (Gunderson, 1980; Love, 2002). Canary rockfish larvae have relatively high dispersal potential, with a pelagic larval duration of approximately 116 days (Shanks and Eckert, 2005). Fertilization occurs as early as September off central California (Lea, 1999) but peaks in December (Phillips, 1960; Wyllie-Echeverria, 1987), and parturition (birth) occurs between January and April and peaks in April (Phillips, 1960). Off the Oregon and Washington coasts, parturition occurs between September and March, with peaks in December and January (Barss, 1989; Wyllie Echeverria, 1987). In British Columbia, parturition occurs slightly later with the peak in February (Hart, 1973; Westrheim, 1975). Canary rockfish spawn once per year (Guillemot, 1985).

Female canary rockfish grow larger and more quickly than do males (Lenarz, 1991; STAT, 1999), and growth does not vary with latitude (Boehlert, 1980). A 58–cm (23–inch) long female is approximately 20 years of age; a male of the same age is about 53 cm (21 inches). Fish tend to move to deeper water as they grow larger (Vetter, 1997). While canary rockfish appear to be generally sedentary (Miller, 1973), tagging studies have shown that some individuals move up to 700 km (435 miles) over several

years (Lea, 1999; Love, 2002). Canary rockfish larvae are planktivores, feeding primarily on nauplii (crustacean larvae), other invertebrate eggs, and copepods (Moser, 1991; Love, 2002). Juveniles are zooplanktivores, feeding on crustaceans such as harpacticoids (an order of copepods), barnacle cyprids (final larval stage), and euphasiid eggs and larvae. Predators of juvenile canary rockfish include other fishes, especially rockfishes, lingcod, cabezon and salmon, as well as birds and porpoises (Ainley, 1981; Love, 1991; Miller, 1973; Morejohn, 1978; Roberts, 1979). Adult canary rockfish are planktivores/carnivores, consuming euphasiids and other crustaceans and small fishes (Cailliet, 2000; Love, 2002). Predators of adult canary rockfish include yelloweye rockfish, lingcod, salmon, sharks, dolphins, seals (Antonelis Jr., 1980; Merkel, 1957; Morejohn, 1978; Rosenthal, 1982), and possibly river otters (Stevens, 1983).

Miller and Borton (1980) describe canary rockfish as being associated with the various rocky and coarse habitats that occur throughout the basins of Puget Sound. The Committee on the Status of Endangered Wildlife in Canada (COSEWIC) (2007) reports that canary rockfish are broadly distributed throughout the Strait of Georgia.

Greenstriped Rockfish

Greenstriped rockfish range from Cedros Island, Baja California, to Green Island in the Gulf of Alaska. Within this range, greenstriped rockfish are common between British Columbia and Punta Colnett in northern Baja California (Eschmeyer *et al.*, 1983; Hart, 1973; Love *et al.*, 2002). They are slim fish, with a distinctive color, and are unlikely to be mistaken for other rockfishes (Love *et al.*, 2002). Greenstriped rockfish is a deep-water species that can inhabit waters from 52 to 828 m (170 to 2,715 feet) in depth, but is most common between 100 and 250 m (330 and 820 feet) depth (Orr *et al.*, 2000). They are solitary fish, most often found resting on the bottom (Love *et al.*, 2002). Male greenstriped rockfish can live to approximately 37 years of age, and females to approximately 28 years of age (Love *et al.*, 1990).

Greenstriped rockfish females store sperm for several months until fertilization occurs, commonly between the months of February and May in areas north of California (O'Connell and Carlisle, 1993). Fertilized individuals are found earlier in more southerly areas (Lea *et al.*, 1999). Greenstriped rockfish are generally believed to spawn once a year (Shaw and Gunderson, 2006), but some evidence of multiple spawnings has been reported (Love *et al.*, 1990). Larvae are extruded at about 5 mm (0.2 inch) length (Matarese *et al.*, 1989) and remain pelagic for up to 2 months (Moser and Boehlert, 1991); settling at around 30 mm (1.2 inches) length (Johnson *et al.*, 1997). Individual greenstriped rockfish of both sexes start to mature at 150 mm (6 inches) length and 5 years of age, with 50 percent maturity occurring at 230 mm (9 inches) and 7–10 years (Shaw and Gunderson, 2006; Wyllie Echeverria, 1987). Females produce 11,000 to 300,000 eggs annually.

Greenstriped rockfish are active and opportunistic feeders, targeting different food sources during different phases of their life history. Larvae are diurnal, with nauplii, eggs, and copepods representing important food sources (Moser and Boehlert, 1991; Sumida *et al.*, 1985). Greenstriped rockfish adults are generally considered to be residential and may feed nocturnally, consuming bigger crustaceans, fishes, and cephalopods during those times (Allen, 1982). Juveniles are preyed upon by birds, nearshore fishes, salmon, and porpoises (Ainley *et al.*, 1993; Love *et al.*, 1991; Morejohn *et al.*, 1978). Adults have been recovered in the stomachs of sharks, porpoises, salmon, seals, and possibly river otters (Antonelis Jr. and Fiscus, 1980; Merkel, 1957; Morejohn *et al.*, 1978).

Greenstriped rockfish are distributed throughout Puget Sound, often associated with sand and coarse substrate (Miller and Borton, 1980; Palsson *et al.*, 2008). Palsson *et al.* (2008) report that greenstriped rockfish are occasionally caught in the western Strait of Juan de Fuca. Greenstriped rockfish are occasionally reported from North Puget Sound, but the low occurrence of reports may be due to the difficulty in surveying the rocky habitats of this area by conventional trawl sampling. COSEWIC has not undertaken a greenstriped rockfish status review in Canada.

Redstripe Rockfish

Redstripe rockfish occur from southern Baja California to the Bering Sea, Alaska (Hart, 1973; Love *et al.*, 2002). They are a streamlined fish with a red, pink, or tan color (Love *et al.*, 2002). Redstripe rockfish have been reported between 12 and 425 m (39 and 1,400 feet) in depth, but 95 percent occur between 150 and 275 m (490 and 900 feet) (Love *et al.*, 2002).

Redstripe rockfish may reach 55 years of age (Munk, 2001). They are most commonly found on a variety of substrates, from hard, high-relief reefs to sand-cobble interfaces. Juveniles settle to the bottom of sand-cobble substrates (Moser and Boehlert, 1991) and move as adults onto deeper rocky reefs and low-relief rubble bottoms. Redstripe rockfish can be found alone or in aggregations, usually near the sea-floor bottom (Love *et al.*, 2002b).

Estimates of pelagic larval duration and fecundity with which to infer dispersal potential are not available for redstripe rockfish, though we expect that larval duration would be similar to or slightly lower than that for bocaccio or canary rockfish (116 155 days; Varanasi, 2007). Approximately 50 percent of adults mature at 28 to 29 cm (11 to 11.5 inches) total length (Garrison and Miller, 1982). Redstripe rockfish females store sperm for several months until fertilization. Fertilization occurs between the months of April and May in areas north of California (O'Connell, 1987; Shaw, 1999; Wyllie-Echeverria, 1987). Larvae are extruded after a typical gestation period of a couple of months, peaking in July for British Columbia (Westrheim, 1975) and in June for Oregon (Shaw, 1999; Wyllie-Echeverria, 1987). Redstripe rockfish spawn once per year (Shaw, 1999). Larvae are extruded at about 5.4 mm length (0.2 inches) (Matarese *et al.*, 1989) and remain pelagic for up to 2 months (Moser and Boehlert, 1991). Recorded size at first maturity for redstripe rockfish is 210 to 220 mm (8.2 to 8.6 inches) length (Shaw, 1999). Size at 50 percent maturity was recorded in the 1970s to be 280 and 290 mm (11.0 and 11.4 inches) (Westrheim, 1975) for males and females, respectively, differing from samples collected in the 1990s (243 and 262 mm (9.5 and 10.0 inches)) for males and females (about 7 years old), respectively (Shaw, 1999). It is not known whether this represents changes in size at maturity over time or differential representation of individuals that geographically mature at larger sizes.

Redstripe rockfish are active and opportunistic feeders, and show feeding habits similar to the greenstriped rockfish. Larvae are diurnal, with nauplii, eggs, and copepods representing important food sources (Moser and Boehlert, 1991; Sumida *et al.*, 1985). Juveniles are diurnal zooplanktivores and feed mainly on calanoid copepods and barnacle cyprids (Allen, 1982; Gaines and Roughgarden, 1987; Love *et al.*, 1991). Adults may also feed nocturnally, consuming bigger crustaceans, fishes, and cephalopods (Allen, 1982). Juvenile redstripe rockfish are preyed upon by birds, nearshore fishes, salmon, and porpoises (Ainley *et al.*, 1993; Love *et al.*, 1991; Morejohn *et al.* 1978). Redstripe

rockfish adults have been recovered in the stomachs of sharks, porpoises, salmon, seals, and possibly river otters (Antonelis Jr. and Fiscus, 1980; Merkel, 1957; Morejohn *et al.*, 1978).

Redstripe rockfish are associated with a wide range of rocky and coarse habitats in a broad range of depths throughout most basins of Puget Sound (Palsson *et al.*, 2008). Palsson *et al.* (2008) report that redstripe rockfish are commonly caught during trawl surveys in the central Strait of Juan de Fuca, channels of the San Juan Archipelago, in the central Strait of Georgia, and in Admiralty Inlet. COSEWIC has not undertaken a redstripe rockfish status review in Canada.

DPS Consideration

As described above, under the DPS policy a population segment is considered a DPS if it is both discrete from other populations within its taxon and significant to its taxon. The population segment may be considered discrete if it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic differences may provide powerful direct evidence of this separation, because the presence of distinct genetic traits indicates that a population segment may be reproductively isolated. In addition to genetic information, various aspects of a population segment's biology, life history, and habitat may provide evidence of discreteness. For example, populations of a sedentary species may have limited reproductive exchange with other populations, and populations occupying habitat that is physically isolating may have little reproductive exchange with other isolated populations. This reproductive isolation over time may result in discreteness. For example, Yamanaka *et al.* (2006) concluded that for yelloweye rockfish, there are at least two distinct populations with limited genetic exchange occupying coastal North American waters between southeast Alaska and Oregon. The authors identified one population occupying the entire Pacific Coast and an inland population occupying the Strait of Georgia and possibly other inland marine waters including the Queen Charlotte Strait and Puget Sound.

There is limited direct genetic information comparing coastal populations of the petitioned rockfish species to populations within the Georgia Basin. In addition to that limited information, where available, we considered several lines of evidence to inform the consideration of discreteness of population segments within the Georgia Basin. These included genetic information from coastal populations of the petitioned species and the degree to which such information indicates stock structure among coastal populations; genetic information comparing Georgia Basin and coastal populations of other west coast rockfish species with life histories similar to the petitioned species; life-history traits of the petitioned species that could lead to reproductive isolation, and thus discreteness, of Georgia Basin populations (such as live-bearing of young, internal fertilization, short-pelagic larval stages, and fidelity to habitat); and characteristics of the species' habitat that could lead to physical isolation and thus discreteness of Georgia Basin populations (such as discontinuity of rocky habitats, bathymetric barriers, and current patterns and physical barriers that limit exchange of coastal and inland waters). The discussion below describes evidence of discreteness that may be relevant to any of the five rockfish species. The later discussion of individual species describes the considerations relevant to the discreteness of each individual species.

As described above under the DPS policy, in addition to being discrete, a population segment must also be significant to qualify as a DPS. The discussion of the policy above describes four characteristics that may make a discrete population segment significant. In the case of the petitioned rockfish species, the most relevant of these characteristics is the persistence of the discrete population segment in a unique ecological setting. The discussion below describes evidence of significance that may be relevant to any of the five rockfish species. The later discussion of individual species describes any additional considerations relevant to the significance of each individual species.

DPS Considerations Relevant to Discreteness of All Petitioned Species

Because there is little direct genetic information on the discreteness of most of the petitioned species in Puget Sound or the Georgia Basin, we considered genetic information on other rockfish species in Puget Sound and Georgia Basin with life histories similar to the petitioned species. In particular, NMFS' 2001 status review of copper, quillback, and brown rockfish (Stout *et al.*, 2001) concluded that there were DPSs of these rockfish in Puget Sound Proper based on genetic information. For copper rockfish, allozyme and DNA data from Seeb (1998) showed no particular genetic divergence for Puget Sound Proper specimens, but microsatellite data from Wimberger (in prep.) and Buonaccorsi *et al.* (2002) showed large differences between populations from within Puget Sound Proper and populations found outside Puget Sound Proper. Wimberger sampled copper rockfish from California, British Columbia, the San Juan Islands, the Canadian Gulf Islands, Admiralty Inlet, Central Puget Sound, and Hood Canal (the latter three populations are found within Puget Sound Proper). Wimberger found significant divergence between both Central Puget Sound and Admiralty Inlet populations, and all populations found outside of Puget Sound Proper. Equal divergence was found among Puget Sound Proper populations compared with San Juan, Gulf Island, and coastal populations as well.

Buonaccorsi *et al.* (2002) used a different set of microsatellite loci to compare populations of copper rockfish from Puget Sound Proper, Canadian Gulf Islands, Queen Charlotte Islands, and coastal California. They also found highly significant divergence among all sampling sites, indicating a clear divergence between populations within Puget Sound Proper and the Canadian Gulf Islands (in the Strait of Georgia). Buonaccorsi *et al.* (2002) also identified unique alleles in Puget Sound Proper, further evidence for isolation of Puget Sound Proper populations from other neighboring regions.

In addition to genetic information, Stout *et al.* (2001) pointed out that copper rockfish are live-bearing and have internal fertilization, a short pelagic larval stage, and high habitat fidelity. Copper rockfish are also considered to be non-migratory (Buonaccorsi *et al.*, 2002). All of these traits, combined with the physical isolation of Puget Sound Proper, could lead to reproductive isolation of copper rockfish in Puget Sound Proper.

For quillback rockfish, Seeb (1998) sampled four sites within Puget Sound Proper, one in the San Juan Islands (in the North Basin of Puget Sound), and coastal sites from California, Washington, and Alaska. Like copper rockfish, quillback rockfish are sedentary and show high fidelity to their home sites (Love *et al.*, 2002). Both allozyme and RFLP analyses indicated large differences in allele frequencies between Puget Sound Proper and the San Juan Islands. When the Puget Sound Proper samples were removed from the analysis, however, no significant divergence was found among the remaining populations (suggesting reproductive exchange among populations in California, Washington,

Alaska, and the San Juan Islands, but reproductive isolation of the Puget Sound proper population). Wimberger (in prep.) found significant differences in microsatellite allele frequencies between Puget Sound Proper and the San Juan Islands. The San Juan Island population was more similar to Sitka, Alaska, than it was to Puget Sound Proper.

Brown rockfish have a distribution that is very different from copper and quillback rockfishes, as they are found in Puget Sound Proper but only rarely occur in North Puget Sound, Georgia Basin, or the Washington and Oregon coastline (Stout *et al.*, 2001). Genetic data support a divergence between Puget Sound Proper and California populations (Seeb, 1998). Buonaccorsi *et al.* (2002) sampled three sites within Puget Sound Proper, and compared them to coastal populations ranging from California to Mexico. They found significant divergence among the populations, and even between two of the Puget Sound Proper populations. Tagging studies indicate that juveniles and subadults may have relatively small home ranges (Love *et al.*, 2002). Puget Sound Proper populations exhibited extremely low genetic divergence compared to coastal samples, which suggested to the authors a potential founder effect combined with reproductive isolation, and/or a low effective population size.

In addition to genetic information for copper, quillback, and brown rockfish, there is genetic information available regarding some of the petitioned species that can help inform consideration of DPS structure of the other petitioned species. For the petitioned species, there is genetic information for yelloweye rockfish (Yamanaka *et al.*, 2006 and R. Withler (unpublished data as cited in Drake *et al.*, 2008)) indicating genetic differences between fish from inland marine waters (Queen Charlotte Strait and Georgia Basin) and the outer coast.

In addition to genetic information that is available for some rockfish species in the Georgia Basin, there are physical features of the Georgia Basin that affect all rockfish species in similar ways, potentially contributing to reproductive isolation and thus discreteness. The waters of the Georgia Basin are isolated from coastal waters by land masses (the Olympic Peninsula and Vancouver Island); underwater sills limit the movement of water, sediment, and bottom-dwelling species such as rockfish; and internal currents limit the exchange of water between the Basin and coastal areas. These geographic features tend to contain the dispersal of larval fish and the migration of adult fish within the Basin, and even within smaller areas within the Basin, such as Puget Sound Proper.

When the available genetic information was considered in concert with the ecological features of Puget Sound and the Georgia Basin and the life histories of the petitioned rockfishes, the BRT drew two general conclusions. First, the petitioned rockfishes in the inland marine waters (Puget Sound and the greater Georgia Basin) are likely to be reproductively isolated and genetically distinct from rockfish from the rest of the Pacific Coast. Second, and consistent with the findings of Stout *et al.* (2001), the more sedentary rockfishes are likely to be further reproductively isolated within Puget Sound Proper (the area that was the focus of the original listing petition). The more mobile rockfish are likely to be reproductively isolated within the Georgia Basin, but are not likely to be reproductively isolated within Puget Sound Proper.

DPS Considerations Relevant to Significance of All Petitioned Species

As described above in more detail, all five of the petitioned rockfish species occupy marine waters from California to Alaska, including coastal waters and the inland waters of the Georgia Basin. Throughout this range, the Georgia Basin is unique, for several reasons. The waters of the Georgia Basin are less saline than coastal waters because of the quantity of fresh water flowing into the Basin, particularly from the Fraser River. The greater amount of fresh water also results in stratification of water by salinity in the Georgia Basin to a greater extent than in coastal waters. Land masses and shallow sills limit the movement of deep-dwelling fish among subbasins within the Georgia Basin, as well as the movement of sediments and nutrients to a much greater extent than in coastal waters. In addition, the inland waters of the Georgia Basin are protected by the land features of the Olympic Peninsula and Vancouver Island, and by numerous islands within the Basin, which interrupts waves and currents and results in a less energetic environment than the coast. These features make the ecological setting of the Georgia Basin region substantially different than other regions in the range of these rockfish species.

While the Straits of Georgia and Juan de Fuca and North Puget Sound are relatively wide bodies of water with numerous islands, Puget Sound Proper is composed of narrow basins separated by shallow sills. The geographic and bathymetric features that constrain rockfish movement in the Georgia Basin are even more pronounced in Puget Sound Proper. The presence of rocky habitat is very limited in Puget Sound Proper, with most bottom substrates comprised of soft sediments, ranging from coarse sands to fine silts and clay. Rockfish in Puget Sound Proper are either limited to the small amount of rocky habitat or, like bocaccio, greenstriped rockfish, and redstripe rockfish, make use of habitat with softer bottom substrates.

DPS Conclusions by Species

Bocaccio

In 2002, our Southwest Fisheries Science Center conducted a status review for bocaccio (MacCall and He, 2002), focusing on a Southern DPS occupying the coastal area from the Oregon/California border to approximately 322 km (200 miles) south of the Mexico/U.S. border. The status review concluded that at least two DPSs of bocaccio were present off the coast of the Western United States and Mexico, the Southern DPS and at least one additional DPS (the Northern) to the north. The authors (MacCall and He, 2002) did not consider whether inland stocks of bocaccio in the northern portion of this species range might be separate DPSs or what their extinction risk might be, because only the southern DPS was the subject of an ESA petition at that time. That review resulted in a determination that listing of the southern DPS of bocaccio was not warranted.

No published studies have compared genetic characteristics of bocaccio from Puget Sound and outer coastal areas, but there have been several studies of genetic variation in bocaccio along the outer coast. Wishard *et al.* (1980) examined allozyme variation in nine coastal sampling locations ranging from Baja California to southern Oregon, with sample sizes ranging from 12 to over 100 individuals per locality. They found two highly polymorphic loci and three others with low levels of variation. They found overlapping confidence intervals for allele frequencies across sampling locations and no evidence for population differentiation. More recently, Matala *et al.* (2004) examined genetic variation in bocaccio at seven microsatellite loci in samples from eight locations from Baja California to British Columbia, including both sides of Point Conception. Samples were adults, except in the Santa Barbara channel where age–0 fish were taken. The results indicate that coastal bocaccio are not a single breeding population. A large-scale pattern of isolation by distance was not observed in the data. However,

using a series of comparisons of smaller, geographically contiguous subsets of samples, the authors found some evidence that geographically proximate samples tended to be more similar genetically. The authors suggested that these results might best be explained by the interacting effects of oceanographic patterns and the species' life history, both of which result in some exchange between populations in close proximity, but limit exchange over larger distances.

Some aspects of bocaccio life history indicate that populations in the Georgia Basin might not be discrete from coastal populations, in particular the ability of adult bocaccio to move over long distances and the modest levels of differentiation among coastal populations described above. For this reason, and because of the lack of direct genetic information comparing inland and coastal populations, the BRT considered it possible that Georgia Basin populations are not discrete from coastal populations, that their presence in the Georgia Basin might be the result of a rare recruitment/migration event from coastal stocks. If that were the case, bocaccio age structure in the Basin would be dominated by a single year class. However, available size frequency data provide evidence that there are multiple year classes spread out over the available time series (MacCall, 2008). In addition, coastal bocaccio are dominated by a strong 1999 year class, but bocaccio in the Georgia Basin are not, providing further evidence against a hypothesis of a single population with frequent reproductive exchange.

The BRT concluded that the best available scientific information instead suggests that bocaccio populations in the Georgia Basin are discrete from coastal populations. Information supporting this conclusion includes the presence of multiple year classes within the Georgia Basin (indicating that bocaccio in the Basin are an independently reproducing entity and not the result of a rare recruitment/migration event from coastal stocks); the lack of a strong 1999 year class in the Georgia Basin, compared to coastal populations which do have a strong 1999 year class (suggesting separate recruitment regimes acting on Georgia Basin populations compared to coastal populations and also suggesting demographic independence); and the presence of large sexually mature individuals (suggesting the capacity for independent reproduction).

Inferences from the genetic evidence for discreteness of copper, quillback, brown, and yelloweye rockfish in the Georgia Basin also supports a conclusion that bocaccio in the Georgia Basin are discrete from coastal populations. Similarities in life histories between bocaccio and the four species for which we do have genetic information include: live-bearing of young, pelagic larval and juvenile stages, and eventual settlement to benthic habitats as fish reach adulthood. All of these species also consume similar prey items and spend at least some time in association with coarse substrates.

For the above reasons, the BRT concluded that the weight of the evidence supports the existence of a discrete population segment of bocaccio in the Georgia Basin more than it supports the existence of a single coastal/Georgia Basin population.

The BRT concluded there was no available information to support a conclusion that population segments of bocaccio within the Georgia Basin are discrete from one another. The factors supporting a conclusion that there are not discrete population segments of bocaccio within the Georgia Basin include the apparent similarity in age structure across the Basin, the fact that mature reproductive age adults have been found throughout the Basin, the fact that suitable habitat is spread throughout the Basin in a pattern that would allow movement of adults within the Basin, and the fact that bocaccio adults are able to move over relatively long distances (i.e., relative to other rockfish species). Because of this species potential for movement and wide habitat availability throughout Georgia Basin, the BRT did not feel that the evidence of within Georgia Basin genetic differences for copper, quillback, and brown rockfishes discussed above was relevant to bocaccio.

Under the DPS policy, having concluded that there is likely a discrete population segment of Georgia Basin bocaccio we must next consider whether the discrete population segment is significant to the species to which it belongs. As described above, the Georgia Basin is a unique ecological setting for all west coast rockfish. In addition, unlike coastal bocaccio, which are most frequently found in association with rocks and boulder fields, bocaccio in the Georgia Basin have been frequently found in areas with sand and mud substrate. We therefore conclude that the discrete population segment of boccacio in the Georgia Basin is also significant and thus a DPS (Figure 1).

In its previous status review, described above, NMFS identified two DPSs of coastal bocaccio (MacCall and He, 2002). The Georgia Basin bocaccio DPS identified in this draft status review would represent a third bocaccio DPS, distinct from both the southern and northern coastal DPSs identified in the previous review.

Yelloweye Rockfish

No published studies have compared genetic characteristics of yelloweye rockfish from Puget Sound and outer coastal areas. A Canadian study (Yamanaka *et al.*, 2006) using nine microsatellite loci in yelloweye rockfish collected from Oregon to southeast Alaska found small allele frequency differences among all the coastal samples; however, three samples from the inside waters of the Strait of Georgia and Queen Charlotte Strait had significantly reduced levels of genetic variability and formed a distinctive genetic cluster. The authors suggested that these results imply restricted gene flow between inland and coastal populations and a lower effective size for populations within the Strait of Georgia. Subsequently, samples taken in 2005 2007 from waters between Vancouver Island and Mainland British Columbia have been screened at the same nine polymorphic microsatellite loci (R. Withler, personal communication, July 2008). Preliminary analysis of these new samples shows that these patterns remain consistent: all the samples from inland waters form a coherent genetic cluster, and inside-outside comparisons typically yield much higher values of genetic differentiation than do comparisons of two coastal samples or two inland samples. In the north, there appears to be a fairly sharp transition between inland and coastal forms in the vicinity of the Gordon Channel. Whether a similar pattern occurs in the south is not known, as no samples from Puget Sound have been analyzed and only a single fish was collected from the Strait of Juan de Fuca. Nevertheless, these results suggest that yelloweye rockfish from the rest of the Georgia Basin are also likely to be genetically differentiated from the coastal population.

Several other lines of evidence support a conclusion that yelloweye rockfish in the Georgia Basin are discrete from coastal populations of yelloweye rockfish. Two aspects of the life history of yelloweye rockfish discussed earlier favor genetic and potentially demographic isolation from coastal populations. First, as both adults and juveniles, yelloweye rockfish are tightly associated with rocky substrata (or invertebrate prey associated with hard substrate). Such substrata are infrequent and patchy in distribution in North Puget Sound and the Georgia Strait, and are very rare in Puget Sound

Proper. Second, yelloweye rockfish show very limited movement as adults. These two aspects of their life history, combined with the retentive patterns of circulation of the Georgia Basin, support a conclusion that yelloweye rockfish in the Georgia Basin are discrete from coastal populations of yelloweye rockfish.

Inferences from the genetic evidence for discreteness of copper, quillback, and brown rockfish in the Georgia Basin also support a conclusion that yelloweye rockfish in the Georgia Basin are discrete from coastal populations. Similarities in life histories between yelloweye and the three species for which we do have genetic information include: live-bearing of young, pelagic larval and juvenile stages, and eventual settlement to benthic habitats as fish reach adulthood. All of these species also consume similar prey items and spend at least some time in association with coarse substrates.

For the above reasons, the BRT concluded that the weight of the evidence supports the existence of a discrete population segment of yelloweye in the Georgia Basin more than it supports the existence of a single coastal/Georgia Basin population.

The BRT concluded there was no available information to support a conclusion that population segments of yelloweye within the Georgia Basin are discrete from one another. The BRT also concluded that it was unlikely that the small amount of rocky habitat within in Puget Sound Proper would be able to support a self sustaining population of yelloweye rockfish. Since the majority of yelloweye habitat occurs in North Puget Sound and in the Strait of Georgia , the BRT did not feel that the evidence of within Georgia Basin genetic differences for copper, quillback, and brown rockfishes discussed above was relevant to yelloweye rockfish.

Under the DPS policy, having concluded that there is likely a discrete population segment of Georgia Basin yelloweye, we must next consider whether the discrete population segment is significant to the species to which it belongs. As described above, the Georgia Basin is a unique ecological setting for all west coast rockfish, satisfying the significance criterion of the DPS policy and supporting a conclusion that the discrete population segment of yelloweye in the Georgia Basin is also significant and thus a DPS.

Although the BRT did not examine additional DPS delineations among coastal populations of yelloweye rockfish, the BRT findings support a conclusion that the coastal populations constitute at least one additional DPS. As the BRT concluded, coastal populations are discrete from Georgia Basin populations. Because coastal populations occupy the majority of the species' range (as described above under Life History, Biology, and Status of the Petitioned Species), they would also certainly meet the DPS requirement of being significant to the taxon. Therefore, we conclude that coastal populations constitute at least one additional yelloweye rockfish DPS.

Canary Rockfish

No published studies have compared genetic characteristics of canary rockfish from Puget Sound and outer coastal areas. The allozyme study mentioned above (Wishard *et al.*, 1980), which examined large samples from 8 eight coastal locations in northern California, Oregon, and Washington, found low levels of heterozygosity in this species and some evidence for stock structure. In particular, samples taken south of Cape Blanco (southern Oregon) lack an allele that occurs at low frequency in populations to the north.

The BRT concluded that the best available scientific information suggests that canary rockfish populations in the Georgia Basin are discrete from coastal populations. Canary rockfish populations were historically most abundant in South Puget Sound, which is the basin in Puget Sound furthest from coastal waters, and is separated from coastal waters by three sills, which can present barriers to migration. Inferences from the genetic evidence for discreteness of copper, quillback, brown, and yelloweye rockfish in the Georgia Basin also support a conclusion that canary rockfish in the Georgia Basin are discrete from coastal populations. Similarities in life histories between canary rockfish and the four species for which we do have genetic information include: live-bearing of young, pelagic larval and juvenile stages, and eventual settlement to benthic habitats as fish reach adulthood. All of these species also consume similar prey items and spend at least some time in association with coarse substrates.

For the above reasons, the BRT concluded that the weight of the evidence supports the existence of a discrete population segment of canary rockfish in the Georgia Basin more than it supports the existence of a single coastal/Georgia Basin population.

The BRT concluded there was no available information to support a conclusion that population segments of canary rockfish within the Georgia Basin are discrete from one another. Because of this species potential for movement, the BRT did not feel that the evidence of within Georgia Basin genetic differences for copper, quillback, and brown rockfishes discussed above was relevant to canary rockfish.

Under the DPS policy, having concluded that there is likely a discrete population segment of Georgia Basin canary rockfish we must next consider whether it is significant to the species to which it belongs. As described above, the Georgia Basin is a unique ecological setting for all west coast rockfish, satisfying the significance criterion of the DPS policy and supporting a conclusion that the discrete population segment of canary rockfish in the Georgia Basin is also significant and thus a DPS.

Although the BRT did not examine additional DPS delineations among coastal populations of canary rockfish, the BRT findings support a conclusion that the coastal populations constitute at least one additional DPS. As the BRT concluded, coastal populations are discrete from Georgia Basin populations. Because coastal populations occupy the majority of the species' range (as described above under Life History, Biology, and Status of the Petitioned Species), they would also certainly meet the DPS requirement of being significant to the taxon. Therefore, we conclude that coastal populations constitute at least one additional canary rockfish DPS.

Redstripe Rockfish

No published studies have examined population genetic structure of redstripe rockfish in the Northeast Pacific. The BRT concluded that the best available scientific information supported a conclusion that the redstripe rockfish population segment in Puget Sound Proper is discrete from other redstripe rockfish populations in the rest of Georgia Basin and in coastal waters. Compared to other rockfish species, redstripe rockfish tend to occur in the mud/sand habitat that characterizes much of Puget Sound Proper. Due to the relatively deep habitat occupied by adult redstripe rockfish, the shallow sills of Puget Sound Proper would present an obstacle to northward migration of this species. Inferences from the genetic evidence for discreteness of copper, quillback, and brown rockfish in the Georgia Basin also support a conclusion that redstripe rockfish in Puget Sound Proper are discrete from other populations in the Georgia Basin. Similarities in life histories between redstripe rockfish and those three species, for which we do have genetic information include: live-bearing of young, pelagic larval and

juvenile stages, and eventual settlement to benthic habitats as fish reach adulthood. All of these species also consume similar prey items and spend at least some time in association with coarse substrates.

Under the DPS policy, having concluded that there is likely a discrete population segment of Puget Sound Proper redstripe rockfish we must next consider whether the discrete population segment is significant to the species to which it belongs. As described above, Puget Sound Proper is a unique ecological setting for all west coast rockfish. In addition, the BRT noted that historical records indicated a long-standing presence of this species in Puget Sound Proper, lending further support to the conclusion that the Puget Sound Proper population segment is significant to the redstripe rockfish species. We therefore conclude that restripe rockfish in Puget Sound Proper satisfy the significance criterion of the DPS policy and should thus be considered a DPS (Figure 1).

Although the BRT did not examine additional DPS delineations among coastal populations of redstripe rockfish, the BRT findings support a conclusion that the coastal populations constitute at least one additional DPS. As the BRT concluded, coastal populations are discrete from Georgia Basin populations. Because coastal populations occupy the majority of the species' range (as described above under Life History, Biology, and Status of the Petitioned Species), they would also certainly meet the DPS requirement of being significant to the taxon. Therefore, we conclude that coastal populations constitute at least one additional redstripe rockfish DPS.

Greenstriped Rockfish

Very little genetic information is available for greenstriped rockfish. A preliminary study of mitochondrial DNA control region sequences (J. Hess, unpublished data) compared data from coastal samples (British Columbia, Washington, and California) and samples collected from the Strait of Juan de Fuca. Preliminary results are consistent with those for coastal populations of other rockfish species: most haplotypes shared by more than one individual were found in all populations sampled, and the only significant pair wise comparison was Washington coast vs. California. However, sample sizes were low (12–40 individuals), so power to detect differences was also low. Furthermore, because no samples were available from Puget Sound Proper, this preliminary study provided no information about the relationship between greenstriped rockfish in Puget Sound and the Pacific coast.

Like redstripe rockfish, greenstriped rockfish tend to occur in the mud/sand habitat that characterizes much of Puget Sound Proper. Also similar to redstripe rockfish, the BRT felt that the shallow sills of Puget Sound Proper might present a migration obstacle to greenstriped rockfish. Some available information supports this conclusion, while other information suggests the sills might not present a migration obstacle to this species. Other information supporting a Puget Sound Proper DPS includes the fact that this species does not appear to occur in a large area north of Admiralty Inlet and south of the San Juan Islands, suggesting a distribution gap between the Puget Sound Proper area and the rest of the Georgia Basin and the coast. The BRT also found no compelling information to suggest that populations of greenstriped rockfish in Puget Sound Proper would be any less discrete from other Georgia Basin populations than was the case for the previously reviewed species (Stout *et al.*, 2001). The only information that was contrary to a Puget Sound Proper DPS was the possibility that the large intra-annual variation in the apparent abundance of the species in Puget Sound Proper could reflect periodic immigration from other areas. Ultimately, the BRT largely relied on the information from the other rockfish species, particularly the previous status review of copper, quillback, and brown rockfish (Stout *et al.*, 2001), to conclude there is likely a Puget Sound Proper DPS of greenstriped rockfish. Similarities in life histories between greenstriped rockfish and those three species, for which we do have genetic information include: live-bearing of young, pelagic larval and juvenile stages, and eventual settlement to benthic habitats as fish reach adulthood. All of these species also consume similar prey items and spend at least some time in association with coarse substrates. Thus for greenstriped rockfish, Puget Sound Proper is discrete from other greenstriped rockfish populations in the rest of Georgia Basin and in coastal waters.

Consistent with the earlier conclusions of Stout *et al.* (2001), Puget Sound Proper is an ecologically unique environment that differs from other parts of Georgia Basin, thus satisfying the significance criterion of the DPS policy and should thus be considered a DPS.

Although the BRT did not examine additional DPS delineations among coastal populations of greenstriped rockfish, the BRT findings support a conclusion that the coastal populations constitute at least one additional DPS. As the BRT concluded, coastal populations are discrete from Georgia Basin populations. Because coastal populations occupy the majority of the species' range (as described above under Life History, Biology, and Status of the Petitioned Species), they would also certainly meet the DPS requirement of being significant to the taxon. Therefore, we conclude that coastal populations constitute at least one additional greenstriped rockfish DPS.

Western Boundary of the Georgia Basin DPS

The BRT noted that the Strait of Juan de Fuca is a transition zone between the oceanic waters of the California Current and inland waters of Georgia Basin. There was general agreement among BRT members that there is unlikely to be a sharp boundary that separates populations residing in these two systems (Drake *et al.*, 2008). The BRT considered two possible western boundaries, the mouth of the Sekiu River and the Victoria Sill. The Sekiu River is used as the western boundary in the Washington Department of Fish and Wildlife (WDFW) assessment of rockfishes (Palsson *et al.*, 2008). The BRT considered the Sekiu River a precautionary boundary in that it is very unlikely that any biologically relevant divisions would occur west of that point. The Victoria Sill bisects the Strait of Juan de Fuca and runs from east of Port Angeles north to Victoria. This sill is a significant oceanographic feature in the Strait of Juan de Fuca. The deep oceanic water in the Juan de Fuca Strait extends up to a depth of about 100 m (328 feet) at the Pacific end of the strait, and its thickness diminishes along the strait to just a few meters at the Victoria Sill (Masson, 2002). Patterns of circulation created by the sill create discontinuities in temperature, salinity (Masson and Cummins, 2000), nitrogen (Mackas and Harrison, 1997), primary production (Foreman *et al.*, 2008), and water column organic carbon (Johannessen *et al.*, 2008). The Victoria Sill also appears to have the potential to restrict larval dispersal (Engie and Klinger, 2007; Paul Chittaro, NWFSC, unpublished data). Using the FEMAT voting procedure described previously, BRT members distributed their votes among the two western boundary options. Victoria Sill received 72 percent of the votes. Thus, the BRT concluded that the Victoria Sill likely represents the western boundary in this DPS scenario. We concur.

Extinction Risk Assessment

The ESA (Section 3) defines ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' ''Threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' We consider a variety of factors in evaluating the level of risk faced by a DPS, including: (1) absolute numbers of fish and their spatial and temporal distributions, (2) current abundance and carrying capacity of the habitat in relation to historical abundance and carrying capacity, (3) trends in abundance, based on indices such as catch statistics, catch per unit effort (CPUE), and spawner-recruit ratios, (4) climate variability, and (5) size distribution of adult fish. Additional risk factors, such as disease prevalence or evolution in life-history traits, also may be considered in the evaluation of risk to a population. The discussion that follows describes each of these considerations, which we then incorporate in the risk discussion below for each species, as relevant.

Absolute Numbers

The absolute number of individuals in a population is important in assessing two aspects of extinction risk. First, small populations may not be sustainable in the face of environmental fluctuations and small-population stochasticity, even if the population currently is stable or increasing (Gilpin and Soule, 1986; Thompson, 1991). Second, present abundance in a declining population is an indicator of the time expected until the population reaches critically low numbers (Caughley and Sinclair, 1994). In addition to absolute numbers, the spatial and temporal distributions of adult population sizes are important in assessing risk to a DPS.

Assessments of marine fish populations have focused on determining abundance and trends from models fit to catch, survey, and biological data. Catch records, fishery and survey catch per unit effort (CPUE), and biomass estimates from research cruises constitute most of the data available to estimate population abundance. The estimated numbers of reproductive adults is the most important measure of abundance in assessing the status of a population. Data on other life-history stages can be used as a supplemental indicator of abundance. In the case of the five petitioned species, very little information is available on their absolute abundance in the Georgia Basin and Puget Sound. Though the BRT did estimate the size of the five petitioned rockfish species using estimates of total rockfish abundance presented in Palsson *et al.* (2008), the BRT focused largely on trends in various abundance indices.

Historical Abundance and Carrying Capacity

An understanding of historical abundance and carrying capacity can provide insights into a population's sustainability under current conditions. For example, estimates of historical abundance provide the basis for establishing long-term abundance trends and also provide a benchmark for an abundance that was presumably sustainable. A comparison of past and present habitat capacity can also indicate long-term population trends from habitat loss, as well as potential habitat fragmentation, which can affect population viability. For a species that is at low abundance or has experienced declines in abundance, a comparison of current abundance to current carrying capacity may provide insight into the causes for decline and the potential for recovery.

Trends in Abundance

Short- and long-term trends in abundance serve as primary indicators of risk in natural populations. Trends may be calculated with a variety of quantitative data, including catch, CPUE, and survey data. Trend analyses for the five species considered in this status review are limited by the lack of long time series of abundances in greater Puget Sound for these species. In addition, although abundance time series are available for other, more common, Puget Sound rockfish species, these time series are characterized by a lack of regular sampling, by use of different survey methods for each species, and, for harvest data, by the effect of frequently revised harvest regulations. The BRT took several approaches to utilize the best available data in order to estimate the abundance trends, and these are discussed in greater detail below.

Climate Variability

Coupled changes in atmospheric and ocean conditions have occurred on several different time scales and have influenced the geographical distributions, and hence local abundances, of marine fishes. On time scales of hundreds of millennia, periodic cooling produced several glaciations in the Pleistocene Epoch (Imbrie *et al.*, 1984; Bond *et al.*, 1993). The central part of greater Puget Sound was covered with ice about 1 km (0.6 miles) thick during the last glacial maximum about 14,000 years ago (Thorson, 1980). Since the end of this major period of cooling, several population oscillations of pelagic fishes, such as anchovies and sardines, have been noted on the West Coast of North America (Baumgartner *et al.*, 1992). These oscillations, with periods of about 100 years, have presumably occurred in response to climatic variability. On decadal time scales, climatic variability in the North Pacific and North Atlantic Oceans has influenced the abundances and distributions of widespread species, including several species of Pacific salmon (Francis *et al.*, 1998, Mantua *et al.*, 1997) in the North Pacific, and Atlantic herring (Alheit and Hagen, 1997) and Atlantic cod (Swain, 1999) in the North Atlantic. Recent declines in marine fish populations in greater Puget Sound may reflect recent climatic shifts. However, we do not know whether these climatic shifts represent long-term changes or short-term fluctuations that may reverse in the near future. Although recent climatic conditions appear to be within the range of historical conditions, the risks associated with climatic changes may be exacerbated by human activities (Lawson, 1993).

Size Distributions

Fisheries often target larger, older, more mature fish, resulting in a population with fewer such individuals than an unfished population would have. Older females generally produce more larvae, and their larvae survive at higher rates, than those of younger females. Thus their removal can decrease the productivity of the overall population, particularly for slow-growing, long-lived species such as rockfish.

The BRT reported that size-frequency distributions for bocaccio in the 1970s included a wide range of sizes, with recreationally caught individuals from 25 to 85 cm (10 to 33 inches) in length. This broad size distribution suggests a spread of ages, with some successful recruitment over multiple years. A similar range of sizes is also evident in data from the 1980s. These patterns are more likely to result from a self-sustaining population within the Georgia Basin rather than sporadic immigration or recruitment from coastal populations. The temporal trend in size distributions for bocaccio also suggests size truncation of the population, with larger fish becoming less common over time until the 1990s. By the decade of the 2000s, no bocaccio data were

available, so the BRT was not able to determine if the size truncation continued in this decade.

The BRT reported that canary rockfish exhibited a broad spread of sizes in the 1970s. However, by the 2000s, there were far fewer size classes represented and no fish greater than 55 cm (22 inches) were recorded in the recreational data. Although some of this truncation may be a function of the overall lower number of sampled fish, the data in general suggest few older fish remain in the population.

For yelloweye rockfish, the BRT reported that recreationally caught fish in the 1970s spanned a broad range of sizes. By the decade of the 2000s, there was some evidence of fewer older fish in the population. However, overall numbers of fish in the database were also much lower, making it difficult to determine if size truncation occurred.

For greenstriped and redstripe rockfish, the BRT noted that these species have a small maximum size. Although common in the recreational catch data for the 1970s and 1980s, greenstriped rockfish are represented by few individuals in catch data from the 1990s and 2000s. Size distributions do not suggest any size truncation over this time period. Low numbers reported in the catch may be a function of decreasing bag limits over time, and the likelihood of discarding of this less desired species by recreational fishermen. Large numbers of redstripe were retained by fishermen in the 1980s, but very few were available in the database for the 1990s and 2000s. There was no evidence of size truncation in this species over time, but too few fish were measured in the later decades to provide a meaningful analysis.

Risk Assessment Methods

In assessing risk, NMFS BRTs consider the best scientific information available, which often includes both qualitative and quantitative information. In previous NMFS status reviews, BRTs have used a ''risk matrix'' method to organize and summarize the professional judgment of a panel of professional scientists regarding the degree of risk facing a species based on the available information. This approach is described in detail by Wainright and Kope (1999) and has been used for over 10 years in Pacific salmonid status reviews (e.g., Good *et al.*, 2005; Hard *et al.*, 2007), as well as in reviews of Pacific hake, walleye pollock, Pacific cod (Gustafson *et al.*, 2000), Puget Sound rockfishes (Stout *et al.*, 2001b), Pacific herring (Stout *et al.* 2001a; Gustafson *et al.*, 2006), and black abalone (Butler *et al.*, 2008). In this risk matrix approach, the collective condition of individual populations is summarized at the DPS level according to four demographic risk criteria: abundance, growth rate/productivity, spatial structure/connectivity, and diversity. These viability criteria, outlined in McElhany *et al.* (2000), reflect concepts that are well founded in conservation biology and are generally applicable to a wide variety of species. These criteria describe demographic risks that individually and collectively provide strong indicators of extinction risk. The summary of demographic risks and other pertinent information obtained by this approach is then considered by the BRT in determining the species' overall level of extinction risk.

After reviewing all relevant biological information for the species, each BRT member assigns a risk score to each of the four demographic criteria. The scoring for the risk criteria correspond to the following values: 1–very low risk, 2–low risk, 3–moderate risk, 4–high risk, 5–very high risk. The scores were tallied (means, modes, and range of scores), reviewed, and the range of perspectives discussed by the BRT before making its overall risk determination. Although this process helps to integrate and summarize a large amount of diverse information, the risk matrix scores do not always translate directly into a determination of overall extinction risk. Other factors must be considered. For example, a DPS with a single extant sub-population might be at a high level of extinction risk because of high risk to spatial structure/connectivity, even if it exhibited low risk for the other demographic criteria. Another species might be at risk of extinction because of moderate risks to several demographic criteria.

After completing the risk matrix approach for each DPS, the BRT evaluated their overall extinction risk. The BRT was asked to use three categories of risk to describe the species' status ''high risk'' of extinction; ''moderate risk'' of extinction; or ''not at risk'' of extinction. To allow individuals to express uncertainty in determining the overall level of extinction risk facing the species, the BRT adopted the ''likelihood point'' method referred to previously.

Abundance Trends Data Reviewed by the BRT

The main data available on Puget Sound rock sh trends are from surveys of recreational anglers conducted by WDFW. These data are collected from punch cards sent in by licensed anglers and from dockside surveys. WDFW extrapolates the rock sh per angler data up to total catch using an estimate of number of trips derived from the salmon recreational shery. The data are reported both for the targeted catch (targeting bottom sh) and the incidental catch (targeting salmon). For the trend analyses conducted by the BRT, only the data from the shery targeting bottomfish were used because the bottomfish information was recorded in an inconsistent fashion in the salmon catch report (Drake *et al.*, 2008). The BRT utilized data covering the time period from 1965–2007.

The recreational data have numerous limitations. In particular, during 1994 to 2003, the total catch was still estimated using salmon shery data, yet restrictions on the salmon shery resulted in limited information. In addition, the bag limit on rock sh was lowered from 15 sh in 1983 to 1 rock sh per trip in both the north Puget Sound and Puget Sound Proper in 2000. Reductions in bag limits both directly reduce the sh per trip by capping the maximum and may lead to changes in angler targeting leading to reductions in the number of rock sh taken per trip. To correct for the effects of bag limits and changes in angler targeting, the trend analyses conducted by the BRT treated each bag limit period as a separate dataset and a scaling parameter to adjust the mean for each period was estimated.

Data from commercial fisheries were also examined by the BRT. Commercial data with effort information is available from records on the bottom trawl shery operating until 1988. Effort data (hours trawled) are available from 1955. Due to some concerns in the sheries literature about CPUE data from commercial sheries not correlating with actual population abundances, these data were not used for the trend analyses.

Data from the WDFW trawl survey (a shery independent survey) were included in the trend analysis conducted by the BRT. The survey is described in detail by Palsson *et al.* (2008). These trawl surveys cover 1987 to 2000, are depth stratified, and done in twelve regions. The rocky habitat used by bocaccio, canary rockfish and yelloweye rockfish is not effectively sampled by trawl gear, while the unconsolidated habitat used by redstripe rockfish and greenstriped rockfish can be trawled effectively. As a result, the BRT used the WDFW trawl survey data primarily with respect to the latter two species.

Another data source included in the BRT analysis is sightings of rock sh by recreational SCUBA divers throughout the Puget Sound as part of a program by

the Reef Environmental Education Foundation (REEF, 2008), which trains recreational divers to identify and record sh species during recreational dives. The data are reported in relative abundance categories: single = single sh, few = 2–10 sh, many = 11–100 sh, and abundant = 100+ sh. The REEF database was used to determine presence/absence per dive (at any abundance) and also to determine minimum and maximum rock sh abundance by using the upper and lower ends of the categories to convert the categorical levels to numerical levels.

In addition to the data sources described above, the BRT reviewed numerous historical documents, short-term research projects, and graduate theses from regional universities. In general, historical reports confirm that the five petitioned species have consistently been part of the Puget Sound fish fauna. For example, Kincaid (1919) noted that the family Scorpaenidae (which includes rockfishes) constituted ''one of the most important and valuable groups of fishes found on the Pacific Coast.'' He produced an annotated list of Puget Sound fishes that documented 13 species of rockfish that were known to inhabit Puget Sound, including two of the petitioned species reported with different common nanmes: the ''orange rockfish'' (S. pinniger) that was ''abundant in deep water'', and the ''red rockfish or red snapper'' (S. ruberrimus), the largest of this group, ''common in deep water'' and ''brought to market in considerable quantities.'' Smith (1936) provided one of the first scientific reports on Puget Sound commercial fisheries focused on the fleet of otter trawlers which targeted flatfish landed for market in Seattle. The fishery occurred primarily over relatively soft-bottom areas. Seven rockfish species were indicated as being taken by this fishery, including three of the petitioned species ''orange rockfish'' (S. pinniger), ''red snapper'' (S. ruberrimus), and ''olive-banded rock cod'' (S. elongatus). Haw and Buckley's (1971) text on saltwater fishing in Washington marine waters, including Puget Sound, was designed to popularize recreational sport (hook and line) fishing in the region to the general public. Fishing locations and habitat preferences were indicated for three species of rockfish: canary, yelloweye, and bocaccio. Canary rockfish were found at depths over 150 feet (46 m) and were not restricted to rocky bottom areas. This species occurred in certain locations as far south as Point Defiance and was taken in large numbers at Tacoma Narrows, but was considered more abundant in the San Juan Islands, North Puget Sound, and Strait of Juan de Fuca. Rockfish were found at depths over 150 feet (46 m) on rocky bottoms, and primarily occurred in north Puget Sound, the Strait, and the outer coast. Finally, bocaccio were frequently caught in the Tacoma Narrows.

Two documents (Delacy *et al.*, 1972; Miller and Borton, 1980) compiled all available data on Puget Sound fish species distributions and relative number of occurrences since 1971 and 1973, respectively, from the literature (including some records noted above), fish collections, unpublished log records, and other sources. Twenty-seven representatives of the family Scorpaenidae are listed in these documents, including all five species considered in this status review (total records indicated in parentheses): greenstriped rockfish (54): most records occur in Hood Canal, although they were also collected near Seattle, primarily associated with otter trawls; bocaccio (110): most records occur from the 1970's in Tacoma Narrows and Appletree Cove (near Kingston) associated with sport catch; canary rockfish (114): most records occur from the 1960s to 1970s in Tacoma Narrows, Hood Canal, San Juan Islands, Bellingham, and Appletree Cove associated with sport catch; redstripe rockfish (26): most records are from Hood Canal sport catch, although a few were also taken in Central Sound/Seattle; yelloweye rockfish (113): most records occur from the early 1970's in the San Juan Islands (Sucia Island) and Bellingham Bay associated with the sport catch.

Summary of Previous Risk Analyses

The WDFW conducted an extensive review of the current status of all Puget Sound rockfishes (Palsson *et al.*, 2008). The authors examined historic patterns of abundance, results of WDFW surveys, and ecosystem stressors to produce a qualitative risk assessment. Palsson *et al.* (2008) note a precipitous decline in several species of rockfish, including bocaccio, yelloweye rockfish, and canary rockfish. They concluded that fishery removals (including bycatch from other fisheries) are highly likely to limit recovery of depleted rockfish populations in Puget Sound. In addition, they concluded that habitat disruption, derelict fishing gear, low dissolved oxygen, chemical toxicants, and predation are moderate threats to Puget Sound rockfish populations.

WDFW evaluated the status of rockfishes in Puget Sound using information on fishery landings trends, surveys, and species composition trends (Musick *et al.*, 2000). Their evaluation was based on the American Fisheries Society's Criteria for Marine Fish Stocks (Musick *et al.*, 2000). This method uses biological information and life history parameters such as population growth rates, age at maturity, fecundity, maximum age, etc. These parameters in concert with information regarding population trends are used to classify populations as depleted, vulnerable, precautionary or healthy. WDFW interpreted ''depleted'' to mean that there is a high risk of extinction in the immediate future, while ''vulnerable'' was considered to be likely to be endangered or threatened in the near future. ''Precautionary'' was interpreted to mean that populations were reduced in abundance, but that population size was stable or increasing. After applying the criteria, WDFW concluded that yelloweye rockfish were depleted in both North and South Puget Sound. Canary rockfish were also considered depleted in North and South Puget Sound. Greenstriped rockfish and redstripe rockfish were both considered to be healthy. Bocaccio were considered to have a precautionary status. The precautionary status of bocaccio was the result of a lack of information for bocaccio, as well as their increased rarity in South Puget Sound.

An evaluation on the status of yelloweye rockfish was prepared for the Canadian Committee on the Status of Endangered Wildlife in Canada (COSEWIC). COSEWIC concluded that there are two designatable units of yelloweye rockfish in Canada: an ''inside'' designatable unit that encompasses the Strait of Georgia, Johnstone Strait and Queen Charlotte Strait, and an ''outside'' designatable unit that extends from southeast Alaska to northern Oregon. The two designatable units are distinguished on the basis of genetic information indicating restricted gene flow, and age at maturity. For the inside designatable unit, submersible surveys in 1984 and 2003 showed statistically nonsignificant declines in mean, median and maximum sightings per transect. Commercial handline and longline CPUEs declined 59 percent and 49 percent respectively from 1986 to 2004. Age and length information indicates that the proportion of old individuals declined from the 1980s into the early 1990s. Overall, the COSEWIC report concluded that yelloweye rockfish abundance has declined more than 30 percent in a third of a yelloweye generation. COSEWIC also conducted status reviews for canary rockfish and

bocaccio; however, these reports focused on coastal populations. In both cases, populations were determined to be threatened.

Coastal populations of yelloweye rockfish, canary rockfish and bocaccio are considered ''overfished'' by the U.S. Pacific Fisheries Management Council.

Current Abundance

Because of a lack of systematic sampling targeting rare rockfishes, absolute estimates of population size of the petitioned species cannot be generated with any accuracy. However, a rough estimate of the order of magnitude of population size can be determined from information assembled by WDFW. Palsson *et al.* (2008) extrapolated results from a video survey to estimate the population size of the common rockfish species (copper rockfish, quillback rockfish, black rockfish and brown rockfish) in Puget Sound Proper as about 40,683 and in North Puget Sound as 838, 944. The BRT applied the percent frequency of the petitioned species in the recreational catch to these numbers to conclude that the population sizes of boccacio, yelloweye rockfish, and canary rockfish are quite small, probably less than 10,000 in Georgia Basin and less than 1,000 in Puget Sound Proper. The absolute abundance of greenstriped and redstripe rockfish are unknown, but these species appear highly abundant in certain areas (Drake *et al.*, 2008).

Abundance Trends

The BRT did not generate quantitative estimates of trend in abundance for the ve species in the current petition because the low sampling of the catches in many years, particularly the early years, provides insufficient yearly estimates. Because of the nature of the available data, the BRT used the overall trend in all rockfishes (heavily influenced by common species such as copper, brown, and quillback rockfishes) to make inferences about the magnitude of trend in the petitioned species. They did this by looking for changes in the frequency of the petitioned species relative to the common species. The BRT examined this evidence for changes in the frequency of the petitioned species in the recreational catch, WDFW trawl surveys, and REEF dive surveys. If the petitioned species are not declining as fast as the ''total rock sh'' time series, then their frequency should be increasing relative to other more common species. On the other hand, they should become less frequent if they are declining more quickly.

The three most common species during 1965–2007 in the North Puget Sound (black rockfish, copper rockfish and quillback rockfish) and Puget Sound Proper (brown rockfish, copper rockfish, and quillback rockfish) increased in proportion of the total from 1980 through 1990, and currently comprise approximately 90 percent of the recreational catch. Four of the ve petitioned species (boccacio, canary rockfish, greenstriped rockfish, and yelloweye rockfish) became progressively less frequent in the recreational catch during the same time period.

Estimates of the declining trend in the total population of rockfish in Puget Sound were approximately 3 percent per year, although this figure varied depending on what assumptions were included in the model estimating the trend (see Drake *et al.*, 2008 for details). This rate of annual decline corresponds to an average decline of about 70 percent over the 1965–2007 time period the BRT examined. Since the relative frequency of the petitioned species declined, the BRT concluded that the decline of the petitioned species must have been greater than the 70 percent observed in the total rockfish population.

Extinction Risk Assessment Conclusions

Bocaccio

The BRT concluded that the bocaccio Georgia Basin DPS is at ''high risk'' of extinction throughout all of its range. Bocaccio appear to have declined in frequency in Puget Sound Proper, relative to other species, from the 1970s to the present. From 1975–1979, bocaccio were reported as an average of 4.63 percent of the total rockfish catch. From 1980–1989, they were 0.24 percent of the rock sh identified, and from 1996 to 2007, bocaccio have not been observed out of the 2238 rock sh identified in the dockside surveys of the recreational catches. In a sample this large, the probability of observing at least 1 bocaccio would be 99.5 percent assuming it was at the same frequency (0.24 percent) as in the 1980s. The BRT concluded that there is strong support in the data for a decline in the frequency of bocaccio relative to other species in Puget Sound Proper. The BRT noted that other data sources (SCUBA surveys) indicate that although rare, bocaccio rock sh were present in Puget Sound Proper as recently as 2001. Relying on the estimate of Palsson *et al.* (2008) of 40,683 rockfish in Puget Sound Proper, a 0.24 percent frequency rate would mean there were about 100 individual bocaccio in Puget Sound Proper in the 1980's. In North Puget Sound, bocaccio have always been rare in the surveys of the recreational shery. In the Strait of Georgia, bocaccio have been documented in some inlets, but records are sparse, isolated, and often based on anecdotal reports (COSEWIC, 2002).

A majority of the BRT concluded that the downward population size trend was, by itself, sufficient to indicate that the Georgia Basin DPS of bocaccio had a high risk of extinction. The BRT was also concerned that bocaccio as a species have a very low intrinsic rate of population growth, even in the absence of harvest or other threats that may limit productivity, and the size distribution of bocaccio in Puget Sound appeared to be trending toward smaller, less productive sizes (see above). Bocaccio are also characterized by highly variable recruitment that may be largely driven by environmental conditions which may occur only infrequently (Tolimieri and Levin, 2005). Even in the absence of continued exploitation, the BRT therefore concluded that Georgia Basin bocaccio were at risk due to their low abundance and low intrinsic population growth rate.

Threats to this DPS include areas of low dissolved oxygen within their range, the potential for continued losses as bycatch in recreational and commercial harvest, and the reduction of kelp habitat necessary for juvenile recruitment. The BRT's conclusions regarding the overall risk to the Georgia Basin bocaccio DPS were weighted to ''high risk'' (66 percent) with substantially less support for ''moderate risk'' (32 percent) and almost no support for ''not at risk'' (2 percent).

Although there have been no confirmed observations of bocaccio in Georgia Basin for approximately 7 years, the BRT concluded that there was no compelling reason to believe that the DPS has been extirpated. In particular, although it has disappeared from the recreational catch, the recreational fishery does not provide a complete sampling of Georgia Basin. Given the lack of an intensive effort to completely enumerate bocaccio, and the long life-span of the species, the BRT concluded that it is likely that the DPS still exists at a very low abundance and would be observed with a sufficiently intensive observation program.

Yelloweye Rockfish

The BRT concluded that the yelloweye rockfish Georgia Basin DPS is at ''moderate risk'' of extinction throughout all of its range. The frequency of yelloweye rock sh in Puget Sound Proper does not show a consistent trend, with percent

frequencies less than 1 in the 1960s and 1980s and about 3 percent in the 1970s and 1990s. Relying on the estimate of Palsson *et al.* (2008) of 40,683 rockfish in Puget Sound Proper, a 3 percent frequency rate would mean there are about 1,200 individual canary rockfish in Puget Sound Proper. In North Puget Sound, however, the frequency of yelloweye rock sh decreased from a high of greater than 3 percent in the 1970s to a frequency of 0.65 percent in the most recent samples. Based on this decline in frequency in North Puget Sound, combined with the overall decline in rockfish abundance in Puget Sound, the BRT concluded that the current trend in abundance contributes significantly to the extinction risk of the DPS. Like bocaccio and canary rockfish, the BRT also noted that the low intrinsic productivity combined with continuing threats from bycatch in commercial and recreational harvest, loss of near shore habitat, chemical contamination, and areas of low dissolved oxygen, increase the extinction risk of this species. The BRT further noted the downward trends in the size of yelloweye rockfish in Puget Sound (see above). The BRT's conclusions regarding the overall risk to the Georgia Basin canary rockfish DPS were heavily weighted toward ''moderate risk'' (59 percent), with minority support for ''high risk'' (23 percent) and ''not at risk'' (18 percent).

Canary Rockfish

The BRT concluded that the canary rockfish Georgia Basin DPS is at ''moderate risk'' of extinction throughout all of its range. There appears to be a steep decline in the abundance of canary rockfish in the Georgia Basin, reflected in the species becoming less frequent in the recreational rockfish catch data since 1965. In Puget Sound Proper, canary rockfish occurred at frequencies above 2 percent of the total rockfish catch in the 1960s and 1970s, but by the late 1990s had declined to about 0.76 percent. Relying on the estimate of Palsson *et al.* (2008) of 40,683 rockfish in Puget Sound Proper, a 0.76–percent frequency rate would mean there are about 300 individual canary rockfish in Puget Sound Proper. In North Puget Sound, the frequency of canary rockfish exceeded 6 percent in the 1960s and declined to 0.56 percent in the 1990s. Based on this decline in frequency, combined with the overall decline in rockfish abundance in Puget Sound, the BRT concluded that the current trend in abundance contributes significantly to the extinction risk of the DPS.

The BRT also noted that the species' low intrinsic productivity combined with continuing threats from bycatch in commercial and recreational harvest, loss of near shore habitat, chemical contamination, and areas of low dissolved oxygen, increase the extinction risk of this species. The BRT further noted the downward trends in the size of the canary rockfish in Puget Sound (see above). The BRT noted that this species is more mobile than many other rockfish species, which may help preserve genetic diversity by increasing connectivity among breeding populations. However, the BRT noted the lack of specific information on canary rockfish population structure within the Georgia Basin, and that there does not appear to be a stronghold for canary rockfish anywhere within the range of the DPS. The BRT's conclusions regarding the overall risk to the Georgia Basin canary rockfish DPS were heavily weighted toward ''moderate risk'' (56 percent), with minority support for ''high risk'' (24 percent) and ''not at risk'' (20 percent).

Greenstriped Rockfish

The BRT concluded that the greenstriped rockfish Puget Sound Proper DPS is ''not at risk'' of extinction throughout all of its range. Greenstriped rock sh do not occur in the recreational catch data from North Puget Sound and occur very infrequently in the Puget Sound Proper recreational catch data, presumably due to the low value attached to this species. Bag limits were imposed in 1983 and the bag limit was further reduced in 1994 and 2000. Since greenstriped rock sh are smaller than other species, the bag limit may lead to discarding and thus under-representation of greenstriped rockfish in the recreational catch. Greenstriped rock sh appear in a low frequency in the WDFW sheries independent trawl survey, but they were caught in the most recent years of the WDFW trawl survey in Puget Sound Proper (in both 2002 and 2005). Thus, although greenstriped rock sh have not been reported from the recreational catch from 1999–2007, they are still present in Puget Sound Proper. The BRT noted the lack of information on the abundance trends of greenstriped rockfish, but noted that Puget Sound Proper has large areas of the unconsolidated habitats that are used by this species, and that this species has somewhat higher intrinsic productivity than other rockfish species. The BRT noted that this species is not preferred by recreational anglers, and may therefore be less susceptible to overharvest. Because this species is also more of a habitat generalist than many other rockfish, the BRT concluded it was not at risk from habitat loss or reduced diversity. Size distributions do not suggest any size truncation since the 1970s. The BRT did note that areas of low dissolved oxygen are a potential risk factor. The BRT conclusions regarding the overall risk the DPS were weighted toward ''not at risk'' (59 percent), with ''moderate risk'' receiving minority support (32 percent) and ''high risk'' receiving very little support (9 percent).

Redstripe Rockfish

The BRT concluded that the redstripe rockfish Puget Sound Proper DPS is ''not at risk'' of extinction throughout all of its range. Redstripe rockfish do not occur in the catch data from North Puget Sound. In Puget Sound Proper, however, redstripe rock sh appeared frequently in the recreational catch (between 1–14 percent) from 1980 to 1985. Previous to that, from 1965 to 1979, redstripe rockfish appeared much less frequently (less than 1 percent). After 1985, the frequency of redstripe rockfish declined in the recreational data, and since 1996 it does not appear in the catch data. A bag limit was imposed in 1983 and the bag limit was further reduced in 1994 and 2000. Since redstripe rockfish are smaller than other species, bag limits may lead to discarding and thus under-representation of redstripe rockfish in the recreational catch. In the 1980s and 1990s, redstripe rockfish appeared at a low frequency (less than 1.5 percent) in the WDFW trawl survey. The frequency increased dramatically in 2002 and 2005, with redstripe rockfish making up 39 and 48 percent of the individuals caught. The BRT concluded that these high estimates may be statistical outliers, however, and are not necessarily indicative of an actual increase in abundance in recent years. However, the biomass of redstripe rockfish in the Puget Sound trawls was significantly higher in 2008 than in 1995, indicating a potential increase in abundance. The BRT also noted that the presence of redstripe rockfish in the WDFW trawl survey indicates that redstripe rockfish are present in Puget Sound but are no longer being recorded in the dockside surveys of the recreational catch, for undetermined reasons. Overall, the BRT noted that the total abundance and trends in abundance for this species were not well known, but concluded that the available data indicated that the species was at least locally abundant within Puget Sound.

The BRT also noted that this species has a shorter generation time and higher intrinsic rate of productivity than many other rockfish species. The BRT noted

that this species is not preferred by recreational anglers, and may therefore be less susceptible to overharvest. Because this species is also more of a habitat generalist than many other rockfish, the BRT concluded it was not at risk from habitat loss or reduced diversity. The BRT did note that areas of low dissolved oxygen and chemical contamination are potential risk factors for this species. There was no evidence of size truncation in this species over time, but too few fish were measured in the later decades to provide a meaningful analysis. The BRT conclusions regarding the overall risk to the DPS were weighted toward ''not at risk'' (58 percent), with ''moderate risk'' receiving minority support (32 percent), and ''high risk'' receiving little support (10 percent).

Summary of Factors Affecting the Five DPSs of Rockfish

As described above, section 4(a)(1) of the ESA and NMFS implementing regulations (50 CFR 424) state that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or man-made factors affecting its continued existence. The primary factors responsible for the decline of these five DPSs of rockfishes are overutilization for commercial and recreational purposes, water quality problems including low dissolved oxygen, and inadequacy of existing regulatory mechanisms. The factors for decline are so similar for the petitioned DPSs of rockfish that they are addressed collectively in the following section. This section briefly summarizes findings regarding threats to the five DPSs of rockfishes. More details can be found in the draft status report (Drake *et al.*, 2008) and Palsson *et al.* (2008).

The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The BRT identified habitat destruction as a threat to petitioned rockfish. In particular, loss of rocky habitat, loss of eelgrass and kelp, introduction of non-native species that modify habitat, and degradation of water quality were identified as specific threats to rockfish habitat in the Georgia Basin.

Adults of bocaccio, canary rockfish, and yelloweye rockfish are typically associated with rocky habitats. Palsson *et al.* (2008) report that such habitat is extremely limited in Puget Sound, with only 10 km^2 (3.8 sq miles) of such habitat in Puget Sound Proper, and 207 km^2 (80 sq miles) in North Puget Sound. Rocky habitat is more common in the Strait of Georgia and Strait of Juan de Fuca. Palsson *et al.* (2008) note that this habitat is threatened by, or has been impacted by, construction of bridges, sewer lines and other structures, deployment of cables and pipelines, and burying from dredge spoils and natural subtidal slope failures.

Eelgrass, kelp, and other submerged vegetation provide important rockfish habitat, particularly for juveniles. In 2006, there were about 20,234 hectares (78 sq miles) of eelgrass in Puget Sound, with about a third of this in Padilla and Samish bays. Monitoring of eelgrass began in 2000, and although coverage declined until 2004, since that time it has remained unchanged throughout Puget Sound. Localized declines have occurred, with local losses in Hood Canal ranging from 1 to 22 percent per year (Puget Sound Action Team, 2007). Kelp cover is highly variable and has shown long-term declines in some regions, while kelp beds have increased in areas where artificial substrate provides additional kelp habitat (Palsson *et al.*, 2008).

Non-indigenous species are an emerging threat to biotic habitat in Puget Sound. *Sargassum muiticum* is an introduced brown alga that is now common throughout much of the Sound. The degree to which *Sargassum* influences native macroalgae, eelgrass, or rockfish themselves is not presently understood. Several species of non-indigenous tunicates have been identified in Puget Sound. For example, *Ciona savignyi* was initially seen in one location in 2004, but within 2 years spread to 86 percent of sites surveyed in Hood Canal (Puget Sound Action Team, 2007). The exact impact of invasive tunicates on rockfish or their habitats is unknown, but results in other regions (e.g., Levin *et al.*, 2002) suggest the potential for introduced invertebrates to have widespread impacts on rocky-reef fish populations.

Over the last century, human activities have introduced a variety of toxins into Puget Sound and the Georgia Basin at levels that may affect rockfish populations or the prey that support them. Several urban embayments in the Sound have high levels of heavy metals and organic compounds (Palsson *et al.*, 2008). About 32 percent of the sediments in Puget Sound are considered to be moderately or highly contaminated (Puget Sound Action Team, 2007). Organisms that live in or eat these sediments are consumed, thus transferring contaminants up the food web to higher level predators like rockfishes, and to a wider geographic area.

Not surprisingly, contaminants such as polychlorinated biphenyls (PCBs), chlorinated pesticides (e.g., DDT), and polybrominated diphenyl ethers (PBDEs) appear in rockfish collected in urban areas (Palsson *et al.*, 2008). However, while the highest levels of contamination occur in urban areas, toxins can be found in the tissues of animals in all regions of the sound (Team, 2007). Indeed, rockfish collected in rural areas of the San Juan Islands revealed high levels of mercury and hydrocarbons (West *et al.*, 2002).

Although risks from contaminants can affect all life history stages of rockfish, few studies have investigated the effects of toxins on rockfish ecology or physiology. Contaminants may influence growth rates of rockfish. For example, Palsson *et al.* (2008) describe a case in which male rockfish have lower growth rates than females an unusual pattern for rockfish since males typically grow faster than females. The explanation may be that male rockfish tend to accumulate PCBs while female's body burden does not increase with time since they reduce their toxin level when they release eggs. Thus, the observed difference in growth rate may result from the higher contaminant concentration in males versus females.

Rockfish may also experience reproductive dysfunction as a result of contaminant exposure. Although no studies have shown an effect on rockfish, other fish in Puget Sound that have been studied do show a substantial impact. For instance, in English sole, reproductive function is reduced in animals from contaminated areas, and this effectively decreases the productivity of the species (Landahl *et al.*, 1997).

The full effect of contaminants on rockfish in the Georgia Basin remains unknown, but there is clearly a potential for impact. Unfortunately, good physical rockfish habitat is located in areas that are now subject to high levels of contaminants. This is evidenced by the fact that rockfish were historically captured in great numbers in these areas (compare Palsson *et al.*, 2008 and Puget Sound Action Team, 2007). Palsson *et al.* (2008) suggest that these areas, often in urban embayments, have become de facto no-take zones because people avoid fishing there. Now, many of the areas where rockfish are not subjected to

fishing pressure are contaminated, potentially creating a barrier to recovery.

In addition to chemical contamination, water quality in Puget Sound is also influenced by sewage, animal waste, and nutrient inputs. The Washington Department of Ecology has been monitoring water quality in Puget Sound for several decades. Monitoring includes fecal coliform, nitrogen, ammonium, and dissolved oxygen. In 2005, of the 39 sites sampled, 8 were classified as highest concern, and 10 were classified as high concern. Low levels of dissolved oxygen have been an increasing concern. Hood Canal has seen persistent and increasing areas of low dissolved oxygen since the mid 1990s. Typically, rockfish move out of areas with dissolved oxygen less than 2 mg/l; however, when low dissolved oxygen waters were quickly upwelled to the surface in 2003, about 26 percent of the rockfish population was killed (Palsson *et al.*, 2008). In addition to Hood Canal, Palsson *et al.* (2008) report that periods of low dissolved oxygen are becoming more widespread in waters south of Tacoma Narrows.

Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The BRT and WDFW (Palsson *et al.* 2008) identify overutilization for commercial and recreational purposes as the most severe threat to petitioned rockfish in the Georgia Basin. Because individual species of rockfish were historically not indentified in fisheries statistics, it is impossible to estimate rates of fishing mortality and thus impossible to conduct a detailed quantitative analysis of the effects of fishing on rockfish populations. Nonetheless, there is little doubt that overfishing played a major role in the declines of rockfish in Puget Sound (Drake *et al.*, 2008; Palsson *et al.*, 2008). Moreover, the life histories of the petitioned species (especially bocaccio, canary rockfish, and yelloweye rockfish) make them highly susceptible to overfishing and, once populations are at a low level, recovery can require decades (Levin *et al.*, 2006; Love *et al.*, 2002; Parker *et al.*, 2000). In particular, rockfish grow slowly, have a long life span and low natural mortality rates, mature late in life, often have sporadic reproductive success from year to year, may display high fidelity to specific habitats and locations, and require a diverse genetic and age structure to maintain healthy populations (Love *et al.*, 2002).

Estimates of rockfish harvest in Puget Sound are available for the last 87 years (Palsson *et al.*, 2008). Commercial harvest was very low prior to World War II, rose during the War, and then averaged 125,000 pounds (56,700 kg) between 1945 and 1970. In the 1970s, harvest increased dramatically, peaking in 1980 at 880,000 pounds (399,200 kg). Catches remained high until the early 1990s and then declined dramatically (Palsson *et al.*, 2008). From 1921–1970 a total of 3,812,000 pounds (1,729,000 kg) of rockfish were landed in Puget Sound, while nearly this same level of harvest (3,968,000 pounds; 1,800,000 kg) was achieved in only 7 years (from 1977–1983). The average annual harvest from 1977–1990 was nearly four times pre–1970 levels.

Although an estimate of fishing mortality is not available, some available evidence suggests that the fishing mortality experienced by the petitioned species would have been very high. Palsson *et al.* (2008) provide a rough estimate of the total rockfish biomass in Puget Sound during the 1999–2004 time period of 3,205,521 pounds (1,454,000 kg) less than the total harvest from 1977–1983. Although the BRT considered the estimate provided by Palsson *et al.* (2008) as only a coarse estimate of biomass, it is clear that fishing removed a substantial fraction of the rockfish biomass during the 1977–1990 time frame. For comparison, exploitation rates for canary rockfish during the 1980s and 1990s along the U. S. Pacific Coast ranged from 5–19 percent (Stewart, 2007), bocaccio ranged from 5–31 percent (MacCall, 2008), and yelloweye rockfish ranged from less than 5 percent to about 17 percent (Wallace, 2007). In each of these cases, these high exploitation rates were followed by dramatic declines in population size (Sewart, 2007; Wallace, 2007; MacCall, 2008). Given the life history of rockfish and the level of harvest in Puget Sound, the BRT concurred with WDFW (Palsson *et al.*, 2008) and identified overutilization for commercial and recreational purposes as the most severe threat to petitioned rockfish in the Georgia Basin.

Fishery removals can affect both the absolute abundance of rockfish as well as the relative abundance of larger fish. Palsson *et al.* (2008) examined studies comparing rockfish populations in marine reserves in Puget Sound to populations outside reserves, and related this information to long-term trends in rockfish catch data, to draw conclusions about the effects of fishing on Puget Sound rockfish. They noted that rockfish in marine reserves in Puget Sound generally are at higher densities than rockfish outside reserves. They considered this information in the context of steep declines in the catch of rockfish after the early 1980s to conclude that the current low abundance of rockfish in Puget Sound is likely the result of overfishing. They further noted that rockfish in marine reserves in Puget Sound are larger than rockfish outside the reserves. Coupled with information that the size of rockfish in Puget Sound has declined in recent decades, they concluded that fishing has also likely altered the age structure of rockfish populations by removing larger older individuals.

Age truncation (the removal of older fish) can occur at even moderate levels of fishing for rockfish (Berkeley *et al.*, 2004b). Age truncation has been widely demonstrated for Sebastes populations all along the west coast (Mason, 1998; Harvey *et al.*, 2006), even for species not currently categorized as overfished by the Pacific Fishery Management Council. It can have ''catastrophic'' effects for long-lived species such as rockfish (Longhurst, 2002). For Puget Sound rockfish, it is likely that the age truncation effects of past overfishing are long-lasting and may constitute an ongoing threat, particularly because older, larger, older females are likely to be more fecund.

In addition, fishing can have dramatic impacts on the size or age structure of the population, with effects that can influence ongoing productivity. Notably, declines in size and age of females can significantly impact reproductive success. Below, we outline the evidence for maternal effects on reproductive success and discuss the possibility that such effects occur in the petitioned species.

Because most rockfish females release larvae on only one day each year (with a few exceptions in southern populations), the timing of parturition can be crucial in terms of matching favorable oceanographic conditions for larvae. Larger or older females release larvae earlier in the season compared to smaller or younger females in black, blue, yellowtail, kelp, and darkblotched rockfish (Sogard *et al.*, 2008; Nichol and Pikitch, 1994). Maternal effects on larval quality have been documented for black, blue, gopher, and yellowtail rockfish (Berkeley *et al.*, 2004; Sogard *et al.*, 2008). The mechanism for maternal effects on larval quality across species is the size of the oil globule provided to larvae at parturition, which provides the developing larva with energy insurance against the risks of starvation (Berkeley *et al.*, 2004; Fisher *et al.*, 2007), and in black rockfish enhances early growth rates (Berkeley *et al.*, 2004). An additional maternal effect in black rockfish indicates that older females are

more successful in producing progeny that recruit from primary oocyte to fully developed larva (Bobko and Berkeley, 2004).

In a broad span of species, there is evidence that age or size truncation is associated with increased variability in recruitment (e.g., Icelandic cod (Marteinsdottir and Thorarinsson, 1998), striped bass (Secor, 2000), Baltic cod (Wieland *et al.*, 2000), and a broad suite of California Current species (Hsieh *et al.*, 2006)). For long-lived species, reproduction over a span of many years is considered a bet-hedging strategy that has a buffering effect at the population level, increasing the likelihood of some successful reproduction over a period of variable environmental conditions (Longhurst, 2002). When reproductive effort is limited to younger ages, this buffering capacity is lost and populations more closely follow short-term fluctuations in the environment (Hsieh, 2006).

In summary, it is likely that past overfishing has reduced the abundance of the petitioned DPSs, leading to the current low abundance levels that place their future viability at risk. In addition, it is likely that past overfishing has reduced the proportion of large females in the petitioned DPSs, harming the productivity of the populations and affecting their ability to recover from current low levels of abundance. Ongoing fisheries also create risks for the petitioned DPSs, and are discussed below under The Inadequacy of Existing Regulatory Mechanisms.

Disease or Predation

The BRT identified predation as a threat to the five DPSs of rockfishes. Rockfish are important prey items of lingcod (Beaudreau and Essington, 2007). Populations of lingcod have been low in Puget Sound, but are increasing in recent years (Palsson *et al.*, 2008). Ruckelshaus *et al.* (in press) examined the potential effect of predation by lingcod on rockfish recovery. Their models indicate that even very small increases in predation mortality within marine protected areas (i.e., 1.2 percent) are sufficient to negate the benefit of zero fishing pressure that occurs within the protected areas.

Predation by pinnipeds may be locally significant. Four pinniped species are found in the waters of the State of Washington: harbor seals, California sea lions, Steller sea lions, and northern elephant seals. Harbor seal populations have increased from in the 100s during the 1970s to more than 10,000 at present (Jeffries *et al.*, 2003). The harbor seal is the only pinniped species that breeds in Washington waters, and is the only pinniped with known haul-out sites in the San Juan Islands (Jeffries *et al.*, 2000). Harbor seals are considered a threat to local fisheries in many areas (Bjorge *et al.*, 2002; Olesiuk *et al.*, 1990), and in Washington, Oregon, and California, consumption of rockfishes by California sea lions and harbor seals is estimated to be almost half of what is harvested in commercial fisheries (NMFS 1997). In Puget Sound, harbor seals are considered opportunistic feeders that consume seasonally and locally abundant prey (London *et al.*, 2001; Olesiuk *et al.*, 1990).

About 2,000 Steller sea lions occur seasonally in Washington waters, with dozens found in Puget Sound, particularly in the San Juan Islands (Palsson *et al.*, 2008). About 8 percent of the Steller sea lion diet is rockfish (Lance and Jeffries, 2007). Though not abundant, their large size and aggregated distribution suggest that their local impact on rockfish could be significant.

Fifteen species of marine birds breed along the Washington coast; seven of these have historically been found breeding in the San Juan Islands/Puget Sound area (Speich and Wahl, 1989). The predominant breeding marine birds in the San Juan Islands are pigeon guillemots, double-crested cormorants, pelagic cormorants, and members of the western gull/glaucous-winged gull complex (Speich and Wahl, 1989). The first three species are locally abundant. Although these avian predators can consume juvenile rockfish, whether they have a significant impact on rockfish populations is unknown.

Rockfish are susceptible to diseases and parasites (Love *et al.*, 2002), but disease and parasite impacts on the petitioned species are not known. Palsson *et al.* (2008) suggest that stress associated with poor water quality may exacerbate the incidence and severity of naturally occurring diseases to the point of directly or indirectly decreasing survivorship of the petitioned species.

The Inadequacy of Existing Regulatory Mechanisms

Sport and Commercial Fishing Regulations

Significant efforts to protect rockfish in Puget Sound from overharvest began in 1982 when the Washington Department of Fisheries (now the WDFW) published the Puget Sound Groundfish Management Plan. This plan identified rockfish as an important commercial and recreational resource in the Sound and established acceptable biological catch levels to control harvest (Palsson *et al.*, 2008). The acceptable biological catch levels were based on recent average catches and initially set at 304,360 kg (671,000 total pounds) of rockfish for Puget Sound. This plan emphasized recreational fisheries for rockfish while limiting the degree of commercial fishing. During the 1980s, WDFW continued to collect information on rockfish harvest with an emphasis on increasing the amount of information available on rockfish bycatch in non-targeted fisheries (e.g., salmon fishery). In 1983, rockfish recreational harvest limits were reduced from 15 fish to 10 fish in North Puget Sound and to 5 fish in South Puget Sound. The 1982 Groundfish Management Plan was updated in 1986 and extended the preference for recreational fisheries over commercial fishing for rockfish to the San Juan Islands and the Strait of Juan de Fuca (Palsson *et al.*, 2008). During this same time, WDFW received a Federal grant to monitor recreational catches of rockfish and collect biological data on rockfish populations in the Sound. Information was collected, and new management scenarios for rockfish were developed but never implemented.

In 1991, WDFW adopted a significant change in strategy for rockfish management in Puget Sound. The strategy, called ''passive management,'' ended all monitoring of commercial fisheries for groundfish and collection of biological data (Palsson *et al.*, 2008). The switch in strategy was at least partially due to the closing by the State legislature of commercial fishing in Puget Sound south of Foulweather Bluff. The termination of monitoring created a data gap in rockfish biological data for the 1990s. In 1994, the recreational daily bag limit for rockfish was reduced to 5 fish in North Puget Sound and 3 fish in South Puget Sound. In addition, WDFW adopted regulations to close remaining trawl fisheries in Admiralty Inlet.

In 1996, the Washington State Fish and Wildlife Commission established a new policy for Puget Sound Groundfish management. The policy stated that the commission would manage Puget Sound groundfish, especially Pacific cod, in a conservative manner in order to minimize the risk of overharvest and to ensure the long-term health of the resource. During the next two years, WDFW developed a groundfish management plan (Palsson *et al.*, 1998) that identified specific goals and objectives to achieve the commission's precautionary approach (Palsson *et al.*, 2008). The plan also called for the development of species-specific (including many rockfishes) conservation and use plans. To date,

plans for the various species of rockfishes have not been developed. In 2000, WDFW established a one rockfish daily bag limit for all of Puget Sound, and in 2002 and 2003, prohibited the retention of canary and yelloweye rockfishes. In 2004, WDFW promulgated additional protective regulations limiting harvest of rockfish to the open salmon and lingcod seasons, prohibiting spearfishing for rockfish east of Sekiu, and only allowing the retention of the first rockfish captured. Monitoring of recreational fisheries has also increased, with estimates of total rockfish catches by boat-based anglers now available.

Bycatch and subsequent discarding of rockfish is currently thought to be quite high in the recreational fishery (Palsson *et al.*, 2008). WDFW reported bycatch rates of greater than 20 percent (20 percent of rockfish caught are released) prior to the 1980s, but in recent years bycatch rates are in excess of 50 percent. The recent increase is ostensibly the outcome of the reduction in the allowable daily catch of rockfish (Palsson *et al.*, 2008). Palsson *et al.* (2008) reports that for every rockfish landed in Puget Sound, 1.5 are released.

WDFW records (as summarized in Palsson *et al.*, 2008) show that between 2004 and 2007, an average of 23 kg/yr (50 pounds) of canary rockfish were harvested and 160 kg/yr (353 pounds) were released in North Puget Sound, while an average of 82 kg/yr (181 pounds) were harvested and 151 kg/yr (333 pounds) were released in South Puget Sound. An average of 6 kg/yr (13 pounds) of yelloweye rockfish were harvest and 189 kg/yr (417 pounds) were released in North Puget Sound while no yelloweye rockfish were harvest and an average of 14 kg/yr (30 pounds) were released in South Puget Sound. These data show that despite the ban on retention of canary and yelloweye rockfish, a small number of fish were harvested in years following the ban. Although the reported harvest levels may appear low, canary and yelloweye rockfish are currently at low abundance and removal of individuals, particularly large females, may limit recovery. Although no data is presented for bocaccio, this species is present at such low abundance that removal of any individuals would be detrimental to recovery. As discussed earlier, most released rockfish will also die.

The current fishery regulations may inadequately protect bocaccio, canary, and yelloweye rockfish. Fishers targeting other species of rockfish or other types of popular fishes such as salmon and lingcod are likely to hook the occasional bocaccio, canary, or yelloweye rockfish. This is because all of the aforementioned fishes' distributions overlap within the Georgia Basin. They also consume similar or identical prey items, making them vulnerable to fishing lures or baits imitating these prey items. The continued decline in these three petitioned species is further evidence that the current fishery regulations are inadequate.

Almost no greenstriped or redstripe rockfish were reported as harvested or released from North or South Puget Sound during the period from 2004 to 2007. These fishes are not popular among recreational fishers and inhabit water deeper than is typically fished with currently available recreational fishing gear. Although it is likely the occasional greenstriped and redstripe rockfish are discarded during recreational fisheries and not reported, current recreational fishery regulations appear adequate to protect these species.

During each year from 2004 to 2007, a large number of rockfish harvested or released were recorded as unidentified. Although the canary, yelloweye, greenstriped, and redstripe rockfish are among the more easily identified rockfishes, it is likely that some additional harvested or released fish from these species are recorded in the unidentified category. The same situation likely exists for bocaccio, and some fish may be harvested or released without being recorded. Information about shore-based catches, and bycatch of rockfish in salmon fisheries, is still not available and these may be significant sources of mortality for the petitioned species. Rockfish discard levels vary among fisheries targeting different species about 60 percent in the bottomfish fishery, 76 percent in the salmon fishery, and nearly 50 percent in other fisheries (Palsson *et al.* 2008). Commerical catch data do not include information on bycatch, and there is a lack of an effective program to make direct observations of bycatch aboard fishing vessels operating in Puget Sound. Given the very high mortality rate of discarded rockfish (Parker *et al.*, 2006), and the low resiliency of rockfish populations to exploitation, the BRT concluded that current levels of bycatch are an important threat to the petitioned species.

Tribal Fishing

Several species of rockfish have been historically harvested by Native Americans. Since 1991, rockfishes harvested by tribal fishers have represented less than 2 percent of total Puget Sound rockfish harvest (Palsson *et al.*, 2008). Information from the Northwest Indian Fisheries Commission indicates that total reported rockfish catches by member tribes from 2000 to 2005 range between 10.9 and 368 kg (24 and 811 pounds). Tribal regulations in Puget Sound vary by tribe from a ban on commercial harvest of rockfish to a 15–fish bag limit for personal use. The currently low rockfish abundance in this area has significantly decreased the interest in harvest of rockfish by tribal fishers (William Beattie, Northwest Indian Fisheries Commission, personal communication).

Other Natural or Manmade Factors Affecting Its Continued Existence

Rockfishes are known to compete interspecifically for resources (Larson, 1980). Harvey *et al.*, (2006) documented the decline of bocaccio in the California Current, and used bioenergetic models to suggest that recovery of coastal populations of bocaccio may be inhibited by other more common rockfishes. In Puget Sound, more abundant species such as copper rockfish and quillback rockfish may interact with juvenile bocaccio, canary rockfish, or yelloweye rockfish and limit the ability of these petitioned species to recover from perturbations. However, evidence documenting competition in Puget Sound is generally lacking and most species abundances are declining, which implies that competition is currently less significant.

Chinook and coho salmon consume larval and juvenile rockfish, and they also compete for prey with small size classes of rockfish (Buckley, 1997). Thus, large releases of hatchery salmon have the potential to influence the population dynamics of the petitioned species. Total hatchery releases in Puget Sound have mirrored those in the California Current region (Naish *et al.*, 2007), with about 2 million fish released in the early 1970s, reaching a peak of over 8 million in the early 1990s. Current annual releases are around 4 million (Palsson *et al.*, 2008). Although releases of hatchery salmon have the potential to affect the petitioned rockfishes, considerable uncertainty remains about how detrimental the effect may be.

Rockfish are unintentionally captured as part of fishing activities targeting other species (e.g., the lingcod fishery and the setnet fishery for spiny dogfish (Squalus acanthias), particularly in South Puget Sound (Drake *et al.*, 2008)). Although fishers may return rockfish to the water, the mortality rate of these fish is extremely high (Parker *et al.*, 2006). Although there are some methods available that could lower the mortality rates of discarded rockfish (summarized

by Palsson *et al.*, 2008), application of these methods in the Puget Sound fishery would be difficult (Palsson *et al.*, 2008). WDFW considers bycatch of rockfish to be a ''high impact stressor'' on rockfish populations (Palsson *et al.*, 2008).

Palsson *et al.* (2008) report that more than 3,600 pieces of abandoned fishing gear (especially gillnets) have been located in Puget Sound. About 35 percent of this derelict gear has been removed. Derelict nets continue fishing and are known to kill rockfish (Palsson *et al.*, 2008). While the total impact of this abandoned gear has not been fully evaluated, WDFW has concluded that derelict gear is likely to moderately affect local populations of rockfish (Palsson *et al.*, 2008).

Patterns of circulation and productivity in Puget Sound are fundamentally influenced by climate conditions. Changes in the timing of freshwater input affect stratification and mixing in the Sound, while changes in wind pattern influence the amount of biologically important upwelled water that enters the Strait of Juan de Fuca from the coast (Snover *et al.*, 2005). Direct studies on the effect of climate variability on rockfish are rare, but all the studies performed to date suggest that climate plays an extremely important role in population dynamics. The negative effect of the warm water conditions associated with El Niño appear to be common across rockfishes (Moser *et al.*, 2000). Field and Ralston (2005) noted that recruitment of all species of rockfish appeared to be correlated at large scales and hypothesized that such synchrony was the result of large-scale climate forcing. Exactly how climate influences the petitioned species in Puget Sound is unknown; however, given the general importance of climate to Puget Sound and to rockfish, it is likely that climate influences the dynamics of the petitioned species. Any future changes in climate patterns could affect the ability of rockfishes in Puget Sound to recover.

Efforts Being Made to Protect Rockfish in Puget Sound and the Georgia Basin

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to take into account efforts being made to protect a species that has been petitioned for listing. Accordingly, we will assess conservation measures being taken to protect these five rockfish DPSs to determine whether they ameliorate the species' extinction risks (50 CFR 424.11(f)). In judging the efficacy of conservation efforts that have not yet been implemented, or have been implemented but have not yet demonstrated their effectiveness, we consider the following: the substantive, protective, and conservation elements of such efforts; the degree of certainty that such efforts will reliably be implemented; the degree of certainty that such efforts will be effective in furthering the conservation of the species (68 FR 15100; March 28, 2003); and the presence of monitoring provisions that track the effectiveness of recovery efforts, and that inform iterative refinements to management as information is accrued.

Habitat Protection

In the Puget Sound ecosystem, several Federal laws protect marine habitat as well as the watersheds that flow into the Sound. Federal programs carried out under the Clean Water Act (CWA) help ensure that water quality is maintained or improved and that discharge of fill material into rivers and streams is regulated. Several sections of this law, such as section 404 (discharge of fill into wetlands), section 402 (discharge of pollutants into water bodies), and section 404(d) (designation of water quality limited streams and rivers), regulate activities that might degrade waters flowing into Puget Sound. In addition, the Puget Sound region contains hundreds of CWA 303(d) designated waters, where high levels of pollutants, such as Polychlorinated biphenyls (PCBs), have already been documented. Although programs carried out under the CWA are well funded and enforcement of this law occurs, it is generally accepted that Puget Sound has ongoing water quality problems, particularly due to storm water runoff, that are not currently adequately mitigated by this law. This is evidenced by recent low oxygen events in Puget Sound that killed large numbers of rockfish (Drake *et al.*, 2008).

The Coastal Zone Management Act and Coastal Zone Act Reauthorization Amendments of 1990 encourage states and tribes to preserve, protect, develop, and where possible, restore or enhance valuable natural coastal resources such as wetlands, floodplains, estuaries, beaches, dunes, barrier islands, and coral reefs, as well as the fish and wildlife using those habitats. Despite these provisions, the status of rockfishes and other species continues to decline.

In Puget Sound and elsewhere along the west coast, governments and non-governmental organizations are working to restore depressed salmon stocks. Rockfish in Puget Sound benefit from these efforts indirectly, primarily through improved water quality in streams that flow into Puget Sound. As part of these efforts, the State of Washington established the Puget Sound Partnership in 2007, a new agency consisting of an executive director, an ecosystem coordination board, and a Puget Sound science panel. The Partnership was created to oversee the restoration of the environmental health of Puget Sound by 2020, and was directed to create a long-term plan called the 2020 Action Agenda released in December 2008. The Partnership met this deadline, but does not presently have a track record to support a conclusion that the control or reduction of pollutants into Puget Sound is reasonably foreseeable. Therefore, it is not possible to draw conclusions about Partnership efforts and how they may reduce pollution and contamination or other threats to rockfish populations.

There are also local efforts underway to identify and protect important habitats in Puget Sound. In 2004, the San Juan County Board of Commissioners designated the entire marine waters of the county as a Marine Stewardship Area. Under the Marine Stewardship Area designation, the county is working with other government agencies and using public input from Indian Tribes, county residents, non-resident landowners, visitors, and others with an interest in the county's marine ecosystems to closely examine adopted goals, develop specific objectives, and determine what additional protections are necessary to achieve those objectives. The results of this work will be the designation of specific locations within the marine stewardship area where different levels of voluntary or regulatory protection could be established in a coordinated effort by marine site managers in the County waters to meet the goals. It is unclear what impact these actions may have.

In Canada, the Georgia Basin Action Plan is a multi-partnered initiative describing its mission as working to improve sustainability in the Georgia Basin. This group conducts physical and biological monitoring throughout the basin and funds collaborative restoration and enhancement projects. This group's progress reports indicate that most projects that would benefit rockfishes focus on improving water quality. These projects are expected to benefit rockfishes by reducing the level of contaminants, but given the current water quality problems throughout the basin, it is likely to take many years to make significant progress.

After 2000, WDFW began to expand the role of marine reserves in rockfish management (Palsson *et al.*, 2008). Fourteen of these marine reserves in

Puget Sound are occupied by rockfish (Palsson *et al.*, 2008). Reserves include conservation areas where all non-tribal harvest of rockfish is prohibited, and marine preserve areas where bottom fish and shellfish harvest is prohibited, but salmon fishing is allowed during open seasons. Analysis by WDFW indicates that marine reserves may help restore abundance of rockfish species, but it is unclear how rockfish assemblages and their predators and prey are affected by the establishment of these reserves (Palsson *et al.*, 2008).

Fisheries and Oceans Canada has developed an extensive network of rockfish conservation areas off the coast of British Columbia (Fisheries and Oceans Canada, 2007). Many of these conservation areas fall within the range of the bocaccio, yelloweye rockfish, and canary rockfish Georgia Basin DPSs. None of them are located within the range of the greenstriped and redstripe rockfish Puget Sound Proper DPSs. Within the Canadian conservation areas, recreational fishing is limited to harvesting invertebrates by hand picking or SCUBA, harvesting crab by trap, harvesting shrimp and prawn by trap, and capturing smelt by gillnet. These restrictions reduce rockfish mortality by eliminating directed harvest of rockfish and restricting fishing methods that may have significant rockfish bycatch. For commercial fisheries, invertebrates can be taken by hand picking or SCUBA; crabs by trap; prawns by trap; scallops by trawl; salmon by seine or gillnet; herring by gillnet, seine, and spawn-on-kelp; sardine by gillnet, seine, and trap; smelt by gillnet; euphausiid (krill) by mid-water trawl; opal squid by seine; and groundfish by mid-water trawl. For commercial groundfish fishing, methods that may result in rockfish bycatch are still permissible. Thus, these actions may still harm rockfish populations, and populations continue to decline.

Proposed Determinations

Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect and conserve the species. We have reviewed the best scientific and commercial information available including the petition, the reports of the BRT (Drake *et al.*, 2008), co-manager comments, and other available published and unpublished information, and we have consulted with species experts and other individuals familiar with the rockfishes.

For the reasons stated above, and as summarized below, we conclude: (1) bocaccio, canary rockfish, and yelloweye rockfish inhabiting the Georgia Basin meet the discreteness and significance criteria for DPSs; (2) redstripe and greenstriped rockfish inhabiting Puget Sound Proper meet the discreteness and significance criteria for DPSs; (3) Georgia Basin bocaccio are in danger of extinction throughout their range; (4) Georgia Basin canary rockfish and yelloweye rockfish are likely to become endangered throughout their ranges in the foreseeable future; and redstripe and greenstriped rockfish in Puget Sound Proper are not likely to become endangered throughout all or a significant portion of their ranges in the foreseeable future.

Bocaccio occurring in the Georgia Basin are discrete from other members of their species based on the following: (1) Information from other rockfish species shows genetic differences between rockfish inhabiting coastal waters and inland marine waters of the Pacific Northwest; (2) differences in bocaccio age structure between coastal and inland stocks support the conclusion that these populations are isolated; (3) unlike coastal bocaccio, which are most frequently found in association with rocks and boulder fields, bocaccio in the Georgia Basin have been frequently found in areas with sand and mud substrate. Yelloweye rockfish occurring in the Georgia Basin are discrete from other members of their species based on the following: (1) Information from yelloweye studies and studies of other rockfish species shows genetic differences between rockfish inhabiting coastal waters and inland marine waters of the Pacific Northwest; (2) although yelloweye rockfish have the potential to move large distances as adults, they generally remain sedentary as adults, limiting gene flow between coastal and inland populations; (3) lack of suitable habitat for yelloweye rockfish in Puget Sound Proper indicates that a larger geographic area including the Georgia Basin would be needed to support a viable DPS of this species. Canary rockfish occurring in the Georgia Basin are discrete from other members of their species based on the following: (1) Information from other rockfish species shows genetic differences between rockfish inhabiting coastal waters and inland marine waters of the Pacific Northwest; (2) canary rockfish were historically abundant in South Puget Sound and their movement potential as adults would allow some interactions with fish in North Puget Sound, but bathymetry and current patterns most likely limit interactions with coastal populations. These DPSs meet the significance criteria because they occupy the unique ecological setting of the Georgia Basin. The current patterns of the inland marine waters, interactions between fresh and saltwater, the protection afforded by the land features of the Olympic Peninsula and Vancouver Island, and sill-dominated bathymetry make the Georgia Basin different from other coastal areas occupied by these species and likely lead to unique adaptations in these species.

We conclude that greenstriped and redstripe rockfish occupying Puget Sound Proper (inland waters south of Admiralty Inlet) meet the discreteness and significance criteria for DPSs. Members of these species occurring in this area are discrete from other members of their species based on the following: (1) Information from other rockfish species shows genetic differences between rockfish inhabiting coastal waters and inland marine waters of the Pacific Northwest (e.g., Puget Sound, Georgia Basin, etc.) and additional genetic differences between some rockfish species occupying Puget Sound Proper and those occupying the rest of the Georgia Basin; (2) suitable mud/sand habitat for these two species is abundant in Puget Sound Proper but less common in the Strait of Juan de Fuca and North Puget Sound; (3) there is a large geographic break between greenstriped rockfish populations occupying Puget Sound Proper and those occupying the Strait of Juan de Fuca; (4) greenstriped and redstripe rockfish tend to occupy deeper habitat (Love *et al.*, 2002) than the other petitioned species and they very rarely travel over the shallow sills of Puget Sound Proper, likely limiting interactions between populations in Puget Sound Proper and the rest of the Georgia Basin. These discrete population segments meet the significance criteria because they occupy a unique ecological setting. The current patterns, interactions between fresh and saltwater, sill-dominated bathymetry, and abundance of mud/sand habitat make Puget Sound Proper different from other areas in the Georgia Basin and coastal waters occupied by these species.

On the basis of the best available scientific and commercial information, we have determined that the Georgia Basin DPS of bocaccio is currently in danger of extinction throughout all of its range. Factors supporting this conclusion include: (1) reduced

abundance, to the point where it is almost undetectable; (2) infrequent recruitment events dependent on rare weather and ocean conditions; (3) high susceptibility to overfishing; (4) high mortality rate (resulting in further reduction of population productivity and abundance) associated with incidental capture in fisheries (due to the inability of its swim bladder to accommodate the rapid change in pressure when brought to the surface), despite improvements (summarized in the previous sections) in current commercial, recreational, and tribal fishing regulations; and (5) exposure to continuing water quality problems within the range of the Georgia Basin. Therefore, we propose to list the Georgia Basin DPS of bocaccio as endangered.

We have determined that the Georgia Basin DPSs of canary and yelloweye rockfish are not presently in danger of extinction, but are likely to become so in the foreseeable future throughout all of their range. Factors supporting a conclusion that these DPSs are not presently in danger of extinction include: (1) These DPS's abundances have been greatly reduced from historic levels, but fish are still present in significant enough numbers to be caught in recreational fisheries and research trawls; (2) large female members of these species are highly fecund, and, if allowed to survive and reproduce successfully, can produce large numbers of offspring; and (3) WDFW has prohibited retention of these species. Factors supporting a conclusion that these DPSs are likely to become in danger of extinction in the foreseeable future include: (1) These DPS's abundances have greatly decreased from historic levels and abundance trends are negative; (2) individuals of these species appear to be absent in areas where they were formerly abundant (i.e., canary rockfish in South Puget Sound); (3) although these species were formerly abundant in the catch, they are less frequent now; (4) although current commercial, recreational, and tribal fishing regulations have been changed to offer more protection to these DPSs, these species are still vulnerable to being hooked in salmon and lingcod fisheries in the Georgia Basin and almost always die after release, further reducing population productivity and abundance; and (5) current protective measures for habitat in the Georgia Basin are insufficient to ameliorate the threats to these species as evidenced by continuing water quality problems in this area. We propose to list the Georgia Basin DPSs of yelloweye and canary rockfish as threatened.

We conclude that the Puget Sound Proper DPSs of greenstriped and redstripe rockfishes are not presently in danger of extinction, nor are they likely to become so in the foreseeable future throughout all or a significant portion of their ranges. Factors supporting this conclusion include: (1) Abundances for these DPSs are lower than historical levels, but seem to have been constant over recent years; (2) these species have patchy but wide distributions, indicating that connectivity remains high; (3) redstripe rockfish are very abundant in some areas within Puget Sound Proper; (4) these species are generally not targeted by recreational fishers; (5) exposure to continuing water quality problems within the range of the Georgia Basin; and (6) these species are habitat generalists and are not reliant on the rock habitats that are rare in Puget Sound Proper. Therefore, we conclude that listing the Puget Sound Proper greenstriped and redstripe rockfish DPSs as threatened or endangered under the ESA is not warranted at this time.

Take Prohibitions and Protective Regulations

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These section 9(a) prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. In the case of threatened species, ESA section 4(d) requires the Secretary to issue regulations he deems necessary and appropriate for the conservation of the species. We have flexibility under section 4(d) to tailor protective regulations based on the needs of and threats to the species. The section 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. We will evaluate protective regulations pursuant to section 4(d) for the threatened rockfish DPSs and propose any considered necessary and advisable for conservation of these species in a future rulemaking. In order to inform our consideration of appropriate protective regulations for these DPSs, we seek information from the public on the threats to yelloweye and canary rockfish in the Georgia Basin and possible measures for their conservation.

Other Protections

Section 7(a)(2) of the ESA and NMFS/U.S. Fish and Wildlife Service (FWS) regulations require Federal agencies to confer with us on actions likely to jeopardize the continued existence of species proposed for listing or result in the destruction or adverse modification of proposed critical habitat. If a proposed species is ultimately listed, Federal agencies must consult on any action they authorize, fund, or carry out if those actions may affect the listed species or its critical habitat. Examples of Federal actions that may affect the proposed rockfish DPSs include: point and non-point source discharge of persistent contaminants, contaminated waste disposal, dredging in marine waters, development of water quality standards, fishery management practices, and transportation management.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Public Law 106–554), is intended to enhance the quality and credibility of the Federal Government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we are obtaining independent peer review of the draft status report, which supports this proposal to list three DPSs of rockfish in Puget Sound and Georgia Basin as threatened or endangered; all peer reviewer comments will be addressed prior to dissemination of the final report and publication of the final rule.

Critical Habitat

Critical habitat is defined in section 3 of the ESA as: ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species'' (16 U.S.C. 1532(5)(A)). ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary (16 U.S.C. 1532(3)).

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, critical habitat be designated concurrently with the listing of a species (16 U.S.C. 1533(a)(3)(A)(i)). Section 4(b)(2) requires that designation of critical habitat be based on the best scientific data available, after taking into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)).

Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize, or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure that their actions do not jeopardize the continued existence of listed species.

At this time, critical habitat is not determinable for bocaccio, canary rockfish, or yelloweye rockfish. We are currently compiling information to prepare a critical habitat proposal for bocaccio, canary rockfish, and yelloweye rockfish in the Puget Sound and the Georgia Basin. Therefore, we seek public input and information to assist in gathering and analyzing the best available scientific data to support a critical habitat designation. After considering all available information, we will initiate rulemaking with the publication of a proposed designation of critical habitat in the **Federal Register**, opening a period for public comment and providing the opportunity for public hearings.

Joint NMFS/FWS regulations for listing endangered and threatened species and designating critical habitat at 50 CFR 424.12(2)(b) state that the agency ''shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection.'' Pursuant to the regulations, such requirements include, but are not limited to the following: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. The regulations also state that the agency shall focus on the principal biological or physical constituent elements within the specific areas considered for designation. These constituent elements may include, but are not limited to: spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, geological formation, vegetation type, tide, and specific soil types. While we have not yet analyzed the habitat needs of these rockfish DPSs, essential features of rockfish habitat may include free passage, forage, benthic substrate, and water quality.

In accordance with the Secretarial Order on American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the ESA, we will coordinate with federally recognized American Indian Tribes on a Government-to-Government basis to determine how to make critical habitat assessments in areas that may impact Tribal trust resources. In accordance with our regulations at 50 CFR 424.13, we will consult as appropriate with affected states, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, we solicit comments and suggestions from the public, other governmental agencies, the Government of Canada, the scientific community, industry, environmental groups, and any other interested parties. Comments are encouraged on this proposal (See **DATES** and **ADDRESSES**). Specifically, we are interested in information regarding: (1) population structure of bocaccio, yelloweye rockfish, and canary rockfish; (2) biological or other relevant data concerning any threats to the rockfish DPSs we propose for listing; (3) the range, distribution, and abundance of these rockfish DPSs; (4) current or planned activities within the range of the rockfish DPSs we propose for listing and their possible impact on these DPSs; and (5) efforts being made to protect rockfish DPSs we propose to list.

Critical Habitat

We also request quantitative evaluations describing the quality and extent of marine habitats for the proposed rockfish DPSs as well as information on areas that may qualify as critical habitat for the proposed DPSs. Specific areas that include the physical and biological features essential to the conservation of the DPSs, where such features may require special management considerations or protection, should be identified. We are requesting information about these areas, particularly information indicating whether these unoccupied areas may be essential to conservation of these species. Although the range of these DPSs extends into Canada, ESA implementing regulations at 50 CFR 424.12(h) specify that critical habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction. Therefore, we request information only on potential areas of critical habitat within the United States or waters within U.S. jurisdiction.

Section 4(b)(2) of the ESA requires the Secretary to consider the ''economic impact, impact on national security, and any other relevant impact'' of designating a particular area as critical habitat. Section 4(b)(2) authorizes, but does not require, the Secretary to exclude from a critical habitat designation those particular areas where the Secretary finds that the benefits of exclusion outweigh the benefits of designation, unless excluding that area will result in extinction of the species. We seek information regarding the conservation benefits of designating areas in Puget Sound as critical habitat for the rockfish DPSs we propose to list under the ESA. We also seek information on the economic benefit of excluding areas from the critical habitat designation, and the economic benefits of including an area as part of the critical habitat designation. In keeping with the guidance provided by the OMB (2000; 2003), we seek information that would allow us to monetize these effects to the extent possible, as well as information on qualitative impacts to economic values. We also seek information on impacts to national security and any other relevant impacts of designating critical habitat in these areas.

Data reviewed may include, but are not limited to: (1) scientific or commercial publications, (2) administrative reports, maps or other graphic materials, information received from experts, and (3) comments from interested parties. Comments and data particularly are sought concerning: (1) maps and specific information describing the amount, distribution, and use type (e.g., spawning, rearing, or migration) of habitat areas for the proposed rockfish DPSs, including information on whether such areas are currently occupied; (2) information regarding the benefits of designating particular areas as critical habitat; (3) information regarding the benefits of excluding particular areas from critical habitat designation (4) current or planned activities in the areas that might be proposed for designation and

their possible impacts; (5) any foreseeable economic, national security, or other potential impacts resulting from designation, in particular, any impacts on small entities; (6) whether specific unoccupied areas (e.g., areas where bocaccio, yelloweye rockfish, or canary rockfish have been extirpated) may be essential to the conservation of these DPSs; and (7) potential peer reviewers for a proposed critical habitat designation, including persons with biological and economic expertise relevant to the species, region, and designation of critical habitat. We seek information regarding critical habitat for these three Georgia Basin rockfishes as soon as possible, but by no later than June 22, 2009.

Public Hearings

If requested by the public by June 8, 2009, hearings will be held within the range of the proposed Georgia Basin rockfishes. If hearings are requested, details regarding location(s), date(s), and time(s) will be published in a forthcoming **Federal Register** notice.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d 825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (See NOAA Administrative Order 216–6).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be given to the relevant state agencies in each state in which the species is believed to occur, and those states will be invited to comment on this proposal. We have conferred with the State of Washington in the course of assessing the status of the petitioned populations of rockfishes, and considered, among other things, Federal, state and local conservation measures. As we proceed, we intend to continue engaging in informal and formal contacts with the states, and other affected local or regional entities, giving careful consideration to all written and oral comments received.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

Endangered and threatened species.

Dated: April 15, 2009.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9) *et seq.*

2. In § 223.102 paragraph (c) is amended by adding and reserving paragraphs (c)(25) through (c)(26) and adding new paragraphs (c)(28) and (c)(29) to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

(c) * * *

Species[1]		Where Listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	*	*	*
(28)Georgia Basin/Puget Sound DPS – Rockfish, Yelloweye	*Sebastes ruberrimus.*	Washington, and British Columbia.	[INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE].	[INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE].
(29)Georgia Basin/Puget Sound DPS – Rockfish, Canary	*Sebastes pinniger.*	Washington, and British Columbia.	[INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE].	[INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE].
*	*	*	*	*

[1]Species includes taxonomic species, subspecies, distinct population segments 9DPSs) (for a policy statement; see 61 FR4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement; see 56 FR 58612, November 20, 1991).

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

4. Amend the table in § 224.101, by adding an entry for ''Georgia Basin/Puget Sound DPS – Bocaccio'' at the end of the table in § 224.101(a) to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(a) * * *

Species[1]		Where Listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	*	*	*
Georgia Basin/ Puget Sound DPS–Bocaccio	*Sebastes paucispinis*.	Washington, and British Columbia.	[INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE].	[INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE].
*	*	*	*	*

[1]Species includes taxonomic species, subspecies, distinct population segments 9DPSs) (for a policy statement; see 61 FR4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement; see 56 FR 58612, November 20, 1991).

[FR Doc. E9–9354 Filed 4–22–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 74, No. 77
Thursday, April 23, 2009

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Correction

April 20, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: Brucellosis Program.

OMB Control Number: 0579–0047.

Summary of Collection: Brucellosis is a contagious animal disease that causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. It is mainly a disease of cattle, bison and swine. There is no economically feasible treatment for brucellosis in livestock. Veterinary Services, a division with USDA's Animal and Plant Health Inspection Service (APHIS), is responsible for administering regulations intended to prevent the dissemination of animal diseases, such as brucellosis, within the United States. These regulations are found in Part 78 of Title 9, Code of Federal Regulations. The continued presence of brucellosis in a herd seriously threatens the health of other animals. APHIS will collect information using various forms.

Need and Use of the Information: APHIS will use the information collected from the forms to continue to search for other infected herds, maintain identification of livestock, monitor deficiencies in identification of animals for movement, and monitor program deficiencies in suspicious and infected herds. This information will be used to determine brucellosis area status and aids herd owners by speeding up the detection and elimination of serious disease conditions in their herds. Without the data, APHIS' Brucellosis Eradication Program would be severely crippled.

Description of Respondents: Business; State, local or tribal government.

Number of Respondents: 117,446.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 440,584.

Animal & Plant Health Inspection Service

Title: Citrus from Peru.

OMB Control Number: 0579–0289.

Summary of Collection: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal and Plant Health Inspection Service (APHIS) amended the fruits and vegetables regulations to allow the importation, under certain conditions of fresh commercial citrus fruit (grapefruit, limes, mandarin oranges, or tangerines, sweet oranges, and tangelos) from approved areas of Peru into the United States.

Need and Use of the Information: APHIS will collect information that includes inspections by national plant protection organization officials from Peru, grower registration and agreement, fruit fly trapping, monitoring, recordkeeping, and phytosanitary certificate. Without the information APHIS could not verify that fruit was treated, verify that citrus canker, fruit flies, and other pests were destroyed by treatment, or that the treatment was adequate to prevent the risk of plant pests from entering the United States.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 11,080.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–9319 Filed 4–22–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 20, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the

burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Cooperative State Research, Education, and Extension Service

Title: Cooperative State Research, Education, and Extension Application Kit for Research and Extension Programs.

OMB Control Number: 0524–0039.

Summary of Collection: The United States Department of Agriculture (USDA), Cooperative State Research, Education, and Extension Service (CSREES) sponsor ongoing research, education, and extension programs under which competitive, formula, and special awards of a high-priority nature are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101), the Smith-Lever Act, and other legislative authorities. Before awards can be issued, certain information is required from applicants as part of an overall application. In addition to a project summary, proposal narrative, vitae of key personnel, and other pertinent technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided. This information is obtained via applications through the use of Federal-wide standard grant application forms and CSREES specific application forms. Because competitive applications are submitted, many of which necessitate review by peer panelists, it is particularly important that applicants provide the information in a standardized fashion to ensure equitable treatment for all.

Need and Use of the Information: The fundamental purpose of the information requested is for USDA proposal evaluation, award, management, reporting, and recordkeeping, as part of the overall administration of the research, education, and extension programs administered by CSREES. In addition to Federal-wide standard grant application forms, CSREES will use the following program and agency specific components as part of its application package: Supplemental Information Form; Application Type Form; Application Modification Form; Form CSREES–2008, Assurance Statement(s); Form CSREES–2010, Fellowships/Scholarships Entry/Annual Update/Exit Form; and the Summary of USDA/1890 Cooperation Form.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or household; Federal Government; State, Local or Tribal Government.

Number of Respondents: 5,050.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 12,154.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–9320 Filed 4–22–09; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Solicitation of Input From Stakeholders on the Roadmap for Agricultural Research, Education, and Extension

AGENCY: Research, Education, and Economics Office, USDA.

ACTION: Notice of public comment period for written stakeholder input; second correction.

SUMMARY: The Research, Education, and Extension Office (REEO) of the Research, Education, and Economics (REE) Mission Area of the Department of Agriculture published a document in the **Federal Register** on April 1, 2009, concerning written stakeholder input on the preparation of a roadmap for the REEO. The document contained an incorrect word in the background and purpose section which is listed under the supplementary information section of the notice. The correction notice was published on April 10, 2009. However, the correction notice still contained an incorrect word in the background and purpose section.

FOR FURTHER INFORMATION CONTACT: Michele Simmons, 202–720–1777.

Second Correction

In the **Federal Register** of April 10, 2009, in FR Doc. E9–7252, on page 14768, in the fifth column, correct section to read as follows:

Background and Purpose

The preparation of the roadmap for agricultural research, education, and extension is mandated in section 7504 of the Food, Conservation, and Energy Act (FCEA) of 2008, (Pub. L. 110–246, U.S.C. 7614a). The Secretary, acting through the Under Secretary for Research, Education, and Economics (Under Secretary), will prepare the Roadmap.

Dated: April 16, 2009.

Yvette Anderson,

Federal Register Liaison Officer for Agriculture Research Service.

[FR Doc. E9–9201 Filed 4–22–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Decisions Appealable at 36 CFR Part 218 or Subject to the Objection Process at 36 CFR 218

AGENCY: Forest Service, USDA.

ACTION: Notice—Availability of appealable decisions; legal notice for availability for comment of decisions that may be appealable under 36 CFR part 215. Notice—Availability of decisions subject to an objection process; legal notice for availability for comment of decisions that may be subject to the objection process under 36 CFR part 218.

SUMMARY: Responsible Officials in the Rocky Mountain Region of the USDA Forest Service will publish notices of availability for comment and notices of decisions that may be subject to administrative appeal under 36 CFR part 215. These notices will be published in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5, 215.6, and 215.7, such notice shall constitute legal evidence that the agency has given timely and constructive notice for comment and notice of decisions that may be subject to administrative appeal. Newspaper

publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

Additionally, Responsible Officials in the Rocky Mountain Region of the USDA Forest Service will publish notices of availability for comment and notices of decisions that may be subject to the objection process under 36 CFR part 218. These notices will be published in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 218.4 and 218.9, such notice shall constitute legal evidence that the agency has given timely and constructive notice for comment and notice of decisions that may be subject to the objection process. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for the purpose of publishing legal notices for comment and decisions that may be subject to appeal under 36 CFR part 215 or subject to objection under 36 CFR part 218 shall begin April 23, 2009 and continue until further notice.

ADDRESSES: USDA Forest Service, Rocky Mountain Region; ATTN: Regional Appeals Manager; 740 Simms Street, Golden, Colorado 80401

FOR FURTHER INFORMATION CONTACT: Ken Tu, 303–275–5156.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Rocky Mountain Region of the USDA Forest Service will give legal notice of decisions that may be subject to appeal under 36 CFR part 215 or subject to the objection process under 36 CFR part 218 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice for comment and for decisions that may be subject to administrative appeal or objection process. As provided in 36 CFR 215.15, the time frame for appeal shall be based on the date of publication of a notice for decision in the primary newspaper. As provided in 36 CFR 218.9, the time frame for an objection shall be based on the date of publication of a notice for decision in the primary newspaper.

Notice by Regional Forester of Availability for Comment and Decisions

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, South Dakota, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published the day after in the *Rocky Mountain News,* published daily in Denver, Denver County, Colorado. For those Regional Forester decisions affecting a particular unit, the day after notice will also be published in the newspaper specific to that unit.

Arapaho and Roosevelt National Forests and Pawnee National Grassland, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions:

The Denver Post, published daily in Denver, Denver County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions:

Canyon Lakes District: Coloradoan, published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: Greeley Tribune, published daily in Greeley, Weld County, Colorado.

Boulder District: Daily Camera, published daily in Boulder, Boulder County, Colorado.

Clear Creek District: Clear Creek Courant, published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: Middle Park Times, published weekly in Grand County, Colorado.

Grand Mesa, Uncompahgre, and Gunnison National Forests, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions:

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions:

Grand Valley District: Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

Paonia District: Delta County Independent, published weekly in Delta, Delta County, Colorado.

Gunnison Districts: Gunnison Country Times, published weekly in Gunnison, Gunnison County, Colorado.

Norwood District: Telluride Daily Planet, published daily in Telluride, San Miguel County, Colorado.

Ouray District: Montrose Daily Press, published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands

Notice by Forest Supervisor of Availability for Comment and Decisions:

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions:

San Carlos District: Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

Comanche District: Plainsman Herald, published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the *La Junta Tribune Democrat,* published daily in La Junta, Otero County, Colorado.

Cimarron District: The Elkhart *Tri-State News,* published weekly in Elkhart, Morton County, Kansas.

South Platte District: News Press, published weekly in Castle Rock, Douglas County, Colorado.

Leadville District: Herald Democrat, published weekly in Leadville, Lake County, Colorado.

Salida District: The Mountain Mail, published daily in Salida, Chaffee County, Colorado.

South Park District: Fairplay Flume, published weekly in Bailey, Park County, Colorado.

Pikes Peak District: The Gazette, published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions:

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions:

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions:

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

Notice by District Rangers of Availability for Comment and Decisions:

Hahns Peak-Bears Ears District: Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Yampa District: Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Parks District: Jackson County Star, published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions:

Durango Herald, published daily in Durango, La Plata County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions:

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions:

The Glenwood Springs Post Independent, published daily in Glenwood Springs, Garfield County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions:

Aspen District: Aspen Times, published daily in Aspen, Pitkin County, Colorado.

Blanco District: Rio Blanco Herald Times, published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: Summit Daily, published daily in Frisco, Summit County, Colorado.

Eagle District: Vail Daily, published daily in Vail, Eagle County, Colorado.

Holy Cross District: Vail Daily, published daily in Vail, Eagle County, Colorado.

Rifle District: Citizen Telegram, published weekly in Rifle, Garfield County, Colorado.

Sopris District: Aspen Times, published daily in Aspen, Pitkin County, Colorado.

Nebraska National Forest, Nebraska and South Dakota

Notice by Forest Supervisor of Availability for Comment and Decisions:

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

Notice by District Rangers of Availability for Comment and Decisions:

Bessey District/Charles E. Bessey Tree Nursery: The North Platte Telegraph, published daily in North Platte, Lincoln County, Nebraska.

Pine Ridge District: The Chadron Record, published weekly in Chadron, Dawes County, Nebraska.

Samuel R. McKelvie National Forest: The Valentine Midland News, published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts, Buffalo Gap National Grassland: The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Fort Pierre National Grassland: The Capital Journal, published Monday through Friday in Pierre, Hughes County, South Dakota.

Black Hills National Forest, South Dakota and Eastern Wyoming

Notice by Forest Supervisor of Availability for Comment and Decisions:

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Notice by District Rangers of Availability for Comment and Decisions:

Bearlodge District; Hell Canyon District; Mystic District; and Northern Hills District:

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Notice by Forest Supervisor of Availability for Comment and Decisions:

Bearlodge District; Hell Canyon District; Mystic District; and Northern Hills District:

Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Notice by District Rangers of Availability for Comment and Decisions:

Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Medicine Bow National Forests and Thunder Basin National Grassland, Wyoming

Notice by Forest Supervisor of Availability for Comment and Decisions:

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

Notice by District Rangers of Availability for Comment and Decisions:

Laramie District: Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

Douglas District: Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Brush Creek—Hayden District: Rawlins Daily Times, published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Notice by Forest Supervisor of Availability for Comment and Decisions:

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

Notice by District Rangers of Availability for Comment and Decisions:

Clarks Fork District: Powell Tribune, published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

Wind River District: The Dubois Frontier, published weekly in Dubois, Fremont County, Wyoming.

Washakie District: Lander Journal, published twice weekly in Lander, Fremont County, Wyoming.

Dated: April 10, 2009.

Antoine L. Dixon,

Deputy Regional Forester, Resources, Rocky Mountain Region.

[FR Doc. E9–9315 Filed 4–22–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet April 24, 2009 (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Handout Discussion (3) Public Comment, (4) Financial Report (5) Sub-committees (6) Matters before the group (7) Discussion—approval of projects (8) Next agenda and meeting date.

DATES: The meeting will be held on April 24, 2009, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St. Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428. (707) 983–6658; e-mail *windmill@willitsonline.com.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by April 23, 2009. Public comment will have the opportunity to address the committee at the meeting.

Dated: April 14, 2009.

Lee Johnson,

Designated Federal Official.

[FR Doc. E9–9209 Filed 4–22–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

Title: Coastal and Estuarine Land Conservation, Planning, Protection, or Restoration.

OMB Control Number: 0648–0459.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 1,405.

Number of Respondents: 69.

Average Hours per Response: State plans, 120 hours; plan revisions, 35 hours; project proposals, 15 hours; final applications, 3 hours and 30 minutes; and reporting, 1 hour and 30 minutes.

Needs and Uses: The FY 2002 Commerce, Justice, State Appropriations Act directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program (CELCP) to protect important areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion, and to issue guidelines for this program delineating the criteria for grant awards (16 U.S.C. 1456d). The guidelines establish procedures for eligible applicants, who choose to participate in the program, to use when developing state conservation plans, proposing or soliciting projects under this program, applying for funds and carrying out projects under this program in a manner that is consistent with the purposes of the program. NOAA also has, or is given, authority under the Coastal Zone Management Act, annual appropriations or other authorities, to issue funds to coastal states and localities for planning, conservation, acquisition, protection, restoration, or construction projects. This information collection will enable NOAA to implement the CELCP, under its current or future authorization, and facilitate the review of similar projects under different, but related authorities.

Affected Public: Individuals or households; State, Local or Tribal Government.

Frequency: Semi-annually and one time.

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

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: April 17, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–9273 Filed 4–22–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; SURF (Summer Undergraduate Research Fellowship) Program Student Applicant Information

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 22, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms 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 should be directed to the attention of Terrell Vanderah, NIST, 100 Bureau Drive, Stop 8520, Gaithersburg, MD 20899, tel. (301) 975–5785, or *terrell.vanderah@nist.gov.* In addition, written comments may be sent via e-mail to *terrell.vanderah@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this collection is to gather information needed for the SURF (Summer Undergraduate Research Fellowship) Program. The information will be provided by student applicants and will be described in the Proposal Review Process and Evaluation Criteria sections of the **Federal Register** Notice for the SURF Program. The information will be used by the Program Directors and technical evaluators and is needed to determine eligible students, select students for the program, and place selected students in appropriate research projects that match their needs, interests, and academic preparation. The information includes: student name, host institution, e-mail address/contact information, home address, class standing, first- and second-choice of NIST laboratories they wish to apply to, academic major/minor, current overall GPA, need for housing and gender (for housing purposes only), availability dates, resume, personal statement of commitment and research interests, two letters of recommendation, academic transcripts, and ability to verify U.S. citizenship or permanent legal residency.

II. Method of Collection

The Student Application Information Form will be available on the Web; the collection is currently limited to paper form but can be submitted as hardcopy or scanned and submitted via e-mail.

III. Data

OMB Control Number: 0693–0042.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annual Respondent Cost Burden: $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 will 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, e.g., the use of

automated collection techniques or other forms of information technology.

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

Dated: April 17, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–9278 Filed 4–22–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) 2010 Re-Engineered SIPP—Dress Rehearsal

AGENCY: U.S. Census Bureau.

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 22, 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(s) and instructions should be directed to Patrick J. Benton, Census Bureau, Room HQ–6H045, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau will be conducting a dress rehearsal for the Re-engineered SIPP from January to March of 2010. The SIPP is a household-based survey designed as a continuous series of national panels. The Re-engineered SIPP design is a revision of the 2008 Panel SIPP Instrument, in which respondents were interviewed at 4-month intervals or ''waves'' over the life of the panel. The current 2008 Panel was molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of the panel and then supplemented with questions designed to address specific needs called ''topical modules.'' Examples of these topical modules include Medical Expenses, Child Care, Retirement and Pension Plan Coverage, Marital History, and others.

In contrast, the new Re-engineered SIPP will interview respondents in one year intervals, using the previous calendar year as the reference period. The content of the Re-engineered SIPP will match that of the 2008 Panel SIPP very closely. The Re-engineered SIPP will not contain free-standing topical modules. However, a portion of the 2008 Panel topical module content will be integrated into the Re-engineered SIPP interview. The Re-engineered SIPP will use an Event History Calendar (EHC), which records dates of events and spells of coverage. The EHC should provide increased accuracy to dates reported by respondents.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population, which the SIPP has provided on a continuing basis since 1983. The SIPP has measured levels of economic well being and permitted changes in these levels to be measured over time.

The 2010 Re-engineered SIPP dress rehearsal will be conducted from January 2010 to March 2010. Approximately 8,000 households are selected for the 2010 Re-engineered SIPP dress rehearsal, of which, 5,120 households will likely be interviewed. We estimate that each household contains 2.0 people aged 15 and above, yielding approximately 10,240 person-level interviews in the dress rehearsal. Interviews take 30 minutes on average. The total annual burden for 2010 Re-engineered SIPP dress rehearsal interviews would be 5,120 hours in FY 2010.

In addition, we will be conducting practice interviews for 2010 Re-engineered SIPP Field Representatives (FR) in November and December of 2009. These practice interviews will consist of 200 Field Representatives interviewing 3 households of two persons each at 30 minutes per interview. The resulting burden hours for the practice interviews are 600 burden hours.

II. Method of Collection

The 2010 Re-engineered SIPP dress rehearsal instrument will consist of one household interview, which will reference the calendar year 2009. The interview is conducted in person with all household members 15 years old or over using regular proxy-respondent rules.

III. Data

OMB Control Number: None.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 11,440 people.

Estimated Time per Response: 30 minutes per person on average.

Estimated Total Annual Burden Hours: 5,720.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

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: April 17, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–9324 Filed 4–22–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Oral History Project: Preserving Research and Cultural Heritage for NOAA's Cooperative Oxford Laboratory

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

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 June 22, 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: Please direct requests for additional information to Theresa L. Goedeke, (301) 713–3020 or *Theresa.Goedeke@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Cooperative Oxford Laboratory (COL) in Oxford, Maryland was established in 1960 and has operated under a cooperative agreement between NOAA and the Maryland Department of Natural Resources (MDNR) for the last 12 years. Research conducted by COL scientists has supported efforts to sustain historic fisheries along the Atlantic coast of the United States for nearly 50 years. As COL's 50th anniversary approaches, staff at the National Centers of Coastal Ocean Science will undertake a cultural history project to document and preserve the rich and unique history of the COL, its importance to the local seafood industry, and the cultural memory of the ''oyster years.'' In addition to collecting historical documents, photographs and artifacts, the researchers will conduct 25 to 30 videotaped oral history interviews with key members from the local community who have historic knowledge of COL and local, coastal resources. This includes scientists, resource managers, watermen, business owners, and knowledgeable members of the general community. The goal of the oral history project is to collect stories about the successes and challenges related to preserving the local seafood industry, and to document the rich history and local heritage tied to the COL. These videotaped oral histories will be archived with local, regional, and national organizations. In addition, the researchers will edit clips from the interviews to create short documentaries, which will be made available to local, regional, and national museums and other entities.

II. Method of Collection

Researchers will conduct videotaped, unstructured oral history interviews.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 30 (for the entire project).

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 30 hours.

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: April 17, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–9281 Filed 4–22–09; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–801

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the Fifth Antidumping Duty Administrative Review

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

EFFECTIVE DATE: April 23, 2009.

FOR FURTHER INFORMATION CONTACT: Alan Ray or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–5403 and (202) 482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2008, the Department of Commerce (''Department'') published a notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part for certain frozen fish fillets from the Socialist Republic of Vietnam covering the period August 1, 2007, through July 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56795, (September 30, 2008). The preliminary results are currently due on May 3, 2009.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), and 19 CFR 351.213(h)(1) require the Department to issue the preliminary results in an administrative review of an antidumping duty order 245 days after the last day of the anniversary month of the order for which the administrative review was requested. The Department may, however, extend the deadline for completion of the preliminary results of an administrative review to 365 days if it determines it is not practicable to complete the review within the

foregoing time period. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.214(h)(2).

The Department finds that it is not practicable to complete the preliminary results within this time limit. The Department is extending the deadline because it intends to provide parties additional time to submit surrogate value data and thus will require additional time to analyze these data. Furthermore, the Department recently rescinded a changed circumstance review for Vinh Hoan Co., Ltd. because it determined that Vinh Hoan's circumstances would be best addressed in the context of this administrative review. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rescission of Antidumping Duty Changed Circumstances Review*, 74 FR 7659 (February 19, 2009). The Department requires additional time to address these circumstances in this review. We are therefore extending the time for the completion of the preliminary results of this review by 120 days to August 31, 2009.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: April 16, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–9334 Filed 4–22–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XN80

Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

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

ACTION: Notice; public comment on an application for exempted fishing permit.

SUMMARY: This notice announces the public comment period for an exempted fishing permit (EFP) application from the Best Use Cooperative (BUC). If granted, this permit would allow three BUC vessels to remove halibut from a codend on the deck, and release those fish back to the water after determining the physical condition of the halibut with the International Pacific Halibut Commission method for predicting halibut mortality. The EFP would allow operators of BUC non–pelagic trawl vessels to study methods for reducing halibut mortality in trawl fisheries by evaluating various fishing and handling practices. This activity has the potential to promote the objectives of the Magnuson–Stevens Fishery Conservation and Management Act by assessing techniques for reducing halibut discard mortality in non–pelagic trawl fisheries.

DATES: Written comments must be received by May 8, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–XN80,'' by any one of the following methods:

- E-mail: *EFP0902@noaa.gov*. Include in the subject line the following document identifier: ''RIN 0648-XN80''. E-mail comments, with or without attachments, are limited to 5 megabytes;
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: 907–586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Copies of the EFP application and the basis for a categorical exclusion under the National Environmental Policy Act are available by writing to the Alaska Region, NMFS, P. O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian. The application also is available from the Alaska Region, NMFS website at *http://alaskafisheries.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907–586–7442 or *jeff.hartman@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for Groundfish of the BSAI (FMP), which the Council prepared under the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at § 600.745(b) and § 679.6 allow the NMFS Regional Administrator to authorize, for limited experimental purposes, fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary).

On March 23, 2009, NMFS published a notice for receipt of an application from the Best Use Cooperative (BUC) for an EFP that evaluates handling methods to improve discard survival of incidentally caught halibut (74 FR 12113). Review of the EFP application was included on the published agenda for the April 2009 North Pacific Fishery Management Council (Council) meeting. The Council's Scientific and Statistical Committee (SSC) and the Advisory Panel (AP) reviewed the application, provided opportunity for public comment, and recommended the Council approve issuance of the EFP.

After hearing the recommendations of the SSC and AP, and not expressing disagreement with those recommendations, the Council did not further consider the EFP application and provided no additional method of public testimony on this item at the Council meeting. Regulations at § 600.745(b)(3) requires NMFS to provide opportunity for public comment on an EFP application either through a **Federal Register** notice and/or during a Council meeting. Because NMFS has determined that this application for an EFP warrants further consideration and because the public was not provided the opportunity to provide public comment to the Council at its April 2009 meeting, NMFS is providing this additional opportunity for public review and comment on this EFP application.

Background

Regulations implemented by the IPHC allow Pacific halibut to be commercially harvested by the directed North Pacific longline fishery only. Halibut caught incidentally in other fisheries, such as non–pelagic trawl fisheries, must be sampled by observers and returned to the ocean as soon as possible. Regulations implementing the FMP establish annual halibut bycatch mortality limits, also referred to as halibut prohibited species catch (PSC) limit, for the groundfish fisheries. Fisheries close when they reach their seasonal or annual halibut PSC limit even if the allowable catch of groundfish is not yet caught. In the case of the Bering Sea flatfish fishery,

seasons have been closed before the fishery quotas have been reached to prevent the fishery from reaching the halibut PSC limit. Reducing halibut mortality and assuring that each halibut returned to the sea has the highest possible chance of survival are therefore high priorities for the IPHC's, the Council's, and NMFS's management goals for both halibut and groundfish.

Before halibut are returned to the sea, the catch of halibut as well as other groundfish must first be estimated by at–sea observers. A number of regulations assure that observer estimates of halibut and groundfish catch are credible, accurate, and without bias. For example, NMFS requires that all catch be made available for sampling by an observer; prohibits tampering with observer samples; prohibits removal of halibut from a codend, bin, or conveyance system prior to being observed and counted by an at–sea observer; and prohibits fish (including halibut) from remaining on deck unless an observer is present.

With the implementation of Amendment 80 to the FMP on September 14, 2007 (72 FR 52668), allocation of halibut PSC amounts was modified for vessels in the Amendment 80 sector, but halibut mortality continued to limit fishing in some fisheries. The Amendment 80 sector received an initial allocation of 2,525 metric tons (mt) of halibut PSC in 2008, but that allocation will decrease by 50 mt per year until it reaches 2,325 mt in 2012 and subsequent years. This amount is further allocated between the BUC and the Amendment 80 limited access fishery. In certain years, the amount of halibut PSC allocated to the Amendment 80 sector is less than the sector's historic catch; therefore, finding ways to continue to reduce halibut mortality is important for this sector.

The EFP applicant proposes to assess various fishing practices and their effect on halibut survival. It would allow researchers onboard the three catcher processor vessels to sort halibut removed from a codend on the deck of the vessel and release those fish back to the water after determining the physical condition of the halibut using standard IPHC viability methods for predicting mortality of individual fish.

Fishing under the EFP would occur in two phases during 2009. In May and June, Phase I fishing would allow sorting of halibut on deck to determine practices for reducing halibut mortality. Later in the year, Phase II would apply the halibut mortality saved in Phase I to allow additional EFP catch of groundfish and halibut within the BUC's allocation.

This proposed action would exempt the participating vessels from the following:

1. The prohibition on biasing the sampling procedure employed by an observer through sorting of catch before sampling at § 679.7(g)(2);

2. A requirement to weigh all catch by an Amendment 80 vessel on a NMFS–approved scale at § 679.27(j)(5)(ii);

3. A requirement for all catch to be made available for sampling at § 679.93(c)(1); and

4. The requirement for halibut to not be allowed on deck without an observer present at § 679.93(c)(5).

The BUC would not be allowed to exceed the 2009 Amendment 80 cooperative apportionment of halibut mortality of (1,793 mt). In the event that the amount of halibut mortality savings estimated under this EFP shows less mortality than the amount estimated using standard 2009 halibut discard mortality rates established for the Bering Sea trawl fisheries (February 17, 2009, 74 FR 7333), BUC may be allowed to continue fishing for groundfish species later in the year, with some limitations. The BUC would be required to submit a report to NMFS and the IPHC of the estimated halibut mortality saved during the Phase I. After review and approval by NMFS, the BUC may be allowed to do subsequent EFP fishing later in the year as Phase II fishing under the EFP. The BUC would be limited to no more than the BUC's Amendment 80 groundfish allocation. The additional amount of halibut caught would not exceed the amount of the halibut mortality savings under the EFP, or BUC's 2009 allocation of halibut PSC.

This EFP would apply for the period of time required to complete the experiment in Phase I and potentially in subsequent fishing in Phase II, during 2009, in areas of the BSAI open to directed fishing by the BUC. The EFP activities would be of limited scope and duration and would not be expected to change the nature or duration of the groundfish fishery, fishing practices or gear used, or the amount or species of fish caught by the BUC.

The activities that would be conducted under this EFP are not expected to have a significant impact on the human environment as detailed in the categorical exclusion issued for this action (see **ADDRESSES**).

In accordance with § 679.6, NMFS has determined that the proposal warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council considered the EFP application during its April 2009 meeting.

Public Comments

Public comments are being solicited on the application through the end of the comment period stated in this notice. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date. Copies of the application and categorical exclusion are available for review from NMFS (see **ADDRESSES**).

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

Dated: April 17, 2009.

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–9343 Filed 4–22–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

List of National System Marine Protected Areas

AGENCY: NOAA, Department of Commerce (DOC).

ACTION: Notice of availability of the List of National System Marine Protected Areas (MPAs) and response to comments on nominations of existing MPAs to the national system.

SUMMARY: NOAA and the Department of the Interior (DOI) invited federal, state, commonwealth, and territorial MPA programs with potentially eligible existing MPAs to nominate their sites to the national system of MPAs (national system). A total of 225 nominations were received. Following a 30-day public review period, 26 public comments were received by the National Marine Protected Areas Center and forwarded to the relevant managing agencies. After review of the public comments, managing agencies were asked to make a final determination of sites to nominate to the national system. All the nominations were confirmed by the managing agencies. Finding them to be eligible for the national system, the National Marine Protected Areas Center has accepted the nominations for 225 sites and placed them on the List of National System MPAs.

The national system and the nomination process are described in the *Framework for the National System of Marine Protected Areas of the United States of America* (Framework), developed in response to Executive Order 13158 on Marine Protected Areas. The final Framework was published on

November 19, 2008, and provides guidance for collaborative efforts among Federal, State, commonwealth, territorial, tribal and local governments and stakeholders to develop an effective and well coordinated national system that includes existing MPAs meeting national system criteria as well as new sites that may be established by managing agencies to fill key conservation gaps in important ocean areas.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, NOAA, at 301–713–3100, ext. 136 or via e-mail at *mpa.comments@noaa.gov.* A more detailed electronic copy of the List of National System MPAs is available for download at *http://www.mpa.gov.*

SUPPLEMENTARY INFORMATION:

Background on National System

The national system of MPAs includes member MPA sites, networks and systems established and managed by Federal, State, Territorial, Tribal and/or local governments that collectively enhance conservation of the nation's natural and cultural marine heritage and represent its diverse ecosystems and resources. Although participating sites continue to be managed independently, national system MPAs also work together at the regional and national levels to achieve common objectives for conserving the nation's important natural and cultural resources, with emphasis on achieving the priority conservation objectives of the Framework. MPAs include sites with a wide range of protection, from multiple use areas to no take reserves where all extractive uses are prohibited. The term MPA refers only to the marine portion of a site (below the mean high tide mark) that may include both terrestrial and marine components.

Benefits of joining the national system, which are expected to increase over time as the system matures, include a facilitated means to work with other MPAs in the MPA's region, and nationally on issues of common conservation concern; fostering greater public and international recognition of MPAs and the resources they protect; priority in the receipt of available technical and other support for cross-cutting needs; and the opportunity to influence Federal and regional ocean conservation and management initiatives (such as integrated ocean observing systems, systematic monitoring and evaluation, targeted outreach to key user groups, and helping to identify and address MPA research needs). In addition, the national system provides a forum for coordinated regional planning about place-based conservation priorities that does not otherwise exist.

Joining the national system does not restrict or require changes affecting the designation process or management of member MPAs. It does not bring State, Territorial, Tribal or local sites under Federal authority. It does not establish new regulatory authority or revise existing regulatory authority. The national system is a mechanism to foster greater collaboration among participating MPA sites and programs in order to enhance stewardship in the waters of the United States.

Nomination Process

The Framework describes two major focal areas for building the national system of MPAs—a nomination process to allow existing MPAs that meet the entry criteria to become part of the system and a collaborative regional gap analysis process to identify areas of significance for natural or cultural resources that may merit additional protection through existing Federal, State, commonwealth, territorial, tribal or local MPA authorities. The initial nomination process for the national system began on November 25, 2008, when the National Marine Protected Areas Center (MPA Center) sent a letter to federal, state, commonwealth, and territorial MPA programs inviting them to submit nominations of eligible MPAs to the national system. The initial deadline for nominations was January 31, 2009; this was extended to February 13, 2009. A public comment period was held from March 6, 2009 through April 6, 2009.

There are three entry criteria for existing MPAs to join the national system, plus a fourth for cultural heritage. Sites that meet all pertinent criteria are eligible for the national system.

1. Meets the definition of an MPA as defined in the Framework.
2. Has a management plan (can be site-specific or part of a broader programmatic management plan; must have goals and objectives and call for monitoring or evaluation of those goals and objectives).
3. Contributes to at least one priority conservation objective as listed in the Framework.
4. Cultural heritage MPAs must also conform to criteria for the National Register for Historic Places.

Additional sites not currently meeting the management plan criterion can be evaluated for eligibility to be nominated to the system on a case-by-case basis based on their ability to fill gaps in the national system coverage of the priority conservation objectives and design principles described in the Framework.

The MPA Center used existing information in the MPA Inventory to determine which MPAs meet the first and second criteria. The inventory is online at *http://www.mpa.gov/helpful_resources/inventory.html,* and potentially eligible sites are posted online at *http://mpa.gov/pdf/national-system/allsitesumsheet120408.pdf.* As part of the nomination process, the managing entity for each potentially eligible site is asked to provide information on the third and fourth criteria.

List of National System MPAs

The following MPAs have been nominated by their managing programs to join the national system of MPAs. A list providing more detail for each site is available at *http://www.mpa.gov.*

Federal Marine Protected Areas

Marine National Monument

Papahānaumokuākea Marine National Monument (Hawaii)

National Marine Sanctuaries

Channel Islands National Marine Sanctuary (California)
Cordell Bank National Marine Sanctuary (California)
Fagatele Bay National Marine Sanctuary (American Samoa)
Florida Keys National Marine Sanctuary (Florida)
Flower Garden Banks National Marine Sanctuary (Texas)
Gray's Reef National Marine Sanctuary (Georgia)
Stellwagen Bank National Marine Sanctuary (Massachusetts)
Gulf of the Farallones National Marine Sanctuary (California)
Hawaiian Islands Humpback Whale National Marine Sanctuary (Hawaii)
Monitor National Marine Sanctuary (North Carolina)
Monterey Bay National Marine Sanctuary (California)
Olympic Coast National Marine Sanctuary (Washington)
Thunder Bay National Marine Sanctuary (Michigan)

National Parks

Assateague Island National Seashore (Virginia, Maryland)
Biscayne National Park (Florida)
Channel Islands National Park (California)
Dry Tortugas National Park (Florida)
Everglades National Park (Florida)
Glacier Bay National Park (Alaska)
Isle Royale National Park (Minnesota, Michigan)
Point Reyes National Park (California)

Virgin Islands Coral Reef National Monument (US Virgin Islands)
Virgin Islands National Park (US Virgin Islands)

National Wildlife Refuges

ACE Basin National Wildlife Refuge (South Carolina)
Alaska Maritime National Wildlife Refuge (Alaska)
Alligator River National Wildlife Refuge (North Carolina)
Anahuac National Wildlife Refuge (Texas)
Aransas National Wildlife Refuge (Texas)
Arctic National Wildlife Refuge (Alaska)
Back Bay National Wildlife Refuge (Virginia)
Baker Island National Wildlife Refuge (Hawaii)
Bandon Marsh National Wildlife Refuge (Oregon)
Big Boggy National Wildlife Refuge (Texas)
Big Branch Marsh National Wildlife Refuge (Louisiana)
Blackwater National Wildlife Refuge (Maryland)
Block Island National Wildlife Refuge (Rhode Island)
Bombay Hook National Wildlife Refuge (Delaware)
Bon Secour National Wildlife Refuge (Alabama)
Brazoria National Wildlife Refuge (Texas)
Breton National Wildlife Refuge (Louisiana)
Cape May National Wildlife Refuge (New Jersey)
Cape Romain National Wildlife Refuge (South Carolina)
Cedar Island National Wildlife Refuge (North Carolina)
Cedar Keys National Wildlife Refuge (Florida)
Chassahowitzka National Wildlife Refuge (Florida)
Chincoteague National Wildlife Refuge (Virginia, Maryland)
Conscience Point National Wildlife Refuge (New York)
Crocodile Lake National Wildlife Refuge (Florida)
Cross Island National Wildlife Refuge (Maine)
Crystal River National Wildlife Refuge (Florida)
Currituck National Wildlife Refuge (North Carolina)
Delta National Wildlife Refuge (Louisiana)
Don Edwards San Francisco Bay National Wildlife Refuge (California)
Dungeness National Wildlife Refuge (Washington)
Eastern Neck National Wildlife Refuge (Maryland)
Eastern Shore of Virginia National Wildlife Refuge (Virginia)
Edwin B. Forsythe National Wildlife Refuge (New Jersey)
Featherstone National Wildlife Refuge (Virginia)
Fisherman Island National Wildlife Refuge (Virginia)
Grand Bay National Wildlife Refuge (Mississippi, Alabama)
Grays Harbor National Wildlife Refuge (Washington)
Great Bay National Wildlife Refuge (New Hampshire)
Great White Heron National Wildlife Refuge (Florida)
Guam National Wildlife Refuge (Guam)
Howland Island National Wildlife Refuge (Pacific Islands)
Huron National Wildlife Refuge (Michigan)
Island Bay National Wildlife Refuge (Florida)
J.N. Ding Darling National Wildlife Refuge (Florida)
Jarvis Island National Wildlife Refuge (Pacific Islands)
John H. Chafee National Wildlife Refuge (Rhode Island)
Johnston Island National Wildlife Refuge (Pacific Islands, Hawaii)
Key West National Wildlife Refuge (Florida)
Kingman Reef National Wildlife Refuge (Pacific Islands)
Lewis and Clark National Wildlife Refuge (Washington, Oregon)
Lower Suwannee National Wildlife Refuge (Florida)
Mackay Island National Wildlife Refuge (Virginia, North Carolina)
Marin Islands National Wildlife Refuge (California)
Martin National Wildlife Refuge (Maryland)
Mashpee National Wildlife Refuge (Massachusetts)
Matlacha Pass National Wildlife Refuge (Florida)
Midway Atoll National Wildlife Refuge (Hawaii)
Monomoy National Wildlife Refuge (Massachusetts)
National Key Deer Refuge (Florida)
Nestucca Bay National Wildlife Refuge (Oregon)
Ninigret National Wildlife Refuge (Rhode Island)
Nisqually National Wildlife Refuge (Washington)
Nomans Land Island National Wildlife Refuge (Massachusetts)
Occoquan Bay National Wildlife Refuge (Virginia)
Oyster Bay National Wildlife Refuge (New York)
Palmyra Atoll National Wildlife Refuge (Pacific Islands)
Parker River National Wildlife Refuge (Massachusetts)
Pea Island National Wildlife Refuge (North Carolina)
Pelican Island National Wildlife Refuge (Florida)
Pine Island National Wildlife Refuge (Florida)
Pinellas National Wildlife Refuge (Florida)
Plum Tree Island National Wildlife Refuge (Virginia)
Pond Island National Wildlife Refuge (Maine)
Prime Hook National Wildlife Refuge (Delaware)
Protection Island National Wildlife Refuge (Washington)
Rachel Carson National Wildlife Refuge (Maine)
Rose Atoll National Wildlife Refuge (Pacific Islands)
Sabine National Wildlife Refuge (Louisiana)
Sachuest Point National Wildlife Refuge (Rhode Island)
San Bernard National Wildlife Refuge (Texas)
San Pablo Bay National Wildlife Refuge (California)
Seatuck National Wildlife Refuge (New York)
Shell Keys National Wildlife Refuge (Louisiana)
Siletz Bay National Wildlife Refuge (Oregon)
St. Marks National Wildlife Refuge (Florida)
St. Vincent National Wildlife Refuge (Florida)
Stewart B. McKinney National Wildlife Refuge (Connecticut)
Supawna Meadows National Wildlife Refuge (New Jersey)
Susquehanna National Wildlife Refuge (Maryland)
Swanquarter National Wildlife Refuge (North Carolina)
Sweetwater Marsh National Wildlife Refuge (California)
Target Rock National Wildlife Refuge (New York)
Ten Thousand Islands National Wildlife Refuge (Florida)
Waccamaw National Wildlife Refuge (South Carolina)
Wallops Island National Wildlife Refuge (Virginia)
Wertheim National Wildlife Refuge (New York)
Willapa National Wildlife Refuge (Washington)
Yukon Delta National Wildlife Refuge (Alaska)

Federal/State Partnership Marine Protected Areas

National Estuarine Research Reserves

Guana Tolomato Matanzas National Estuarine Research Reserve (Florida)

Jacques Cousteau National Estuarine Research Reserve (New Jersey)
Rookery Bay National Estuarine Research Reserve (Florida)
Waquoit Bay National Estuarine Research Reserve (Massachusetts)

State Marine Protected Areas

American Samoa

Aua

California

Ano Nuevo Area of Special Biological Significance
Ano Nuevo State Marine Conservation Area
Asilomar State Marine Reserve
Big Creek State Marine Conservation Area
Big Creek State Marine Reserve
Bird Rock Area of Special Biological Significance
Bodega Area of Special Biological Significance
Cambria State Marine Conservation Area
Carmel Bay Area of Special Biological Significance
Carmel Bay State Marine Conservation Area
Carmel Pinnacles State Marine Reserve
Del Mar Area of Special Biological Significance
Double Point Area of Special Biological Significance
Duxbury Reef Area of Special Biological Significance
Edward F. Ricketts State Marine Conservation Area
Elkhorn Slough State Marine Conservation Area
Elkhorn Slough State Marine Reserve
Farallon Islands Area of Special Biological Significance
Farnsworth Bank Area of Special Biological Significance
Gerstle Cove Area of Special Biological Significance
Greyhound Rock State Marine Conservation Area
Heisler Park Area of Special Biological Significance
Irvine Coast Area of Special Biological Significance
James V. Fitzgerald Area of Special Biological Significance
Jughandle Cove Area of Special Biological Significance
Julia Pfeiffer Burns Area of Special Biological Significance
King Range Area of Special Biological Significance
La Jolla Area of Special Biological Significance
Laguna Point to Latiga Point Area of Special Biological Significance
Lovers Point State Marine Reserve
Moro Cojo Slough State Marine Reserve
Morro Bay State Marine Recreational Management Area
Morro Bay State Marine Reserve
Natural Bridges State Marine Reserve
Northwest Santa Catalina Area of Special Biological Significance
Pacific Grove Area of Special Biological Significance
Pacific Grove Marine Gardens State Marine Conservation Area
Piedras Blancas State Marine Conservation Area
Piedras Blancas State Marine Reserve
Point Buchon State Marine Conservation Area
Point Buchon State Marine Reserve
Point Lobos Area of Special Biological Significance
Point Lobos State Marine Conservation Area
Point Lobos State Marine Reserve
Point Reyes Headlands Area of Special Biological Significance
Point Sur State Marine Conservation Area
Point Sur State Marine Reserve
Portuguese Ledge State Marine Conservation Area
Redwoods National Park Area of Special Biological Significance
Robert E. Badham Area of Special Biological Significance
Salmon Creek Coast Area of Special Biological Significance
San Clemente Area of Special Biological Significance
San Diego Scripps Area of Special Biological Significance
San Nicolas Island & Begg Rock Area of Special Biological Significance
Santa Barbara & Anacapa Island Area of Special Biological Significance
Santa Rosa & Santa Cruz Island Area of Special Biological Significance
Saunders Reef Area of Special Biological Significance
Soquel Canyon State Marine Reserve
Southeast Santa Catalina Area of Special Biological Significance
Trinidad Head Area of Special Biological Significance
Vandenberg State Marine Reserve
Western Santa Catalina Area of Special Biological Significance
White Rock (Cambria) State Marine Conservation Area

Florida

See National Estuarine Research Reserves, above.

Hawaii

Ahihi Kina'u Natural Area Reserve
Hanauma Bay Marine Life Conservation District, Oahu
Kaho'olawe Island Reserve
Kealakekua Bay Marine Life Conservation District
Molokini Shoal Marine Life Conservation District
Pupukea Marine Life Conservation District, Oahu
West Hawaii Regional Fisheries Management Area

Maryland

U–1105 Black Panther Historic Shipwreck Preserve

Massachusetts

See National Estuarine Research Reserves, above

New Jersey

See National Estuarine Research Reserves, above

Virginia

Bethel Beach Natural Area Preserve
Blue Crab Sanctuary
Dameron Marsh Natural Area Preserve
False Cape State Park
Hughlett Point Natural Area Preserve
Kiptopeke State Park
Savage Neck Dunes Natural Area Preserve

Washington

Admiralty Head Preserve
Argyle Lagoon San Juan Islands Marine Preserve
Blake Island Underwater Park
Brackett's Landing Shoreline Sanctuary Conservation Area
Cherry Point Aquatic Reserve
Cypress Island Aquatic Reserve
Deception Pass Underwater Park
False Bay San Juan Islands Marine Preserve
Fidalgo Bay Aquatic Reserve
Friday Harbor San Juan Islands Marine Preserve
Haro Strait Special Management Fishery Area
Maury Island Aquatic Reserve
San Juan Channel & Upright Channel Special Management Fishery Area
Orchard Rocks Conservation Area
Shaw Island San Juan Islands Marine Preserve
South Puget Sound Wildfire Area
Sund Rock Conservation Area
Yellow and Low Islands San Juan Islands Marine Preserve
Zelia Schultz/Protection Island Marine Preserve

Response to Public Comments

On March 6, 2009, NOAA and DOI (agencies) published the Nomination of Existing Marine Protected Areas to the National System of Marine Protected Areas for public comment. By the end of the 30-day comment period, 26 individual submissions had been received from a variety of government agencies, non-governmental organizations, industry and conservation interests, advisory groups

and the public. Given the breadth and multi-faceted nature of comments and recommendations received, related comments have been grouped below into categories to simplify the development of responses. For each of the comment categories listed below, a summary of comments is provided, and a corresponding response provides an explanation and rationale about changes that were or were not made in the Official List of National System Marine Protected Areas (MPAs) for this first round of nominated sites.

Comment Category 1: Purpose and Scope of National System
Comment Category 2: Agency Review Process
Comment Category 3: Public Review Process
Comment Category 4: Support for Nomination of Specific Sites to National System
Comment Category 5: Questioning Eligibility of Specific Sites for the National System
Comment Category 6: Concerns about Potential Restrictions on Use
Comment Category 7: Information Available to Assess Nominations
Comment Category 8: Information Quality Act
Comment Category 9: Gap Analysis

Comments and Responses

Comment Category 1: Purpose and Scope of National System

Summary

A few comments called for more clarity about the purpose and vision of the National System of Marine Protected Areas (MPAs), although there were different perspectives about what this vision should include. One respondent thought that the agencies should create more specific minimum criteria for the national system, while another contended that the nomination process should mirror the creation of new sites under the National Marine Sanctuaries Act. Some respondents had comments on entry criteria for nominations to the National System of MPAs, or on plans for implementation of the federal responsibility to avoid harm to the resources protected by a national system MPA. One respondent recommended that the name of the ''National System of MPAs'' be revised and called the ''National Network of MPAs'' stating that ''a National Network is opinion-based; a National System is science-based.''

Response

The purpose and scope of the national system, and plans for its implementation, were developed with extensive stakeholder engagement over a four year period from 2004 through 2008. During this period, the *Framework for the National System of Marine Protected Areas of the United States* (Framework) was developed. Three separate public comment periods on the document were held and announced in the **Federal Register.** In addition, the National Marine Protected Areas Center (MPA Center) held numerous meetings with stakeholders to obtain input on the Framework, and worked closely with the Marine Protected Areas Federal Advisory Committee (MPA FAC) in open meetings on key concepts that were incorporated into the document. The Framework document was finalized in November 2008; no public comments were received on the **Federal Register** notice announcing its release. Issues raised by respondents focused on the content of the Framework are not considered germane to this public comment notice.

Regarding the recommendation that the nomination process should mirror the National Marine Sanctuaries Act (NMSA), the agencies contend that the NMSA should not be the model for nominations to the national system for the following reasons: (1) The national system is charged with working to coordinate diverse MPAs across all levels of governments. These sites and programs have diverse authorities, and it is inappropriate to impose the requirements of one federal MPA program (*e.g.* the NMSA) on other federal, state, and territorial MPA programs, which have their own legal authorities, processes and purposes; (2) The procedural elements for the NMSA are focused on the designation of new MPAs, while the nomination process for national system of MPAs is focused on the admission of existing MPAs into the national system for the purposes of enhanced coordination, recognition and stewardship and (3) The NMSA's extensive procedural requirements for sanctuary designation (including public involvement and interagency consultation) are not warranted for inclusion of a site in the national system of MPAs since that action has no regulatory impact or potential to restrict human uses of that site.

The agencies disagree with the recommendation that the National System of MPAs be renamed the ''National Network of MPAs.'' Section 4(e) of Executive Order 13158 calls for the development of a National System of MPAs. In addition, the terms ''system'' and ''network'' as used in the Framework are clearly defined in Section VI. Glossary of Key Terms of the final Framework. These definitions were developed in consultation with the MPA Federal Advisory Committee to ensure clarity of usage and consistency with current scientific thinking.

Comment Category 2: Agency Review Process

Summary

Two respondents called for nominations to the national system to undergo special review by particular management agencies. One called for all nominations in a given region to be reviewed and approved by regional Fishery Management Councils. Another respondent called for all sites in Alaska to be reviewed and approved by the Alaska Board of Fisheries.

Response

The current process for nominations to the national system provides for nominations to be made by the MPA's managing agency and for a public review process of the MPAs proposed for nomination. The agencies believe that while it is appropriate for other agencies or bodies in a region to comment on such proposed nominations as part of the public process, it is inappropriate for these other agencies or bodies to have the authority to approve or disapprove nominations made by the agency legally responsible for the management of an MPA.

Comment Category 3: Public Review Process

Summary

Two respondents noted that the 30-day public comment period was not sufficient to review information for 225 nominated sites, and requested that the public comment period be extended. One respondent recommended that all nominated sites be reviewed by the Marine Protected Areas Federal Advisory Committee.

Response

The agencies have concluded that this extension is not necessary because the public has had ample opportunity to address many of the issues raised through the multi-year public process to develop the Framework, which included three separate **Federal Register** public comment periods. The agencies followed the Framework's process and provided an opportunity for the public to comment on issues related specifically to nominations to the national system. The agencies do not believe that an extended comment period would substantively change the comments received. Moreover, because the national system of MPAs is a non-regulatory program that will not change the management or regulations of member sites, there is no risk of harm to the public resulting from declining this extension. Regarding the

recommendation that the Marine Protected Areas Federal Advisory Committee should review the nominations, the Committee was actively involved in developing and recommending the entry criteria for the national system. However, the role of the Committee is to provide advice to the Departments of Commerce and the Interior, not to engage in governmental decision-making regarding operational details of the national system.

Comment Category 4: Support for Nomination of Specific Sites to National System

Summary

A number of comments supported the nomination of specific sites to the national system, noting the significant ecological and cultural value of the areas, and adding that the participation of these sites in the national system will lead to a strengthening of their conservation efforts, as well as enhancing the national system. One comment sought better integration among NOAA Fisheries and National Marine Sanctuaries, and further sought opportunities to leverage funds and establish partnerships.

Response

Comments that support the nominations of sites to the national system were forwarded to the appropriate managing agencies. Regarding the call for enhanced integration, the agencies believe that the national system will result in enhanced collaboration and coordination of all MPA managing agencies, including NOAA Fisheries and National Marine Sanctuaries.

Comment Category 5: Questioning Eligibility of Specific Sites for the National System

Summary

Several comments questioned the eligibility of specific sites for inclusion in the national system. Eligibility concerns included whether sites met the definitions of 'marine' and 'MPA,' as well as concerns over a specific site's management plan. In particular, several respondents noted that the Cherry Point Aquatic Reserve (WA) did not meet the national system entry criteria to have a management plan because its management plan is still in draft.

Response

According to the *Framework for the National System of Marine Protected Areas of the United States of America* (Framework), a site is eligible for inclusion in the national system if the site: (1) Meets the definition of an MPA as defined in the Framework; (2) has a management plan (can be site-specific or part of a broader programmatic management plan); (3) contributes to at least one priority conservation objective as listed in the Framework; and (4) cultural heritage resources must also conform to criteria for the National Register of Historic Places.

It is important to note that only the 'marine' portion of a site will be eligible for inclusion in the national system. According to the Framework, to be marine, a site ''must be: (a) Ocean or coastal waters (note: coastal waters may include intertidal areas, bays or estuaries); (b) an area of the Great Lakes or their connecting waters; (c) an area of submerged lands under ocean or coastal waters or the Great Lakes or their connecting waters; or (d) a combination of the above. The term ''intertidal'' is understood to mean the shore zone between the mean low water and mean high water marks. An MPA may be a marine component part of a larger site that includes uplands. However, the terrestrial portion is not considered an MPA. For mapping purposes, an MPA may show an associated terrestrial protected area.''

Recognizing the often lengthy process in finalizing a management plan, which in some cases can take years to complete, the agencies determined that an established site may submit a draft management plan in order to meet this eligibility criterion.

Comment Category 6: Concerns About Potential Restrictions on Use

Summary

Several comments addressed the concern that the inclusion of a site in the national system will limit access to an area, and in particular will restrict recreational fishing or boating, sportfishing, commercial fishing, aquaculture operations, or coastal industry.

Response

The national system has no authority under Executive Order 13158 to either change the management or regulatory authority of existing MPAs or create new MPAs. MPAs will continue to be established, managed and revised under each site's existing federal, state, territorial, tribal or local authorities and their associated legal processes. The inclusion of an MPA into the national system in no way ''federalizes'' any state or local areas included within the system. The Executive Order states that the national system is ''intended to support, not interfere with, agencies' independent exercise of their own existing authorities.''

Comment Category 7: Information Available to Assess Nominations

Summary

Several respondents contended that the information available on the nominated sites was not sufficient for the public to assess whether the entry criteria had been met. Respondents noted that additional information was needed to ensure the transparency of the review process. For example, one respondent wanted to view information that indicated how, not merely whether, sites met the nomination criteria.

Response

The agencies posted information on the nominated sites on the public Web site, *http://www.mpa.gov* in a downloadable PDF format. Information provided in this format included: site name, management agency, level of protection, permanence, constancy, protection focus, fishing restrictions and management plan type. In addition, information on the primary conservation objective(s) addressed by each site, and the regulatory or management tools used to address the primary conservation objective(s) was provided. One week after the **Federal Register** notice appeared, based on a request from the public, the location of all federal sites sorted by the state in which it is located was added to the downloadable file to improve ease of utility. Users were also able to download GIS data for nominated sites as part of the MPA Inventory posted on *www.mpa.gov.* Information regarding the MPA Center's assessment of eligibility was available to the public through the Web site. For example, the Web site provided information on the type of management plan for each site, as well as the evidence the management program for each site provided to indicate how it met the primary conservation objective(s) of the national system.

The MPA Center recognizes the need to expand the data available on *http://www.mpa.gov* and to make it more accessible and usable to the public, and is in process of developing and improving Web-based applications to address this need.

Comment Category 8: Information Quality Act

Summary

One respondent expressed concern that because of general disclaimers on the *http://www.mpa.gov* Web site (at: *http://mpa.gov/helpful_resources/*

disclaimers_pr.html), the data contained therein regarding the Marine Protected Areas Inventory does not comply with the Information Quality Act (IQA). The respondent states that in light of the disclaimer language, the public ''has no reason to believe that any of these data are accurate, reliable, and complete or they have any utility.'' If true, dissemination of such information would violate NOAA's Information Quality (IQ) guidelines, published pursuant to the IQA. In support of this assertion, the respondent cites NOAA's IQA guidelines as follows: ''Information quality is composed of three elements: utility, integrity and objectivity. Quality will be ensured and established at levels appropriate to the nature and timeliness of the information to be disseminated. NOAA will conduct a pre-dissemination review of information it disseminates to verify quality. Information quality is an integral part of the pre-dissemination review * * * .''

Response

NOAA's MPA Inventory information is reliable and complies with the NOAA IQ guidelines standards for utility, integrity, and objectivity. The content of the initial Marine Managed Area (MMA) Inventory and its successor Marine Protected Areas Inventory (MPA Inventory) were developed and designed in cooperation with federal, state and territorial agencies and were the subject of public comment under the Paperwork Reduction Act. The definition of ''MPA'' was the subject of **Federal Register** comment processes as part of the inventory development process, and three additional times as part of the development and publication of the *Framework for the National System of Marine Protected Areas of the United States of America.* Data were collected directly from primary sources, and from the Federal, State, or territorial agency programs that designate and manage MPAs. Once initial data were collected, inventory information for each site was sent by the MPA Center to the pertinent MPA management agency for verification prior to posting on the *www.mpa.gov* Web site as part of the quality assurance/quality control process.

In addition, on November 20, 2008 the MPA Center Director sent a letter to MPA program managers providing each with a set of potential nominee sites from the pertinent program. The MPA program managers reviewed and verified the accuracy of the information provided. As a result of these review processes, the agencies believe NOAA's MPA inventory and related information disseminated through the MPA Center Web site meet the applicable NOAA IQ standards.

Regarding the disclaimer language posted on the MPA Center Web site (at: *http://mpa.gov/helpful_resources/disclaimers_pr.html*), the agency has taken the respondent's comments into consideration and will replace the existing disclaimer with more appropriate language regarding limitations on the use of the data contained on the MPA Center Web site.

Comment Category 9: Gap Analysis

Summary

Two respondents noted the importance of the gap analysis described in the Framework document, and urged that the agencies move forward with the gap analysis to identify areas meeting the conservation objectives of the national system in need of additional protection.

Response

The regional gap analysis process described in the Framework will complement the nominations of existing sites to the National System of MPAs by providing information on areas in need of additional protection to MPA management agencies. NOAA and DOI are currently in the design phase of the gap analysis process; information on the process will continue to be posted on *http://www.mpa.gov.*

Dated: April 17, 2009.

John H. Dunnigan,

Assistant Administrator.

[FR Doc. E9–9335 Filed 4–22–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No.: 090416673–9681–01]

Solicitation of Applications for the Minority Business Enterprise Center (MBEC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with 15 U.S.C. 1512 and Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate a Minority Business Enterprise Center (MBEC) in the two locations and geographical service areas specified in this notice. The MBEC operates through the use of business consultants and provides a range of business consulting and technical assistance services directly to eligible minority-owned businesses. Responsibility for ensuring that applications in response to this competitive solicitation are complete and received by MBDA on time is the sole responsibility of the applicant. Applications submitted must be for the operation of a MBEC and to provide business consultation services to eligible clients. Applications that do not meet these requirements will be rejected. This is not a grant program to help start or to further an individual business.

A link to the full text of the Announcement of Federal Funding Opportunity (FFO) for this solicitation may be accessed at: *http://www.Grants.gov, http://www.mbda.gov,* or by contacting the appropriate MBDA representative identified above. The FFO contains a full and complete description of the application and programmatic requirements under the MBEC Program. In order to receive proper consideration, applicants must comply with the requirements contained in the FFO.

DATES: The closing date for receipt of applications is June 4, 2009 at 5 p.m. Eastern Daylight Time (EDT). Completed applications must be received by MBDA at the address below for paper submissions or at *http://www.Grants.gov* for electronic submissions. The due date and time is the same for electronic submissions as it is for paper submissions. The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered. Anticipated time for processing is seventy-five (75) days from the closing date for receipt of applications. MBDA anticipates that one award under this notice will be made with a start date of September 1, 2009.

Pre-Application Conference: In connection with this solicitation, a pre-application conference is scheduled for May 7, 2009. The time and location of the pre-application conference have yet to be determined. Participants must register at least 24 hours in advance of the conference and may participate in person or by telephone. Please visit the MBDA Internet Portal at *http://www.mbda.gov* (MBDA Portal) or contact an MBDA representative listed below for the specific time and location of the pre-application conference and for registration instructions.

ADDRESSES:

1. *Electronic Submission:* Applicants are highly encouraged to submit their proposal electronically at *http://www.Grants.gov.* Electronic submissions should be made in accordance with the instructions available at Grants.gov (see *http://www.grants.gov/forapplicants* for detailed information). MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov as, in some cases, the process for completing an online application may require 3–5 working days.

2a. *Paper Submission—If Mailed:* If the application is sent by postal mail or overnight delivery service by the applicant or its representative, one (1) signed original plus two (2) copies of the application must be submitted. Applicants are encouraged to also submit an electronic copy of the proposal, budget and budget narrative on a CD–ROM to facilitate the processing of applications. Complete application packages must be mailed to: Office of Business Development—MBEC Program, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicants are advised that MBDA's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery due to security measures. Applicants may therefore wish to use a guaranteed overnight delivery service. Department of Commerce delivery policies for overnight delivery services require all packages to be sent to the address above.

2b. *Paper Submission—If Hand-Delivered:* If the application is hand-delivered by the applicant or by its representative, one (1) signed original plus two (2) copies of the application must be delivered. Applicants are encouraged to also submit an electronic copy of the proposal, budget and budget narrative on a CD–ROM to facilitate the processing of applications. Complete application packages must be delivered to: U.S. Department of Commerce, Minority Business Development Agency, Office of Business Development—MBEC Program (extension 1940), HCHB—Room 1874, Entrance #10, 15th Street, NW. (between Pennsylvania and Constitution Avenues), Washington, DC. MBDA will not accept applications that are submitted by the deadline, but that are rejected due to the applicant's failure to adhere to Department of Commerce protocol for hand-deliveries set forth in Section IV.D.2 of the accompanying FFO.

FOR FURTHER INFORMATION CONTACT: For further information or for an application package, please visit MBDA's Minority Business Internet Portal at *http://www.mbda.gov.* Paper applications may also be obtained by contacting the MBDA Office of Business Development or the MBDA National Enterprise Center (NEC) in the region in which the MBEC will be located (see below Agency Contacts). In addition, Standard Forms (SF) may be obtained by accessing *http://www.whitehouse.gov/omb/grants* or *http://www.grants.gov* and Department of Commerce (CD) forms may be accessed at *http://www.doc.gov/forms.*

Agency Contacts:

1. MBDA Office of Business Development, 1401 Constitution Avenue, NW., Room 5075, Washington, DC 20230. Contact: Efrain Gonzalez, Chief, 202–482–1940.

2. MBDA Dallas National Enterprise Center (DNEC), 1100 Commerce Street, Room 726, Dallas, Texas, 75242. This region covers the states of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming. Contact: John F. Iglehart, Regional Director, 214–767–8001.

SUPPLEMENTARY INFORMATION:

Background: The MBEC Program is a key component of MBDA's overall minority business development assistance program and promotes the growth and competitiveness of eligible minority-owned businesses. MBEC operators leverage project staff and professional consultants to provide a wide-range of direct business assistance services to eligible minority-owned firms, including but not limited to initial consultations and assessments, business technical assistance, and access to Federal and non-Federal procurement and financing opportunities.

MBDA currently funds a network of thirty MBEC projects located throughout the United States. Pursuant to this notice, and as set forth more fully in the corresponding FFO, competitive applications for new awards are being solicited for the two MBEC projects identified below.

Geographical Service Areas: MBDA is soliciting competitive applications from organizations to operate a MBEC and to provide services in the following geographical service areas:

Name of MBEC	Location of MBEC	MBEC geographical service area*
Houston MBEC	Houston, TX	Houston-Sugar Land-Baytown, TX MSA.**
New Orleans MBEC	New Orleans, LA	New Orleans-Metairie-Kenner, LA MSA.**

** Metropolitan Statistical Area, please see OMB Bulletin No. 09–01, Update of Statistical Area Definitions and Guidance on Their Uses (November 20, 2008) at *http://www.whitehouse.gov/omb/bulletins.*

Electronic Access: Applicants will be able to access, download and submit electronic grant applications for the MBEC Program through *http://www.Grants.gov.* MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov as in some cases the process for completing an Online application may require additional time (*e.g.,* 3–5 working days). The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered.

Funding Priorities: Preference may be given during the selection process to applications which address one or more of the following MBDA funding priorities:

(a) Proposals that include performance goals that exceed by 10% or more the minimum performance goal requirements in the FFO;

(b) Applicants who demonstrate an exceptional ability to identify and work towards the elimination of barriers which limit the access of minority businesses to markets and capital;

(c) Applicants who demonstrate an exceptional ability to identify and work with minority firms seeking to obtain large-scale contracts and/or insertion into supply chains with institutional customers;

(d) Proposals that take a regional approach in providing services to eligible clients; or

(e) Proposals from applicants with pre-existing operations in the identified geographic service area.

Funding Availability: A total of $582,000 of FY 2009 funds is available under the Omnibus Appropriations Act, 2009, Public Law 111–8, to fund financial assistance awards for the two (2) MBEC projects referenced in this solicitation. MBDA anticipates that this amount will also be available in each of FYs 2010 and FYs 2011 to provide continuation funding for these projects. The total award period for awards made under this competitive solicitation is anticipated to be three years and all awards are expected to be made with a start date of September 1, 2009. The anticipated amount of the financial assistance award for each MBEC project, including the minimum 20% non-federal cost share is set forth in the below table, although actual award amounts may vary depending on the availability of funds:

Project name	September 1, 2009 through August 31, 2010			September 1, 2010 through August 31, 2011			September 1, 2011 through August 31, 2012		
	Total cost ($)	Federal share ($)	Non-federal share ($) (20% min.)	Total cost ($)	Federal share ($)	Non-federal share ($) (20% min.)	Total cost ($)	Federal share ($)	Non-federal share ($) (10% min.)
Houston MBEC	$363,750	$291,000	$72,500	$363,750	$291,000	$72,500	$363,750	$291,000	$72,500
New Orleans MBEC	363,750	291,000	72,500	363,750	291,000	72,500	363,750	291,000	72,500

Applicants must submit project plans and budgets for each of the three (3) funding periods under this award (September 1, 2009–August 31, 2010, September 1, 2010–August 31, 2011, and September 1, 2011–August 31, 2012). Projects will be funded for no more than one year at a time. Project proposals accepted for funding will not compete for funding in subsequent budget periods within the approved award period. However, operators that fail to achieve a ''satisfactory'' or better performance rating for the preceding program year may be denied second- or third-year funding (as the case may be). Recommendations for second- and third-year funding are generally evaluated by MBDA based on a mid-year performance rating and/or combination of mid-year and cumulative third quarter performance rating. In making such continued funding determinations, MBDA and the Department of Commerce will consider all the facts and circumstances of each case, such as but not limited to market conditions, most recent performance of the operator and other mitigating circumstances.

The funding periods and funding amounts referenced in this solicitation are subject to the availability of funds, as well as to Department of Commerce and MBDA priorities at the time of award. In no event will the Department of Commerce or MBDA be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other MBDA or Department of Commerce priorities. Publication of this notice does not obligate the Department of Commerce or MBDA to award any specific cooperative agreement or to obligate all or any part of available funds.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

Catalog of Federal Domestic Assistance (CFDA): 11.800, Minority Business Enterprise Centers.

Eligibility: For-profit entities (including but not limited to sole-proprietorships, partnerships, and corporations), non-profit organizations, State and local government entities, American Indian Tribes, and educational institutions are eligible to operate an MBEC.

Program Description: The MBEC Program requires project staff to provide standardized business assistance services directly to eligible ''minority business enterprises,'' with an emphasis on those firms with $500,000 or more in annual revenues and/or with ''rapid growth potential'' (''Strategic Growth Initiative'' or ''SGI'' firms); develop and maintain a network of strategic partnerships; provide collaborative consulting services with MBDA and other MBDA funded programs and strategic partners; and to provide referral services (as necessary) for client transactions. For this purpose, minority business enterprises are business concerns that are owned or controlled by the following persons or groups of persons: African Americans, Puerto Ricans, Spanish-speaking Americans, Asian and Pacific Islander Americans, Native Americans (including Alaska Natives, Alaska Native Corporations and tribal entities), Eskimos, Aleuts, Asian Indians, and Hasidic Jews. *See* 15 CFR 1400.1 and Executive Order 11625.

The MBEC Program incorporates an entrepreneurial approach to building market stability and improving the quality of client services. This entrepreneurial strategy expands the reach of the MBECs by requiring project operators to develop and build upon strategic alliances with public and private sector partners as a means of serving minority-owned firms within each MBEC's geographical service area. The MBEC Program is also designed to effectively leverage MBDA resources, including but not limited to: MBDA Office of Business Development and MBDA National Enterprise Centers; MBDA's Business Internet Portal; and MBDA's nationwide network of MBECs, Native American Business Enterprise Centers (NABECs) and Minority Business Opportunity Centers (MBOCs). MBEC operators are also required to attend a variety of MBDA training programs designed to increase operational efficiencies and the provision of value-added client services.

MBEC operators are generally required to provide the following four client services: (1) Client Assessment—identifying clients' immediate and long-term needs and establishing projected growth tracks; (2) Strategic Business Consulting—providing intensive business consulting services that can be delivered as personalized consulting or group consulting; (3) Access to Capital—assisting clients with securing necessary financial capital; and (4) Access to Markets—assisting clients to identify and access opportunities for increased sales and revenues.

Please refer to the FFO pertaining to this competitive solicitation for a full and complete description of the application and programmatic requirements under the MBEC Program.

Match Requirements: The MBEC Program requires a minimum non-Federal cost share of 20%, which must be reflected in the proposed project budget. Non-Federal cost share is the portion of the project cost not borne by the Federal Government. Applicants must satisfy the non-Federal cost sharing requirements by one or more of the following four means or any combination thereof: (1) Client fees; (2) applicant cash contributions; (3) applicant in-kind (*i.e.,* non-cash) contributions; or (4) third-party in-kind contributions. The MBEC is required to charge client fees for services rendered

based upon a sliding scale of client revenues as set forth in Section III.B. of the accompanying FFO and such fees must be used by the operator towards meeting the non-federal cost share requirements under the award. Applicants will be awarded up to five (5) bonus points to the extent that the proposed project budget includes a non-Federal cost share contribution, measured as a percentage of the overall project budget, exceeding 20% (see Evaluation Criterion below).

Evaluation Criterion: Proposals will be evaluated and one applicant may be selected based on the below evaluation criterion. The maximum total number of points that an application may receive is 105, including the bonus points for exceeding the minimum required non-Federal cost share, except when oral presentations are made by applicants. If oral presentations are made (see below: Oral Presentation By MBDA Selected Applicants), the maximum total of points that can be earned is 115. The number of points assigned to each evaluation criterion will be determined on a competitive basis by the MBDA review panel based on the quality of the application with respect to each evaluation criterion.

1. Applicant Capability (40 points)

Proposals will be evaluated with respect to the applicant's experience and expertise in providing the work requirements listed. Specifically, proposals will be evaluated as follows:

(a) *Community*—Experience in and knowledge of the minority community, minority business sector, and strategies for enhancing its growth and expansion; particular emphasis shall be on expanding SGI firms. Consideration will be given to whether the applicant has a physical presence in the geographic service area at the time of its application (4 points);

(b) *Business Consulting*—Experience in and knowledge of business consulting with respect to minority firms, with emphasis on SGI firms in the geographic service area (5 points);

(c) *Financing*—Experience in and knowledge of the preparation and formulation of successful financial transactions, with an emphasis on the geographic service area (5 points);

(d) *Procurements and Contracting*—Experience in and knowledge of the public and private sector contracting opportunities for minority businesses, as well as demonstrated expertise in assisting clients into supply chains (5 points);

(e) *Financing Networks*—Resources and professional relationships within the corporate, banking and investment community that may be beneficial to minority-owned firms (5 points);

(f) *Establishment of a Self-Sustainable Service Model*—Summary plan to establish a self-sustainable model for continued services to the MBE communities beyond the MBDA award period (3 points);

(g) *MBE Advocacy*—Experience and expertise in advocating on behalf of minority communities and minority businesses, both as to specific transactions in which a minority business seeks to engage and as to broad market advocacy for the benefit of the minority community at large (3 points); and

(h) *Key Staff*—Assessment of the qualifications, experience and proposed role of staff that will operate the MBEC. In particular, an assessment will be made to determine whether proposed key staff possess the expertise in utilizing information systems and the ability to successfully deliver program services. At a minimum the applicant must identify a proposed project director (10 points).

2. Resources (20 points)

Proposals will be evaluated under this criterion as follows:

(a) *Resources*—Resources (not included as part of the non-federal cost share) that will be used in implementing the program, including but not limited to existing prior and/or current data lists that will serve in fostering immediate success for the MBEC (8 points);

(b) *Location*—Assessment of the applicant's strategic rationale for the proposed physical location of the MBEC. Applicant is encouraged to establish a location for the MBEC that is in a building which is separate and apart from any of the applicant's existing offices in the geographic service area (2 points);

(c) *Partners*—How the applicant plans to establish and maintain the network of strategic partners and the manner in which these partners will support the MBEC in meeting program performance goals (5 points); and

(d) *Equipment*—How the applicant plans to satisfy the MBEC information technology requirements, including computer hardware, software requirements and network map (5 points).

3. Techniques and Methodologies (20 points)

Proposals will be evaluated under this criterion as follows:

(a) *Performance Measures*—For each funding period, the manner in which the applicant relates each performance measure to the financial information and market resources available in the geographic service area (including existing client list); how the applicant will create MBEC brand recognition (marketing plan); and how the applicant will satisfy program performance goals. In particular, emphasis will be placed on the manner in which the applicant matches MBEC performance goals with client service hours and how it accounts for existing market conditions in its strategy to achieve such goals (10 points);

(b) *Start-up Phase*—How the applicant will commence MBEC operations within the initial 30-day period. The MBEC shall have thirty (30) days to become fully operational after an award is made (3 points); and

(c) *Work Requirement Execution Plan*—The applicant will be evaluated on how effectively and efficiently staff time will be used to achieve the MBEC programmatic requirements set forth more fully in the FFO, particularly with respect to periods beyond the start-up phase (7 points).

4. Proposed Budget and Budget Narrative (20 points)

The applicant's proposal will be evaluated as follows:

(a) *Reasonableness, Allowability and Allocability of Proposed Program Costs.* All of the proposed program costs expenditures should be discussed and the budget line-item narrative must match the proposed budget. Fringe benefits and other percentage item calculations should match the proposed budget line-item and narrative (5 points);

(b) *Non-Federal Cost Share.* The required 20% non-Federal share must be adequately addressed and properly documented, including but not limited to how client fees (if proposed) will be used by the applicant in meeting the non-Federal cost-share (5 points); and

(c) *Performance-Based Budgeting.* The extent to which the line-item budget and budget narrative relate to the accomplishment of the MBEC programmatic requirements and performance measures (*i.e.,* performance-based budgeting) (10 points).

5. Bonus Points for Exceeding the Minimum Required Non-Federal Cost Share (5 points)

Proposals with non-Federal cost sharing exceeding 20% of the total project costs will be awarded bonus points on the following scale: more than 20%—less than 25% = 1 point; 25% or more—less than 30% = 2 points; 30% or more—less than 35% = 3 points; 35% or more—less than 40% = 4 points; and

40% or more = 5 points. Non-Federal cost sharing of at least 20% is required under the MBEC Program. Non-Federal cost sharing is the portion of the total project cost not borne by the Federal Government and may be met by the applicant by any one or more of the following four means (or a combination thereof): (1) client fees; (2) cash contributions; (3) non-cash applicant contributions; or, (4) third party in-kind contributions.

6. Oral Presentation by MBDA Selected Applicants (10 points)

Oral presentations are held only when requested by MBDA. This action may be initiated for the top two (2) ranked applications for a project and will be applied on a consistent basis for each project competition. Oral presentations will be used to establish a final evaluation and ranking.

The applicant's presentation will be evaluated as to the extent to which the presentation demonstrates:

(a) How the applicant will effectively and efficiently assist MBDA in the accomplishment of its mission (2 points);

(b) Business operating priorities designed to manage a successful MBEC (2 points);

(c) A management philosophy that achieves an effective balance between micromanagement and complete autonomy for its Project Director (2 points);

(d) Robust search criteria for the identification of a Project Director (1 point);

(e) Effective employee recruitment and retention policies and procedures (1 point); and

(f) A competitive and innovative approach to exceeding performance requirements (2 points).

Review and Selection Process:

1. Initial Screening

Prior to the formal paneling process, each application will receive an initial screening to ensure that the applicant is eligible and the application is complete and that all required forms, signatures and documentation are present. An application will be considered non-responsive and will not be evaluated by the review panel if it is received after the closing date for receipt of applications, the applicant fails to submit an original, signed Form SF–424 by the application closing date (paper applications only), or the application does not provide for the operation of a MBEC. Other deficiencies, while not rendering the application non-responsive, will be considered during panel review and may result in point deductions.

2. Panel Review

Each responsive application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The review panel will consist of at least 3 persons, all of whom will be full-time federal employees and at least one of whom will be an MBDA employee, who will review the applications for a specified project based on the above evaluation criterion. Each reviewer shall evaluate and provide a score for each proposal. Each project review panel (through the panel Chairperson) shall provide the MBDA National Director (Recommending Official) with a ranking of the applications based on the average of the reviewers' scores and shall also provide a recommendation regarding funding of the highest scoring application.

3. Oral Presentation by MBDA Selected Applicants

MBDA may request that the two (2) top-ranked applicants to develop and make an oral presentation. If an oral presentation is requested, the selected applicants will receive a formal communication (via standard mail, e-mail or fax) from MBDA informing them of the time and date of the oral presentation. In-person presentations are not mandatory but are encouraged; telephonic presentations are acceptable. MBDA will provide the teleconference dial-in number and pass code.

Oral presenters will be required to submit to MBDA, at least 24 hours before the scheduled date and time for the oral presentation, a PowerPoint (or equivalent) presentation that addresses the oral presentation criteria set forth above. The oral presentation will be made to the MBDA National Director (or his/her designee) and up to three senior MBDA staff who did not serve on the original review panel. The oral panel members may ask follow-up questions after the presentation. Each applicant will present to MBDA staff only and applicants will not be permitted to listen to or attend presentations made by other applicants.

All costs pertaining to this presentation shall be borne by the applicant. MBEC award funds may not be used as a reimbursement for this presentation. MBDA will not accept any requests or petitions for reimbursement.

The oral panel members shall score each presentation in accordance with the oral presentation criterion provided above. An average score shall be compiled and added to the score of the original panel review.

4. Final Recommendation

The MBDA National Director makes the final recommendation to the Grants Officer regarding the funding of one application under this competitive solicitation. MBDA expects to recommend for funding the highest ranking application, as evaluated and recommended by the review panel and taking into account oral presentations (as applicable). However, the MBDA National Director may not make any selection, or he/she may select an application out of rank order for either or both of the following reasons:

(a) A determination that a lower ranked application better addresses one or more of the funding priorities for this competition. The National Director (or his/her designee) reserves the right to conduct one or more site visits to better assess an applicant's capability to achieve the program and funding priorities; or

(b) The availability of MBDA funding.

Prior to making a final recommendation to the Grants Officer, MBDA may request that the apparent winner of the competition provide written clarifications (as necessary) regarding its application.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability: In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if the MBEC Program fails to receive funding or is cancelled because of Department of Commerce or MBDA priorities. All funding periods under the award are subject to the availability of funds to support the continuation of the project. Publication of this notice does not obligate MBDA or the Department of Commerce to award any specific project or to obligate any available funds.

Universal Identifier: All applicants will be required to provide a Dun and Bradstreet Data Universal Numbering system (DUNS) number during the application process. *See* the June 27, 2003 **Federal Register** notice (68 FR 38402) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or by accessing the Grants.gov Web site at *http://www.Grants.gov.*

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Executive Order 12866: This notice has been determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, or contracts (5 U.S.C. 533(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 533 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: April 17, 2009.

Efrain Gonzalez,

Chief, Office of Business Development, Minority Business Development Agency.

[FR Doc. E9–9297 Filed 4–22–09; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No.: 090416670–9679–01]

Solicitation of Applications for the Native American Business Enterprise Center (NABEC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with 15 U.S.C. Section 1512 and Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate a Native American Business Enterprise Center (NABEC) in the four locations and geographical service areas specified in this notice. The NABEC operates through the use of business consultants and provides a range of business consulting and technical assistance services directly to Native American and other eligible minority-owned businesses. Responsibility for ensuring that applications in response to this competitive solicitation are complete and received by MBDA on time is the sole responsibility of the applicant. Applications submitted must be for the operation of a NABEC and to provide business consultation services to eligible clients. Applications that do not meet these requirements will be rejected. This is not a grant program to help start or to further an individual business.

A link to the full text of the Announcement of Federal Funding Opportunity (FFO) for this solicitation may be accessed at: *http://www.Grants.gov*, *http://www.mbda.gov*, or by contacting the appropriate MBDA representative identified below. The FFO contains a full and complete description of the application and programmatic requirements under the NABEC Program. In order to receive proper consideration, applicants must comply with the requirements contained in the FFO.

DATES: The closing date for receipt of applications is June 4, 2009 at 5 p.m. Eastern Daylight Time (EDT). Completed applications must be received by MBDA at the address below for paper submissions or at *http://www.Grants.gov* for electronic submissions. The due date and time is the same for electronic submissions as it is for paper submissions. The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered. Anticipated time for processing is seventy-five (75) days from the close of the competition period. MBDA anticipates that awards under this notice will be made with a start date of September 1, 2009.

Pre-Application Conference: In connection with this solicitation, a pre-application teleconference will be held on May 4, 2009 at 1:00 p.m. (EDT). Participants must register at least 24 hours in advance of the teleconference and may participate in person or by telephone. Please visit the MBDA Internet Portal at *http://www.mbda.gov* (MBDA Portal) or contact an MBDA representative listed below for registration instructions.

ADDRESSES: 1. Electronic Submission: Applicants are highly encouraged to submit their proposal electronically at *http://www.Grants.gov.* Electronic submissions should be made in accordance with the instructions available at Grants.gov (see *http://www.grants.gov/forapplicants* for detailed information). MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov as, in some cases, the process for completing an online application may require 3–5 working days.

2a. Paper Submission—If Mailed: If the application is sent by postal mail or overnight delivery service by the applicant or its representative, one (1) signed original plus two (2) copies of the application must be submitted. Completed application packages must be mailed to: Office of Business Development—NABEC Program, Office of Executive Secretariat, HCHB Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicants are advised that MBDA's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery due to security measures. Applicants may therefore wish to use a guaranteed overnight delivery service. Department of Commerce delivery policies for overnight delivery services require all packages to be sent to the address above.

2b. Paper Submission—If Hand-Delivered: If the application is hand-delivered by the applicant or by its representative, one (1) signed original plus two (2) copies of the application must be delivered to: U.S. Department of Commerce, Minority Business Development Agency, Office of Business Development—NABEC Program (extension 1940), HCHB—Room 1874, Entrance #10, 15th Street, NW. (between Pennsylvania and Constitution Avenues), Washington, DC. MBDA will not accept applications that are submitted by the deadline, but that are rejected due to the applicant's failure to adhere to Department of Commerce protocol for hand-deliveries set forth in Section IV.D.2. of the accompanying FFO.

FOR FURTHER INFORMATION CONTACT: For further information or for an application package, please visit MBDA's Minority Business Internet Portal at *http://www.mbda.gov.* Paper applications may also be obtained by contacting the

MBDA Office of Business Development or the MBDA National Enterprise Center (NEC) in the region in which the NABEC will be located (see below Agency Contacts). In addition, Standard Forms (SF) may be obtained by accessing *http://www.whitehouse.gov/omb/grants* or *http://www.grants.gov.* and Department of Commerce (CD) forms may be accessed at *http://www.doc.gov/forms.*

Agency Contacts:

1. MBDA Office of Business Development, 1401 Constitution Avenue, NW., Room 5075, Washington, DC 20230. Contact: Efrain Gonzalez, Chief, 202–482–1940.

2. MBDA Atlanta National Enterprise Center (ANEC), 401 W. Peachtree Street, Suite 1715, Atlanta, GA 30308. This region covers the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee. Contract: Patricia Hanes, Regional Director, 404–730–3300.

3. MBDA Chicago National Enterprise Center (CNEC), 55 E. Monroe Street, Suite 2810, Chicago, Illinois 60603. This region covers the states of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin. Contact: Eric Dobyne, Regional Director, 312–353–0182.

4. Dallas National Enterprise Center (DNEC), 1100 Commerce Street, Room 726, Dallas, Texas 75242. This region covers the states of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming. Contact: John F. Iglehart, Regional Director, 214–767–8001.

SUPPLEMENTARY INFORMATION:

Background: The NABEC Program is a key component of MBDA's overall minority business development assistance program and promotes the growth and competitiveness of Native American and eligible minority-owned businesses. NABEC operators leverage project staff and professional consultants to provide a wide-range of direct business assistance services to Native American, tribal entities and eligible minority-owned firms. NABEC services include, but are not limited to, initial consultations and assessments, business technical assistance, and access to federal and non-federal procurement and financing opportunities.

MBDA currently funds a network of eight NABEC projects located throughout the United States. Pursuant to this notice, and as set forth more fully in the corresponding FFO, competitive applications for new three-year awards are being solicited for the four NABEC projects set forth below.

Geographical Service Areas: MBDA is soliciting competitive applications from organizations to operate a NABEC and to provide services in the following geographical service areas:

NABEC name	Geographical service area
North Carolina NABEC.	State of North Carolina.
Minnesota/Iowa NABEC.	States of Minnesota & Iowa.
New Mexico NABEC.	State of New Mexico.
Oklahoma NABEC.	State of Oklahoma.

The NABEC project must be physically located within the applicable geographical service area.

Electronic Access: Applicants will be able to access, download and submit electronic grant applications for the NABEC Program through *http://www.Grants.gov.* MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov as in some cases the process for completing an online application may require additional time (e.g., 3–5 working days). The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered.

Funding Priorities: Preference may be given during the selection process to applications which address one or more of the following MBDA funding priorities:

(a) Proposals that include performance goals that exceed by 10% or more the minimum performance goal requirements in the FFO;

(b) Applicants who demonstrate an exceptional ability to identify and work towards the elimination of barriers which limit the access of minority businesses to markets and capital;

(c) Applicants who demonstrate an exceptional ability to identify and work with Native American firms, tribal entities or minority firms seeking to obtain large-scale contracts and/or insertion into supply chains with institutional customers;

(d) Proposals that utilize fee for service models consistent with the fee structure based on client revenues as set forth in Section III.B. of the accompanying FFO and those that use innovative approaches to charging and collecting fees from clients;

(e) Proposals that take a regional approach in providing services to eligible clients; or

(f) Proposals from applicants with pre-existing operations in the identified geographic service area(s).

Funding Availability: A total of $835,000 of FY 2009 funds is available under the Omnibus Appropriations Act, 2009, Public Law No. 111–8, to fund financial assistance awards for the four (4) NABEC projects referenced in this solicitation. MBDA anticipates that this amount will also be available in each of FYs 2010 and 2011 to provide continuation funding for these projects. The total award period for awards made under this competitive solicitation is anticipated to be three years and all awards are expected to be made with a start date of September 1, 2009. The anticipated amount of the financial assistance award for each NABEC project, including the minimum 10% non-federal cost share is set forth in the below table, although actual award amounts may vary depending on the availability of funds:

Project name	September 1, 2009 through August 31, 2010			September 1, 2010 through August 31, 2011			September 1, 2011 through August 31, 2012		
	Total cost ($)	Federal share ($)	Non-federal share ($) (10% min.)	Total cost ($)	Federal share ($)	Non-federal share ($) (10% min.)	Total cost ($)	Federal share ($)	Non-federal share ($) (10% min.)
(1) North Carolina NABEC	$222,300	$200,000	$22,300	$222,300	$200,000	$22,300	$222,300	$200,000	$22,300
(2) Minnesota/Iowa NABEC	222,300	200,000	22,300	222,300	200,000	22,300	222,300	200,000	22,300
(3) New Mexico NABEC	222,300	200,000	22,300	222,300	200,000	22,300	222,300	200,000	22,300
(4) Oklahoma NABEC	261,000	235,000	26,000	261,000	235,000	26,000	261,000	235,000	26,000

Applicants must submit project plans and budgets for each of the three (3) program years. Projects will be funded for no more than one year at a time. Project proposals accepted for funding will not compete for funding in subsequent budget periods within the approved award period. However, operators that fail to achieve a ''satisfactory'' or better performance rating for the preceding program year may be denied second- or third-year funding (as the case may be). Recommendations for second- and third-year funding are generally evaluated by MBDA based on a mid-year performance rating and/or combination of mid-year and cumulative third quarter performance rating. In making such continued funding determinations, MBDA and the Department of Commerce will consider all the facts and circumstances of each case, such as but not limited to market conditions, most recent performance of the operator and other mitigating circumstances.

The funding periods and funding amounts referenced in this solicitation are subject to the availability of funds, as well as to Department of Commerce and MBDA priorities at the time of award. In no event will the Department of Commerce or MBDA be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other MBDA or Department of Commerce priorities. Publication of this notice does not obligate the Department of Commerce or MBDA to award any specific cooperative agreement or to obligate all or any part of available funds.

Authority: 15 U.S.C. Section 1512 and Executive Order 11625.

Catalog of Federal Domestic Assistance (CFDA): 11.801, Native American Business Enterprise Center Program.

Eligibility: For-profit entities (including but not limited to sole-proprietorships, partnerships, and corporations), non-profit organizations, state and local government entities, American Indian Tribes, and educational institutions are eligible to operate a NABEC.

Program Description: MBDA is soliciting competitive applications from organizations to operate four (4) Native American Business Enterprise Centers (NABEC) (formerly known as Native American Business Development Centers). The NABEC will operate through the use of trained professional business consultants who will assist Native American and other minority entrepreneurs and tribal entities through direct client engagements. Entrepreneurs eligible for assistance under the NABEC Program are Native Americans (including Alaska Natives, Alaska Native Corporations and tribal entities), Eskimos, African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian Pacific Americans, Asian Indians and Hasidic Jews. References throughout this notice regarding a NABEC's provision of services and assistance to Native American clients also includes the eligible non-Native American clients listed in the preceding sentence. No service may be denied to any member of the eligible groups listed above.

The NABEC Program requires project staff to: provide standardized business assistance services directly to eligible Native American clients, with an emphasis on those firms with $500,000 or more in annual revenues and/or with ''rapid growth potential'' (''Strategic Growth Initiative'' or ''SGI'' firms); develop and maintain a network of strategic partnerships; provide collaborative consulting services with MBDA and other MBDA funded programs and strategic partners; and to provide referral services (as necessary) for client transactions. NABEC operators will assist Native American clients in accessing federal and non-federal contracting and financing opportunities that result in demonstrable client outcomes. Specific work requirements and performance metrics are used by MBDA to evaluate each project and are a key component of the NABEC program.

The NABEC Program also incorporates an entrepreneurial approach to building market stability and improving quality of services delivered. This strategy expands the reach of the NABECs by requiring project operators to develop and build upon strategic alliances with public and private sector partners, as a means of serving Native American and minority-owned firms within each NABEC's geographical service area. The NABEC Program is also designed to leverage MBDA resources including but not limited to: MBDA Office of Native American Business Development; MBDA Office of Business Development; MBDA National Enterprise Centers; MBDA Business Internet Portal; and MBDA's network of Minority Business Opportunity Centers (MBOCs), Minority Business Enterprise Centers (MBECs), and other NABECs. NABEC operators are required to attend a variety of MBDA training programs designed to increase operational efficiencies and the provision of value-added client services.

NABEC operators are generally required to provide the following four client services: (1) Client Assessment—identifying clients' immediate and long-term needs and establishing projected growth tracks; (2) Strategic Business Consulting—providing intensive business consulting services that can be delivered as personalized consulting or group consulting; (3) Access to Capital—assisting clients with securing necessary financial capital; and (4) Access to Markets—assisting clients to identify and access opportunities for increased sales and revenues.

Please refer to the FFO pertaining to this competitive solicitation for a full and complete description of the application and programmatic requirements under the NABEC Program.

Match Requirements: The NABEC Program requires a minimum non-federal cost share of 10%, which must be reflected in the proposed project budget. Non-federal cost share is the portion of the project cost not borne by the Federal Government. Applicants must satisfy the non-federal cost sharing requirements by one or more of the following four means or any combination thereof: (1) Client fees; (2) applicant cash contributions; (3) applicant in-kind (i.e., non-cash) contributions; or (4) third-party in-kind contributions. The NABEC is not required to charge client fees for services rendered. However, MBDA encourages all NABECs to implement a fee-for-service program. Client fees (if imposed) must be used towards meeting non-federal cost share requirements and must be used in furtherance of the program objectives. In addition, the NABEC's client fee structure must be based on a sliding scale of client revenues as set forth in Section III.B. of the accompanying FFO. Applicants will be awarded up to five (5) bonus points to the extent that the proposed project budget includes a non-federal cost share contribution, measured as a percentage of the overall project budget, exceeding 10% (see Evaluation Criterion below).

Evaluation Criterion: Proposals will be evaluated and applicants will be selected based on the below evaluation criterion. The maximum total number of points that an application may receive is 105, including the bonus points for exceeding the minimum required non-federal cost share, except when oral presentations are made by applicants. If oral presentations are made (see below: Oral Presentation By MBDA Selected Applicants), the maximum total of points that can be earned is 115. The number of points assigned to each evaluation criterion will be determined

on a competitive basis by the MBDA review panel based on the quality of the application with respect to each evaluation criterion.

1. Applicant Capability (40 points)

Proposals will be evaluated with respect to the applicant's experience and expertise in providing the work requirements listed. Specifically, proposals will be evaluated as follows:

(a) *Community*—Experience in and knowledge of the Native American community, Native American tribal entities and minority business sector, and strategies for enhancing its growth and expansion; particular emphasis shall be on expanding SGI firms and tribal entities. Consideration will be given to whether the applicant has a physical presence in the geographic service area at the time of its application (4 points);

(b) *Business Consulting*—Experience in and knowledge of business consulting with respect to Native American and minority firms and tribal entities, with emphasis on SGI firms in the geographic service area (5 points);

(c) *Financing*—Experience in and knowledge of the preparation and formulation of successful financial transactions, with an emphasis on the geographic service area (5 points);

(d) *Procurements and Contracting*—Experience in and knowledge of the public and private sector contracting opportunities for Native American entities and minority businesses, as well as demonstrated expertise in assisting clients into supply chains (5 points);

(e) *Financing Networks*—Resources and professional relationships within the corporate, banking and investment community that may be beneficial to Native American entities and minority-owned firms (5 points);

(f) *Establishment of a Self-Sustainable Service Model*—Summary plan to establish a self-sustainable model for continued services to the Native American and MBE communities beyond the three-year MBDA award period (3 points);

(g) *MBE Advocacy*—Experience and expertise in advocating on behalf of Native American communities, Native American tribal entities and minority businesses, both as to specific transactions in which a minority business seeks to engage and as to broad market advocacy for the benefit of the minority community at large (3 points); and

(h) *Key Staff*—Assessment of the qualifications, experience and proposed role of staff that will operate the NABEC. In particular, an assessment will be made to determine whether proposed key staff possesses the expertise in utilizing information systems and the ability to successfully deliver program services. At a minimum the applicant must identify a proposed project director (10 points).

2. Resources (20 points)

Proposals will be evaluated under this criterion as follows:

(a) *Resources*—Resources (not included as part of the non-federal cost share) that will be used in implementing the program, including but not limited to existing prior and/or current data lists that will serve in fostering immediate success for the NABEC (8 points);

(b) *Location*—Assessment of the applicant's strategic rationale for the proposed physical location of the NABEC. Applicant is encouraged to establish a location for the NABEC that is in a building which is separate and apart from any of the applicant's existing offices in the geographic service area (2 points);

(c) *Partners*—How the applicant plans to establish and maintain the network of strategic partners and the manner in which these partners will support the NABEC in meeting program performance goals (5 points); and

(d) *Equipment*—How the applicant plans to satisfy the NABEC information technology requirements, including computer hardware, software requirements and network map (5 points).

3. Techniques and Methodologies (20 points)

Proposals will be evaluated under this criterion as follows:

(a) *Performance Measures*—For each program year, the manner in which the applicant relates each performance measure to the financial information and market resources available in the geographic service area (including existing client list); how the applicant will create NABEC brand recognition (marketing plan); and how the applicant will satisfy program performance goals. In particular, emphasis will be placed on the manner in which the applicant matches NABEC performance goals with client service hours and how it accounts for existing market conditions in its strategy to achieve such goals (10 points);

(b) *Start-up Phase*—How the applicant will commence NABEC operations within the initial 30-day period. The NABEC shall have thirty (30) days to become fully operational after an award is made (3 points); and

(c) *Work Requirement Execution Plan*—The applicant will be evaluated on how effectively and efficiently staff time will be used to achieve the NABEC programmatic requirements set forth more fully in the FFO, particularly with respect to periods beyond the start-up phase (7 points).

4. Proposed Budget and Budget Narrative (20 points)

Proposals will be evaluated under this criterion as follows:

(a) *Reasonableness, Allowability and Allocability of Proposed Program Costs.* All of the proposed program costs expenditures should be discussed and the budget line-item narrative must match the proposed budget. Fringe benefits and other percentage item calculations should match the proposed budget line-item and narrative (5 points);

(b) *Non-Federal Cost Share.* The required 10% non-federal share must be adequately addressed and properly documented, including but not limited to how client fees (if proposed) will be used by the applicant in meeting the non-federal cost-share (5 points); and

(c) Performance-Based Budgeting. The extent to which the line-item budget and budget narrative relate to the accomplishment of the NABEC programmatic requirements and performance measures (i.e., performance-based budgeting) (10 points).

5. Bonus Points for Exceeding the Minimum Required Non-Federal Cost Share (5 points)

Proposals with a non-federal cost share exceeding 10% of the total project costs will be awarded bonus points on the following scale: more than 10%–less than 15% = 1 point; 15% or more—less than 20% = 2 points; 20% or more–less than 25% = 3 points; 25% or more–less than 30% = 4 points; and 30% or more = 5 points. Non-federal cost sharing of at least 10% is required under the NABEC Program. Non-federal cost sharing is the portion of the total project cost not borne by the Federal Government and may be met by the applicant in any one or more of the following four means (or a combination thereof): (1) Client fees (encouraged but not mandatory); (2) cash contributions; (3) non-cash applicant contributions; or (4) third party in-kind contributions.

6. Oral Presentation by MBDA Selected Applicants (10 points)

Oral presentations are held only when requested by MBDA. This action may be initiated for the top two (2) ranked applications for a project and will be applied on a consistent basis for each project competition. Oral presentations will be used to establish a final evaluation and ranking.

The applicant's presentation will be evaluated as to the extent to which the presentation demonstrates:

(a) How the applicant will effectively and efficiently assist MBDA in the

accomplishment of its mission (2 points);

(b) Business operating priorities designed to manage a successful NABEC (2 points);

(c) A management philosophy that achieves an effective balance between micromanagement and complete autonomy for its Project Director (2 points);

(d) Robust search criteria for the identification of a Project Director (1 point);

(e) Effective employee recruitment and retention policies and procedures (1 point); and

(f) A competitive and innovative approach to exceeding performance requirements (2 points).

Review and Selection Process: 1. Initial Screening

Prior to the formal paneling process, each application will receive an initial screening to ensure that the applicant is eligible and the application is complete and includes all required forms, signatures and documentation. An application will be considered non-responsive and will not be evaluated by the review panel if it is received after the closing date for receipt of applications, the applicant fails to submit an original, signed Form SF–424 by the application closing date (paper applications only), or the application does not provide for the operation of a NABEC. Other deficiencies, while not rendering the application non-responsive, will be considered during panel review and may result in point deductions.

2. Panel Review

Each responsive application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The review panel will consist of at least 3 persons, all of whom will be full-time federal employees and at least one of whom will be an MBDA employee, who will review the applications for a specified project based on the above evaluation criterion. Each reviewer shall evaluate and provide a score for each proposal. Each project review panel (through the panel Chairperson) shall provide the MBDA National Director (Recommending Official) with a ranking of the applications based on the average of the reviewers' scores and shall also provide a recommendation regarding funding of the highest scoring application.

3. Oral Presentation—Upon MBDA Request

MBDA may request that the two (2) top-ranked applicants for each project competition make an oral presentation. If an oral presentation is requested, the selected applicants will receive a formal communication (via standard mail, e-mail or fax) from MBDA informing them of the time and date for the presentation. In-person presentations are not mandatory but are encouraged; telephonic presentations are acceptable. MBDA will provide the teleconference dial-in number and pass code.

Oral presenters will be required to submit to MBDA at least 24 hours before the scheduled date and time of the oral presentation a PowerPoint (or equivalent) presentation that addresses the oral presentation criteria set forth above. The oral presentation will be made to the MBDA National Director (or his/her designee) and up to three senior MBDA staff who did not serve on the original review panel. The oral panel members may ask follow-up questions after the presentation. Each applicant will present to MBDA staff only and applicants will not be permitted to listen to or attend presentations made by other applicants.

All costs pertaining to this presentation shall be borne by the applicant. NABEC award funds may not be used as a reimbursement for this presentation. MBDA will not accept any requests or petitions for reimbursement.

The oral panel members shall score each presentation in accordance with the oral presentation criterion provided above. An average score shall be compiled and added to the score of the original panel review.

4. Final Recommendation

The MBDA National Director makes the final recommendation to the Grants Officer regarding the funding of applications under this competitive solicitation. MBDA expects to recommend for funding the highest ranking application for each project, as evaluated and recommended by the review panel and taking into account oral presentations (as applicable). However, the MBDA National Director may not make any selection, or he may select an application out of rank order for either or both of the following reasons:

(a) A determination that a lower ranked application better addresses one or more of the funding priorities for this competition. The National Director (or his/her designee) reserves the right to conduct one or more site visits to better assess an applicant's capability to achieve the program and funding priorities; or

(b) The availability of MBDA funding.

Prior to making a final recommendation to the Grants Officer, MBDA may request that the apparent winner of the competition provide written clarifications (as necessary) regarding its application.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability: In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other MBDA or Department of Commerce priorities. All funding periods are subject to the availability of funds to support the continuation of the project and the Department of Commerce and MBDA priorities. Publication of this notice does not obligate the Department of Commerce or MBDA to award any specific cooperative agreement or to obligate all or any part of available funds.

Universal Identifier: All applicants will be required to provide a Dun and Bradstreet Data Universal Numbering system (DUNS) number during the application process. See the June 27, 2003 **Federal Register** notice (68 FR 38402) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or by accessing the Grants.gov Web site at *http://www.Grants.gov.*

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Executive Order 12866: This notice has been determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative

Procedure Act for rules concerning public property, loans, grants, benefits, or contracts (5 U.S.C. 533(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 533 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: April 17, 2009.

Efrain Gonzalez,

Chief, Office of Business Development, Minority Business Development Agency.

[FR Doc. E9–9296 Filed 4–22–09; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On April 15, 2009, the Department of Education published a comment period notice in the **Federal Register** (Page 17459, Column 1) for the information collection, ''Documents Associated with the Notice of Terms and Conditions of Additional Purchase of Loans under the ''Ensuring Continued Access to Student Loans Act of 2008''. This notice amends the total annual responses to 8,395. The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: April 20, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

[FR Doc. E9–9316 Filed 4–22–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; DC School Choice Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.370A.

Dates:

Applications Available: April 23, 2009.

Deadline for Notice of Intent to Apply: May 8, 2009.

Deadline for Transmittal of Applications: May 26, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The DC School Choice Incentive Program, established under the DC School Choice Incentive Act of 2003 (Act), provides low-income parents residing in the District of Columbia (District) with expanded options for the education of their children.

Background: For FY 2009, the Department will be awarding one grant on a competitive basis to an eligible applicant to continue a scholarship program to provide students who currently have scholarships under this program with scholarships for the 2009–2010 school year. Students are eligible to receive scholarships under this program if they (1) are residents of the District, and (2) come from households whose income does not exceed 200 percent (or, in the case of an eligible student whose first year of participation in the program was an academic year ending in June 2005 or June 2006 and whose second or succeeding year is an academic year ending on or before June 2009, 300 percent) of the poverty line. These scholarships may be used to pay tuition and fees and transportation expenses, if any, to enable students to attend a participating District nonpublic elementary or secondary school.

Under the absolute priority established in this notice, funds awarded under this competition may only be used to award scholarships to students currently participating in this program. Accordingly, in addition to the requirements described in the preceding paragraph, to be eligible for a scholarship for the 2009–2010 school year, a student must currently be receiving a scholarship through the DC School Choice Incentive Program.

We are establishing this absolute priority in light of the prohibition in Public Law 111–8, the Omnibus Appropriations Act, 2009, against using funds appropriated under that law, or any other law, for scholarships under this program after the conclusion of the 2009–2010 school year and the direction in the Joint Explanatory Statement for Public Law 111–8 to limit scholarships for 2009–2010 to students who are currently receiving scholarships under this program. Specifically, Public Law 111–8 provides, with respect to this program that ''use of any funds in this Act or any other [law] for opportunity scholarships after school year 2009–2010 shall only be available upon enactment of reauthorization of that program by Congress and the adoption of legislation by the District of Columbia approving such reauthorization.'' In addition, the Joint Explanatory Statement for Public Law 111–8 directs that ''[f]unding provided for the private scholarship program shall be used for currently-enrolled participants rather than new applicants.'' The Chancellor of the District of Columbia Public Schools is directed to ''promptly take steps to minimize potential disruption and ensure smooth transition for any students seeking enrollment in the public school system as a result of any changes made to the private scholarship program affecting periods after school year 2009–2010.'' *See* the Joint Explanatory Statement, Division D, Title VIII, Federal Payment for School Improvement, at *http://thomas.loc.gov/home/approp/app09.html*.

Priorities: We are establishing this priority for the FY 2009 grant competition only in accordance with section 437(d)(2) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(2).

Absolute Priority: For FY 2009, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Scholarships for Currently Enrolled Participants During the 2009–2010 School Year.

Scholarship funds must be used to provide scholarships during the 2009–2010 school year only to currently enrolled participants who are DC residents and meet the eligibility requirements related to family income. Funds awarded under this competition may not be used to provide scholarships for new applicants or for current scholarship recipients after the 2009–2010 school year.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, selection criteria, and non-statutory requirements. Section 437(d)(2) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations where application of those requirements will cause extreme hardship to the intended beneficiaries of the program. Conducting notice-and-comment rulemaking for the absolute priority, selection criteria, and non-statutory requirement (in section III.3.(c)) established in this notice would preclude timely implementation of this program for the 2009–2010 school year and, thereby, cause extreme hardship to the intended beneficiaries of this program, namely those students who are currently receiving scholarships under this program and are eligible to receive scholarships in the 2009–2010 school

year. In order to ensure the timely award of scholarships and continued participation of these students in this program for the upcoming school year, the Secretary has decided to forgo comment on the absolute priority, selection criteria, and non-statutory requirement (in section III.3.(c)) under section 437(d)(2) of GEPA. The absolute priority, selection criteria, and non-statutory requirement (in section III.3.(c)) will apply to the FY 2009 grant competition only.

Program Authority: DC Code §§ 38–1851.01—38–1851.11; Omnibus Appropriations Act, 2009, Public Law No. 111–8.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $12,600,000.

Estimated Number of Awards: 1.

Note: The Department plans to fund this project entirely from FY 2009 funds.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Budget Period: Up to 12 months.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An educational entity of the District of Columbia Government.

(b) A nonprofit organization.

(c) A consortium of nonprofit organizations.

Note: To receive an award under this program, an applicant must ensure that a majority of the members of its voting board or governing organization are residents of the District of Columbia.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Additional Requirements:* (a) An eligible entity receiving a grant under this program may award a scholarship, for the second or any succeeding years of a student's participation in the scholarship program, to a student who is a DC resident and comes from a household whose income does not exceed 200 percent (or, in the case of an eligible student whose first year of participation in the program was an academic year ending in June 2005 or June 2006 and whose second or succeeding year is an academic year ending on or before June 2009, 300 percent) of the poverty line.

(b) An eligible entity must assure that it will comply with all requests regarding the evaluation carried out under section 309 of the Act. Additional information regarding this evaluation can be found in the application package for this program.

(c) An eligible entity must be willing and able to work with other entities affiliated with the Federal and District governments, as well as with other organizations that might conduct activities integral to the success of the program, including, as appropriate, determining the household income of scholarship recipients and ensuring the ongoing eligibility of schools participating in the program. Additionally, an eligible entity must demonstrate how it will communicate and coordinate with the current grantee, as needed, to ensure a seamless and smooth transition between the 2008–2009 and 2009–2010 school years for families and schools participating in the scholarship program.

4. *Other: Definitions:* As used in this program:

(a) *Elementary school* means an institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under District of Columbia law.

(b) *Parent* includes a legal guardian or other person standing in *loco parentis* (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

(c) *Poverty line* means the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act) applicable to a family of the size involved.

(d) *Secondary school* means an institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under District of Columbia law, except that the term does not include any education beyond grade 12.

IV. Application and Submission Information

1. *Address To Request Application Package:* Michelle Armstrong, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W217, Washington, DC 20202–5970. Telephone: (202) 205–1729 or by e-mail: *Michelle.Armstrong@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent To Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. This e-mail notification should be sent to *Michelle.Armstrong@ed.gov*. Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit: The application narrative [Part III of the application] is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to the equivalent of no more than 25 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and

certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

3. *Submission Dates and Times:*

Applications Available: April 23, 2009.

Deadline for Notice of Intent To Apply: May 8, 2009.

Deadline for Transmittal of Applications: May 26, 2009.

Applications for grants under this program must be submitted in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions: Use of Funds.*

(a) *Scholarships.*

(1) A grantee must use grant funds to provide currently participating students who are D.C. residents and who meet the household income requirements of this program with scholarships to pay the tuition, fees, and transportation expenses, if any, to enable them to attend a participating District nonpublic elementary school or secondary school of their choice. A grantee must ensure that the amount of any tuition or fees charged by a school to a student participating in the program does not exceed the amount of tuition or fees that the school customarily charges to students who do not participate in the program. An entity that receives an award under this program will be responsible for ensuring compliance with this requirement by each participating school.

(2) A grantee may award scholarships in varying amounts (subject to paragraph (b) of this section), with larger amounts going to students with the greatest need.

(b) *Annual Limit on Amount of Scholarship:* The amount of assistance provided to any eligible student by a grantee with funds received under this program may not exceed $7,500 for any academic year.

(c) *Administrative Expenses:* A grantee may use not more than 3 percent of the amount provided under the grant each year for the administrative expenses of carrying out its program.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted in paper format by mail or hand delivery.

a. *Submission of Applications by Mail.*

If you submit your application by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.370A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

We request that you submit two additional copies of your application, in addition to the original and the required two copies (for a total of one original and four copies).

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

b. *Submission of Applications by Hand Delivery.*

If you submit your application by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.370A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

We request that you submit two additional copies of your application, in addition to the original and the required two copies (for a total of one original and four copies).

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* We are establishing the following selection criteria for the FY 2009 grant competition only in accordance with section 437(d)(2) of GEPA, 20 U.S.C. 1232(d)(2). The maximum score for all of the selection criteria is 120 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(a) *Selection of students (up to 10 points).* In determining the quality of the applicant's plan for the selection of students to receive scholarships, the Secretary considers the extent to which—

(i) The application provides a description of the lottery that would be used for selecting students to attend a participating school if more students apply to, and are accepted for enrollment by, that school than it can accommodate; and

(ii) The application provides assurances and appropriate documentation that the applicant, if funded, will cooperate with the

evaluation contractor selected by the Department and the District of Columbia Government in planning and implementing the lottery for selecting program participants.

(b) *Notification of parents (up to 10 points).* In determining the quality of the applicant's plan to notify parents of currently participating students about schools they may attend, the Secretary considers the extent to which the application provides evidence that parents will receive sufficient information about their options to allow them to make informed decisions, including, but not limited to, information on each participating school about the qualifications of its teachers; the educational philosophy and available courses and programs of the school; the achievement of the school's students; student expectations (such as uniforms, discipline policy, honor code, and required classes); and the safety and school environment of the school.

(c) *Amount of scholarship (up to 10 points).* In determining the quality of the applicant's plan for establishing the amount of a scholarship to an eligible student, the Secretary considers the extent to which the applicant's methods—

(i) Provide a mechanism to award scholarships for tuition and fees, and transportation expenses, if any, in larger amounts to those eligible students with the greatest need, provided they do not exceed the maximum annual scholarship amount; and

(ii) Ensure that the amount of tuition and fees charged by a participating school to a scholarship student under the program will not exceed the amount of tuition and fees that the school customarily charges to students who do not participate in the program.

(d) *Participating schools (up to 10 points).* In determining the quality of the applicant's plan for identifying participating nonpublic schools, the Secretary considers the extent to which the application—

(i) Describes the applicant's plan to seek out non-public elementary and secondary schools that operate lawfully in the District, to participate in the program during the 2009–2010 school year;

(ii) Describes how the applicant will ensure that participating schools will comply with the requirements of the Act and will provide the information needed for the applicant to meet the reporting requirements of the Act; and

(iii) Describes how the applicant will ensure that participating schools are financially responsible and will use the funds received under this program effectively.

(e) *Renewal of scholarships (up to 20 points).* In determining the quality of the applicant's plan for the renewal of scholarships, the Secretary considers the applicant's methods for determining the eligibility of participating students to continue in the program.

(f) *Quality of project personnel (up to 20 points).* In determining the quality of the personnel of the proposed project, the Secretary considers the qualifications, including relevant training and experience, of the project director, other key personnel, and any project consultants in such areas as—

(i) Working with schools, parents, and government officials;

(ii) Operating a scholarship program; and

(iii) Establishing and maintaining record-keeping requirements.

(g) *Organizational capability (up to 20 points).* In determining the applicant's organizational capability, the Secretary considers—

(i) The amount and quality of experience the applicant has with the types of activities it proposes to undertake in its application, such as conducting outreach, administering funds, tracking scholarships, and ensuring that scholarship funds are used for the payment of tuition and fees and transportation expenses, if any, in accordance with the Act; and

(ii) The applicant's financial soundness.

(h) *Reports (up to 10 points).* In determining the quality of the applicant's reporting plan, the Secretary considers the extent to which the applicant's plan for assembling the information and submitting activities reports, achievement reports, and reports to parents complies with the requirements under section 310 of the Act.

(i) *Collection of data (up to 10 points).* In determining the quality of the applicant's plan to collect data, the Secretary considers the extent to which the applicant documents how it will cooperate with the evaluation contractor to collect data, including, but not limited to, student and parent demographics and income, parent perception of a student's current school (including safety), parent awareness of their choice options, contact information for parents, and consent forms for ongoing data collection.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The long-term performance indicator for this program is whether, at the end of the program, the student achievement gains of participants are greater than that of students in control or comparison groups. Data for the performance measure will be collected through the program evaluation.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Michelle Armstrong, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W217, Washington, DC 20202–5970. Telephone: (202) 205–1729 or by e-mail: *Michelle.Armstrong@ed.gov.* If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in

text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 20, 2009.

James H. Shelton III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E9–9351 Filed 4–22–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

April 16, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–68–000.
Applicants: Del Mar Asset Management, L.P.
Description: Joint Application Under Section 203 of the Federal Power Act for Disposition of Jurisdictional Facilities and Request for Waivers and Expedited Consideration of Del Mar Asset Management, L.P., *et al.*
Filed Date: 04/14/2009.
Accession Number: 20090414–5142.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 5, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–316–032.
Applicants: ISO New England Inc.
Description: New England, Inc. submits its Index of Customer Report for the first quarter of 2009.
Filed Date: 04/15/2009.
Accession Number: 20090416–0010.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 6, 2009.

Docket Numbers: ER03–552–011; ER03–984–009.
Applicants: New York Independent System Operator, Inc.
Description: Status Report of New York Independent System Operator, Inc.
Filed Date: 04/15/2009.
Accession Number: 20090415–5034.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 6, 2009.

Docket Numbers: ER06–615–045.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits Attachment A—Interim Measure for Underscheduling in the Day-Ahead Market Compliance Filing *et al.*
Filed Date: 03/30/2009.
Accession Number: 20090403–0139.
Comment Date: 5 p.m. Eastern Time on Monday, April 20, 2009.

Docket Numbers: ER09–304–001.
Applicants: KCP&L Greater Missouri Operations Company.
Description: KCP&L Greater Missouri Operations Co. submits a notice of succession and Order No. 614 compliance filing.
Filed Date: 04/13/2009.
Accession Number: 20090415–0088.
Comment Date: 5 p.m. Eastern Time on Monday, May 4, 2009.

Docket Numbers: ER09–635–001; ER09–641–000.
Applicants: Southern Operating Companies; Southern Companies; PowerSouth Energy Cooperative.
Description: Southern Companies submits response to FERC's delegated letter order dated 3/25/09.
Filed Date: 04/14/2009.
Accession Number: 20090415–0102.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 5, 2009.

Docket Numbers: ER09–920–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits for acceptance, Notice of Termination of the 9/17/03 Offer of Partial Settlement with San Francisco Bay Area Rapid Transit District.
Filed Date: 03/31/2009.
Accession Number: 20090401–0020.
Comment Date: 5 p.m. Eastern Time on Friday, April 24, 2009.

Docket Numbers: ER09–985–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Original Sheet No. 1 to First Revised Electric Rate Schedule FERC No. 377.
Filed Date: 04/13/2009.
Accession Number: 20090414–0036.
Comment Date: 5 p.m. Eastern Time on Monday, May 4, 2009.

Docket Numbers: ER09–986–000.
Applicants: E.ON U.S. LLC.
Description: Kentucky Utilities Company *et al.* submits the 4/24/06 Amendment to the Agreement with Southwest Power Pool etc.
Filed Date: 04/13/2009.
Accession Number: 20090414–0039.
Comment Date: 5 p.m. Eastern Time on Monday, May 4, 2009.

Docket Numbers: ER09–987–000.
Applicants: Idaho Power Company.
Description: Idaho Power Co. submits First Revised Rate Schedule FERC No. 87.
Filed Date: 04/13/2009.
Accession Number: 20090414–0038.
Comment Date: 5 p.m. Eastern Time on Monday, May 4, 2009.

Docket Numbers: ER09–988–000; ER05–1281–009.
Applicants: NextEra Energy Duane Arnold, LLC, FPL Energy Duane Arnold, LLC.
Description: FPL Energy Duane Arnold, LLC requests acceptance of First Revised Sheet 1 *et al.* of FERC Electric Tariff, Original Volume 1.
Filed Date: 04/14/2009.
Accession Number: 20090415–0108.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 5, 2009.

Docket Numbers: ER09–989–000; ER07–904–005.
Applicants: NextEra Energy Point Beach, LLC; FPL Energy Point Beach, LLC.
Description: FPL Energy Point Beach, LLC submits First Revised Sheet 1 *et al.* of FERC Electric Tariff, Original Volume 1, Notice of Succession.
Filed Date: 04/14/2009.
Accession Number: 20090415–0110.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 5, 2009.

Docket Numbers: ER09–990–000; ER02–1838–009.
Applicants: NextEra Energy SeaBrook, LLC; FPL Energy Seabrook, LLC.
Description: FPL Energy Seabrook, LLC submits for acceptance First Revised Sheet 1 to FERC Electric Tariff, Original Volume 1.
Filed Date: 04/14/2009.
Accession Number: 20090415–0111.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 5, 2009.

Docket Numbers: ER09–991–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff to revise Schedule 30, etc.
Filed Date: 04/14/2009.
Accession Number: 20090415–0112.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 5, 2009.

Docket Numbers: ER09–992–000.
Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits for acceptance Original Service Agreement 1790 to FERC Electric Tariff, Fifth Revised Volume 1.
Filed Date: 04/14/2009.
Accession Number: 20090415–0113.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 5, 2009.

Docket Numbers: ER09–994–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits Sub. Original Service Agreement 562 with American Municipal Power-Ohio Inc.
Filed Date: 04/15/2009.
Accession Number: 20090415–0215.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 6, 2009.

Docket Numbers: ER09–995–000.
Applicants: American Electric Power Service Corporation.
Description: Indiana Michigan Power Company submits first revised Interconnection and Local Delivery Service Agreement with the City of South Haven, Michigan, designated as Service Agreement 1454.
Filed Date: 04/15/2009.
Accession Number: 20090416–0006.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 6, 2009.

Docket Numbers: ER09–996–000.
Applicants: PJM Interconnection L.L.C.
Description: PJM Interconnection, LLC submits tariff sheets adding Schedule 16 to the PJM etc.
Filed Date: 04/15/2009.
Accession Number: 20090416–0005.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 6, 2009.

Docket Numbers: ER09–998–000.
Applicants: Midwest Independent System Transmission Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits for acceptance Original Service Agreement to FERC Electric Tariff, Fourth Revised Volume 1.
Filed Date: 04/15/2009.
Accession Number: 20090416–0011.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 6, 2009.

Docket Numbers: ER09–999–000.
Applicants: Midwest Independent System Transmission Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits for acceptance, Second Revised Service Agreement 1628 *et al.* to FERC Electric Tariff, Fourth Revised Volume 1.
Filed Date: 04/15/2009.
Accession Number: 20090416–0007.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 6, 2009.

Docket Numbers: ER09–1000–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits their Interconnection Facilities Agreements with the City of Moreno Valley, FERC Electric Tariff, First Revised Volume 5 etc.
Filed Date: 04/15/2009.
Accession Number: 20090416–0003.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 6, 2009.

Take notice that the Commission received the following electric securities filings:
Docket Numbers: ES09–25–000.
Applicants: Southwest Power Pool, Inc.
Description: Application of Southwest Power Pool, Inc. under Section 204 of the Federal Power Act For An Order Authorizing the Issuance of Securities.
Filed Date: 04/10/2009.
Accession Number: 20090410–5072.
Comment Date: 5 p.m. Eastern Time on Friday, May 1, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–9317 Filed 4–22–09; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0430; FRL–8896–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for the Surface Coating of Large Household and Commercial Appliances (Renewal), EPA ICR Number 1954.04, OMB Control Number 2060–0457

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR that is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 26, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0430, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer

for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0430, which is available for public viewing online at *http://www.regulations.gov,* in-person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for the Surface Coating of Large Household and Commercial Appliances (Renewal).

ICR Numbers: EPA ICR Number 1954.04, OMB Control Number 2060–0457.

ICR Status: This ICR is scheduled to expire on June 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP), for the Surface Coating of Large Household and Commercial Appliances were proposed on December 22, 2000 (65 FR 81133) and promulgated on July 23, 2002 (67 FR 48253).

These regulations apply to existing facilities and new facilities that perform surface coating of large household and commercial appliances and related parts where the total Hazardous Air Pollutants (HAPs) emitted are greater than or equal to 10 tons per year of any one HAP; or where the total HAPs emitted are greater than or equal to 25 tons per year of any combination of HAPs.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 97 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Large household and commercial appliance manufacturers.

Estimated Number of Respondents: 90.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 28,845.

Estimated Total Annual Cost: $2,498,984, which includes: $2,326,984 in labor costs, $64,000 in annualized Capital/Start-Up costs, and $108,000 in O&M costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: April 17, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–9338 Filed 4–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0352; FRL8786–5]

Second Draft Risk and Exposure Assessment Report for Sulfur Dioxide (SO_2)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of second draft report for public review and comment.

SUMMARY: On or about March 19, 2009, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available for public review and comment a draft document titled ''Risk and Exposure Assessment to Support the Review of the SO_2 Primary National Ambient Air Quality Standards: Second Draft.'' The purpose of this draft document is to convey the approach taken to assess exposures to ambient SO_2 and to characterize associated health risks, as well as to present the results of those assessments.

DATES: Comments on the above report must be received on or before May 20, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0352, by one of the following methods:

• *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2007–0352.

• *Fax:* Fax your comments to 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2007–0352.

• *Mail: Send your comments to:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–0352.

• *Hand Delivery or Courier: Deliver your comments to:* EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0352. The 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 Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Stewart, Office of Air Quality Planning and Standards (Mailcode C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *stewart.michael@epa.gov*; telephone: 919–541–7524; fax: 919–541–0237.

General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

• Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

• Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION:

Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as ''criteria pollutants.'' The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.'' Under section 109 of the CAA, EPA establishes national ambient air quality standards (NAAQS) for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Air quality criteria have been established for the sulfur oxides (SO_X) and NAAQS have been established for sulfur dioxide (SO_2), an indicator for SO_X. Presently, EPA is reviewing the air quality criteria for SO_X and the NAAQS for SO_2. As part of its review of the NAAQS, EPA has prepared an assessment of exposures and characterization of health risks associated with ambient SO_2. Planned approaches to assessing exposures and characterizing risks were described in the document, *Sulfur Dioxide Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment.* This planning document was released for public review and comment in November 2007 and was the subject of a consultation with the Clean Air

Scientific Advisory Committee (CASAC) on December 5 and 6, 2007. Comments received from that consultation were considered in developing the ''Risk and Exposure Assessment to Support the Review of the SO_2 Primary National Ambient Air Quality Standards: First Draft,'' which was released in July 2008.

The second draft document being released at this time conveys the approach taken to assess exposures to ambient SO_2 and to characterize associated health risks, as well as to present the results of those assessments. In addition, this document also contains a staff policy assessment that considers the evidence presented in the final Integrated Science Assessment (ISA) and the exposure and risk characterization results presented in this second draft document, as they relate to the adequacy of the current SO_2 NAAQS and any potential alternative primary SO_2 standards. This draft document will be available online at: *http://www.epa.gov/ttn/naaqs/standards/so2/s_so2_cr_rea.html.*

The EPA is soliciting advice and recommendations from the CASAC by means of a review of the draft document at an upcoming public meeting of the CASAC scheduled for April 16–17, 2009 in Chapel Hill, NC. Information about this public meeting will be published as a separate notice in the **Federal Register**. Following the CASAC meeting, EPA will consider comments received from the CASAC and the public in preparing a final risk and exposure assessment report.

Dated: March 18, 2009.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. E9–9336 Filed 4–22–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

April 14, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 26, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, or an e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0636.

Title: Sections 2.906, 2.909, 2.1071, 2.1075, 2.1076, and 15.37, Equipment Authorizations—Declaration of Conformity.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,000 respondents; 8,000 responses.

Estimated Time per Response: 18 hours (average).

Frequency of Response: One-time reporting requirement, recordkeeping requirement and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154(i), 301, 302, 303(e), 303(r), 304 and 307.

Total Annual Burden: 76,000 hours.

Total Annual Cost: $12,000,000.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: No assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission requesting an extension of this information collection in order to obtain the full three year clearance from the OMB. There is no change in the reporting, recordkeeping and/or third party disclosure requirements since this was last submitted to OMB in 2006. There is no change in the estimated respondents/responses, burden hours and/or annual costs. In 1996, the Declaration of Conformity (DoC) procedure was established in a Report and Order, FCC 96–208, *In the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Deregulate the Equipment Authorization Requirements for Digital Devices.*

(a) The Declaration of Conformity equipment authorization procedure, 47 CFR 2.1071, requires that a manufacturer or equipment supplier test a product to ensure compliance with technical standards that limit radio frequency emissions.

(b) Additionally, the manufacturer or supplier must also include a DoC (with the standards) in the literature furnished with the equipment, and the equipment manufacturer or supplier must also make this statement of conformity and supporting technical data available to the FCC, at the Commission's request.

(c) The DoC procedure represents a simplified filing and reporting procedure for authorizing equipment for marketing.

(d) Finally, testing and documentation of compliance are needed to control potential interference to radio communications. The data gathering are necessary for investigating complaints

of harmful interference or for verifying the manufacturer's compliance with the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–9257 Filed 4–22–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Advisory Committee on Diversity for Communications in the Digital Age

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Advisory Committee on Diversity for Communications in the Digital Age (''Diversity Committee'') will hold a meeting on May 7th, 2009 at 10:00 a.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street, SW., Washington, DC 20554. This will be the first meeting of the Diversity Committee under its renewed charter and new membership.

DATES: May 7, 2009, 10 a.m. EST.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jamila-Bess Johnson, (202) 418–2608 or e-mail: *Jamila-Bess.Johnson@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is an organizational meeting for the membership of the Diversity Committee under the renewed charter.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. The public may submit written comments before the meeting to: Barbara Kreisman, the FCC's Designated Federal Officer for the Diversity Committee by e-mail: *Barbara.Kreisman@fcc.gov* or U.S. Postal Service Mail (Barbara Kreisman, Federal Communications Commission, Room 2–A665); or Jamila-Bess Johnson, Alternate Designated Federal Officer for the Diversity Committee by e-mail *Jamila-Bess.Johnson@fcc.gov* or U.S. Postal Service Mail (Jamila-Bess Johnson, Federal Communications Commission, Room 2A–234); or Carolyn Williams, Alternate Designated Federal Officer for the Diversity Committee by e-mail: *Carolyn.Williams@fcc.gov* or U.S. Postal Service Mail (Carolyn Williams, Federal Communications Commission, Room 4–A760). The street address for FCC headquarters is 445 12th Street, SW., Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Additional information regarding the Diversity Committee can be found at *http://www.fcc.gov/DiversityFAC*.

Federal Communications Commission,

Marlene H. Dortch,

Secretary.

[FR Doc. E9–9362 Filed 4–22–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 8, 2009.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Don Rhee, Los Angeles, California; to acquire additional voting shares of Saehan Bancorp, and thereby indirectly acquire additional voting shares of Saehan Bank, both of Los Angeles, California.

Board of Governors of the Federal Reserve System, April 20, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–9311 Filed 4–22–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 18, 2009.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Big Mac Bancshares, Inc., Hoxie, Kansas; to acquire 100 percent of the voting shares of Leonardville State Bank, Leonardville, Kansas.

2. C & M Bancshares, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of

Missouri Federal Savings Bank (to be known as 1st Cameron State Bank), both of Cameron, Missouri, upon its conversion to a commerical bank.

Board of Governors of the Federal Reserve System, April 20, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–9310 Filed 4–22–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Tribal TANF Data Report, TANF Annual Report, and Reasonable Cause/Corrective Action Documentation Process- Final.

OMB No.: 0970–0215.

Description: 42 U.S.C. 612 (Section 412 of the Social Security Act as amended by Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)), mandates that Federally-recognized Indian Tribes with approved Tribal TANF program collect and submit to the Secretary of the Department of Health and Human Services data on the recipients served by the Tribe's programs. This information includes both aggregated and disaggregated data on case characteristics and individual characteristics. In addition, Tribes that are subject to a penalty are allowed to provide reasonable cause justifications as to why a penalty should not be imposed or may develop and implement corrective compliance procedures to eliminate the source of the penalty. Finally, there is an annual report, which requires the Tribes to describe program characteristics. All of the above requirements are currently approved by OMB and the Administration for Children and Families is simply proposing to extend them without any changes.

Respondents: Indian Tribes.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Final Tribal TANF Data Report	62	4	451	111,848
Tribal TANF Annual Report	62	1	40	2,480
Tribal TANF Reasonable Cause/Corrective	62	1	60	3,720

Estimated Total Annual Burden Hours: 118,048.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 20, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–9340 Filed 4–22–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Board of Scientific Counselors, Coordinating Office for Terrorism Preparedness and Emergency Response (BSC, COTPER)

CDC is soliciting nominations for possible membership on the BSC, COTPER. This board provides advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Director, CDC, and the Director, COTPER, concerning strategies and goals for the programs and research within the divisions; conducts peer-review of scientific programs; and monitors the overall strategic direction and focus of the divisions.

Nominations are being sought for individuals who have the expertise and qualifications necessary to contribute to the accomplishment of the board's objectives. Nominees will be selected by the Secretary, HHS, or designee, from authorities knowledgeable in the fields relevant to the issues addressed by the offices and divisions within the coordinating office and related disciplines, including: Medicine, epidemiology, laboratory science, informatics, behavioral science, social science, engineering, business, and crisis leadership. Members may be invited to serve for terms of up to four years. Consideration is given to representation from diverse geographic areas, both genders, ethnic and minority groups, and the disabled. Nominees must be U.S. citizens.

The following information must be submitted for each candidate: Name, affiliation, address, telephone number, e-mail address, and current curriculum vitae. Nominations should be accompanied by a letter of recommendation stating the qualifications of the nominee and must be postmarked by May 11, 2009 to:

Matthew Jennings, BSC Coordinator, CDC, Coordinating Office for Terrorism Preparedness and Emergency Response, 1600 Clifton Road, NE., Mailstop D–44, Atlanta, Georgia 30333, Telephone (404) 639–7357.

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.

Dated: April 17, 2009.

Elaine L. Baker,

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

[FR Doc. E9–9331 Filed 4–22–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Draft National Institutes of Health Guidelines for Human Stem Cell Research Notice

SUMMARY: The National Institutes of Health (NIH) is requesting public comment on draft guidelines entitled ''National Institutes of Health Guidelines for Human Stem Cell Research'' (Guidelines).

The purpose of these draft Guidelines is to implement Executive Order 13505, issued on March 9, 2009, as it pertains to extramural NIH-funded research, to establish policy and procedures under which NIH will fund research in this area, and to help ensure that NIH-funded research in this area is ethically responsible, scientifically worthy, and conducted in accordance with applicable law. Internal NIH procedures, consistent with Executive Order 13505 and these Guidelines, will govern the conduct of intramural NIH research involving human stem cells.

These draft Guidelines would allow funding for research using human embryonic stem cells that were derived from embryos created by *in vitro* fertilization (IVF) for reproductive purposes and were no longer needed for that purpose. Funding will continue to be allowed for human stem cell research using adult stem cells and induced pluripotent stem cells. Specifically, these Guidelines describe the conditions and informed consent procedures that would have been required during the derivation of human embryonic stem cells for research using these cells to be funded by the NIH. NIH funding for research using human embryonic stem cells derived from other sources, including somatic cell nuclear transfer, parthenogenesis, and/or IVF embryos created for research purposes, is not allowed under these Guidelines.

NIH funding of the derivation of stem cells from human embryos is prohibited by the annual appropriations ban on funding of human embryo research (Consolidated Appropriations Act, 2009, Pub. L. 110–161, 3/11/09), otherwise known as the Dickey-Wicker Amendment.

According to these Guidelines, there are some uses of human embryonic stem cells and human induced pluripotent stem cells that, although those cells may come from allowable sources, are nevertheless ineligible for NIH funding.

For questions regarding ongoing NIH-funded research involving human embryonic stem cells, as well as pending applications and those submitted prior to the issuance of Final Guidelines, see the NIH Guide *http://grants.nih.gov/grants/guide/notice-files/NOT-OD-09-085.html.*

DATES: Written comments must be received by NIH on or before May 26, 2009.

ADDRESSES: The NIH welcomes public comment on the draft Guidelines set forth below. Comments may be entered at: *http://nihoerextra.nih.gov/stem_cells/add.htm.* Comments may also be mailed to: NIH Stem Cell Guidelines, MSC 7997, 9000 Rockville Pike, Bethesda, Maryland 20892–7997. Comments will be made publicly available, including any personally identifiable or confidential business information they contain.

SUPPLEMENTARY INFORMATION: On March 9, 2009, President Barack H. Obama issued Executive Order 13505: *Removing Barriers to Responsible Scientific Research Involving Human Stem Cells.* The Executive Order states that the Secretary of Health and Human Services, through the Director of NIH, may support and conduct responsible, scientifically worthy human stem cell research, including human embryonic stem cell research, to the extent permitted by law.

The purpose of these draft Guidelines is to implement Executive Order 13505, issued on March 9, 2009, as it pertains to extramural NIH-funded research, to establish policy and procedures under which NIH will fund research in this area, and to help ensure that NIH-funded research in this area is ethically responsible, scientifically worthy, and conducted in accordance with applicable law. Internal NIH procedures, consistent with Executive Order 13505 and these Guidelines, will govern the conduct of intramural NIH research involving human stem cells.

Long-standing Department of Health and Human Services regulations for Protection of Human Subjects, 45 CFR part 46, establish safeguards for individuals who are the sources of many human tissues used in research, including non-embryonic human adult stem cells and human induced pluripotent stem cells. When research involving human adult stem cells or induced pluripotent stem cells constitutes human subject research, Institutional Review Board review may be required and informed consent may need to be obtained per the requirements detailed in 45 CFR part 46. Applicants should consult *http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.htm.*

As described in these draft Guidelines, human embryonic stem cells are cells that are derived from human embryos, are capable of dividing without differentiating for a prolonged period in culture, and are known to develop into cells and tissues of the three primary germ layers. Although human embryonic stem cells are derived from embryos, such stem cells are not themselves human embryos.

Studies of human embryonic stem cells may yield information about the complex events that occur during human development. Some of the most serious medical conditions, such as cancer and birth defects, are due to abnormal cell division and differentiation. A better understanding of the genetic and molecular controls of these processes could provide information about how such diseases arise and suggest new strategies for therapy. Human embryonic stem cells may also be used to test new drugs. For example, new medications could be tested for safety on differentiated somatic cells generated from human embryonic stem cells.

Perhaps the most important potential use of human embryonic stem cells is the generation of cells and tissues that could be used for cell-based therapies. Today, donated tissues and organs are often used to replace ailing or destroyed tissue, but the need for transplantable tissues and organs far outweighs the available supply. Stem cells, directed to differentiate into specific cell types, offer the possibility of a renewable source of replacement cells and tissues to treat diseases and conditions, including Parkinson's disease, amyotrophic lateral sclerosis, spinal cord injury, burns, heart disease, diabetes, and arthritis.

NIH currently funds ongoing research involving human embryonic stem cells as detailed under prior Presidential policy. Under that policy, Federal funds have been used for research on human embryonic stem cells where the derivation process was initiated prior to 9 p.m. EDT August 9, 2001, the embryo was created for reproductive purposes, the embryo was no longer needed for these purposes, informed consent was obtained for the donation of the embryo, and no financial inducements were provided for donation of the embryo.

These draft Guidelines would allow funding for research using only those human embryonic stem cells that were derived from embryos created by *in vitro* fertilization (IVF) for reproductive purposes and were no longer needed for that purpose. Funding will continue to be allowed for human stem cell research using adult stem cells and induced pluripotent stem cells. Specifically, these Guidelines describe the conditions and informed consent procedures that would have been required during the derivation of human embryonic stem cells for research using these cells to be funded by the NIH. NIH funding for research using human embryonic stem cells derived from other sources, including somatic cell nuclear transfer, parthenogenesis, and/or IVF embryos created for research purposes, is not allowed under these Guidelines.

Please note that, for NIH funded research using the permitted human embryonic stem cells, the requirements of the Department's protection of human subjects regulations, 45 CFR part 46, may or may not apply, depending on the nature of the research. For further information, see *Human Embryonic Stem Cells, Germ Cells and Cell Derived Test Articles:* OHRP Guidance for Investigators and Institutional Review Boards.

NIH funding of the derivation of stem cells from human embryos is prohibited by the annual appropriations ban on funding of human embryo research (Consolidated Appropriations Act, 2009, Pub. L. 110–161, 3/11/09), otherwise known as the Dickey-Wicker Amendment.

According to these Guidelines, there are some uses of human embryonic stem cells that, although those cells may come from allowable sources, are nevertheless ineligible for NIH funding.

In developing these draft Guidelines, the NIH consulted its Guidelines issued in 2000, as well as the thoughtful guidelines developed by other national and international committees of scientists, bioethicists, patient advocates, physicians and other stakeholders, including the U.S. National Academies, the International Society for Stem Cell Research, and others.

As directed by Executive Order 13505, the NIH shall review and update these Guidelines periodically, as appropriate.

The Draft Guidelines Follow:

National Institutes of Health Guidelines for Human Stem Cell Research

I. Scope of Guidelines

These Guidelines describe the circumstances under which human embryonic stem cells are eligible for use in extramural NIH-funded research, and they also include a section on uses of human embryonic stem cells or human induced pluripotent stem cells that are ineligible for NIH funding.

For the purpose of these Guidelines, ''human embryonic stem cells'' are cells that are derived from human embryos, are capable of dividing without differentiating for a prolonged period in culture, and are known to develop into cells and tissues of the three primary germ layers. Although human embryonic stem cells are derived from embryos, such stem cells are not themselves human embryos.

II. Guidelines for Eligibility of Human Embryonic Stem Cells for Use in Research

A. The Executive Order: Executive Order 13505, *Removing Barriers to Responsible Scientific Research Involving Human Stem Cells,* states that the Secretary of the Department of Health and Human Services (DHHS), through the Director of the NIH, may support and conduct responsible, scientifically worthy human stem cell research, including human embryonic stem cell research, to the extent permitted by law.

B. Eligibility of Human Embryonic Stem Cells Derived from Human Embryos: Human embryonic stem cells may be used in research using NIH funds, if the cells were derived from human embryos that were created for reproductive purposes, were no longer needed for this purpose, were donated for research purposes, and for which documentation for all of the following can be assured:

1. All options pertaining to use of embryos no longer needed for reproductive purposes were explained to the potential donor(s).

2. No inducements were offered for the donation.

3. A policy was in place at the health care facility where the embryos were donated that neither consenting nor refusing to donate embryos for research would affect the quality of care provided to potential donor(s).

4. There was a clear separation between the prospective donor(s)'s decision to create human embryos for reproductive purposes and the prospective donor(s)'s decision to donate human embryos for research purposes.

5. At the time of donation, consent for that donation was obtained from the individual(s) who had sought reproductive services. That is, even if potential donor(s) had given prior indication of their intent to donate to research any embryos that remained after reproductive treatment, consent for the donation should have been given at the time of the donation. Donor(s) were informed that they retained the right to withdraw consent until the embryos were actually used for research.

6. Decisions related to the creation of human embryos for reproductive purposes were made free from the influence of researchers proposing to derive or utilize human embryonic stem cells in research. Whenever it was practicable, the attending physician responsible for reproductive clinical care and the researcher deriving and/or proposing to utilize human embryonic stem cells should not have been the same person.

7. Written informed consent was obtained from individual(s) who sought reproductive services and who elected to donate human embryos for research purposes. The following information, which is pertinent to making the decision of whether or not to donate human embryos for research purposes, was in the written consent form for donation and discussed with potential donor(s) in the informed consent process:

a. A statement that donation of the embryos for research was voluntary;

b. A statement that donor(s) understood alternative options pertaining to use of the embryos;

c. A statement that the embryos would be used to derive human embryonic stem cells for research;

d. Information about what would happen to the embryos in the derivation of human embryonic stem cells for research;

e. A statement that human embryonic stem cells derived from the embryos might be maintained for many years;

f. A statement that the donation was made without any restriction or direction regarding the individual(s) who may receive medical benefit from the use of the stem cells;

g. A statement that the research was not intended to provide direct medical benefit to the donor(s);

h. A statement as to whether or not information that could identify the donor(s) would be retained prior to the derivation or the use of the human embryonic stem cells (relevant guidance from the DHHS Office for Human Research Protections (OHRP) should be followed, as applicable; see OHRP's *Guidance for Investigators and Institutional Review Boards Regarding Research Involving Human Embryonic Stem Cells, Germ Cells, and Stem Cell-Derived Test Articles* and *Guidance on Research Involving Coded Private Information or Biological Specimens,* or successor guidances); and

i. A statement that the results of research using the human embryonic stem cells may have commercial potential, and a statement that the donor(s) would not receive financial or any other benefits from any such commercial development.

C. Prior to the use of NIH funds: Funding recipients must ensure that: (1) The human embryonic stem cells were derived consistent with sections II.A and B of these Guidelines; and (2) the grantee institution maintains appropriate documentation demonstrating such consistency in accordance with 45 CFR 74.53, which also details rights of access by NIH. The responsible grantee institutional official must provide assurances with respect to (1) and (2) when endorsing applications and progress reports submitted to NIH for projects that utilize these cells.

III. Research Using Human Embryonic Stem Cells and/or Human Induced Pluripotent Stem Cells That, Although the Cells May Come From Allowable Sources, Is Nevertheless Ineligible for NIH Funding

This section governs research using human embryonic stem cells and human induced pluripotent stem cells, *i.e.,* human cells that are capable of dividing without differentiating for a prolonged period in culture, and are known to develop into cells and tissues of the three primary germ layers. There are some uses of these cells that, although they may come from allowable sources, are nevertheless ineligible for NIH funding, as follows:

A. Research in which human embryonic stem cells (even if derived according to these Guidelines) or human induced pluripotent stem cells are introduced into non-human primate blastocysts.

B. Research involving the breeding of animals where the introduction of human embryonic stem cells (even if derived according to these Guidelines) or human induced pluripotent stem cells may have contributed to the germ line.

IV. Other Non-Allowable Research

A. NIH funding of the derivation of stem cells from human embryos is prohibited by the annual appropriations ban on funding of human embryo research (Consolidated Appropriations Act, 2009, Pub. L. 110–161, 3/11/09), otherwise known as the Dickey-Wicker Amendment.

B. NIH funding for research using human embryonic stem cells derived from other sources, including somatic cell nuclear transfer, parthenogenesis, and/or IVF embryos created for research purposes, is not allowed under these Guidelines.

Dated: April 17, 2009.

Raynard S. Kington,

Acting Director, NIH.

[FR Doc. E9–9313 Filed 4–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

On-Demand In Vitro Assembly of Protein Microarrays

Description of Technology: Protein microarrays are becoming an indispensable biomedical tool to facilitate rapid high-throughput detection of protein-protein, protein-drug and protein-DNA interactions for large groups of proteins. The novel Protein Microarray of this invention is essentially a DNA microarray that becomes a protein microarray on demand and provides an efficient systematic approach to the study of protein interactions and drug target identification and validation, thereby speeding up the discovery process. The technology allows a large number of proteins to be synthesized and immobilized at their individual site of expression on an ordered array without the need for protein purification. As a result, proteins are ready for subsequent use in binding studies and other analysis.

The Protein Microarray is based on high affinity and high specificity of the protein-nucleic acid interaction of the Tus protein and the Ter site of E. coli. The DNA templates are arrayed on the microarray to perform dual function: (1) Synthesizing the protein in situ (cell-free protein synthesis) in the array and (2) at the same time capturing the protein it synthesizes by DNA-protein interaction. This method utilizes an expression vector containing a DNA sequence which serves a dual purpose: (a) Encoding proteins of interest fused to the Tus protein for in vitro synthesis of the protein and (b) encoding the Ter sequence, which captures the fusion protein through the high affinity interaction with the Tus protein.

Applications:

- Simultaneous analysis of interactions of many proteins with other proteins, antibodies, nucleic acids, lipids, drugs, etc, in a single experiment.
- Efficient discovery of novel drugs and drug targets.

Development Status: The technology is in early stages of development.

Inventors: Deb K. Chatterjee, Kalavathy Sitaraman, James L. Hartley, David J. Munroe, Cassio Baptista (NCI).

Patent Status:

U.S. Patent Application No. 11/252,735 filed 19 Oct 2005 (HHS Reference No. E–244–2005/0–US–01).

U.S. Patent Application No. 12/105,636 filed 18 Apr 2008 (HHS Reference No. E–244–2005/1–US–02).

Licensing Status: Available for licensing.

Licensing Contact: Jeffrey A. James, Ph.D.; 301–435–5474; *jeffreyja@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Protein Expression Laboratory is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or

commercialize in vitro assembly of protein microarrays. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Methods and Compositions for High-Throughput Detection of Protein/Protein Interactions Ex Vivo

Description of Technology: This invention relates to methods and compositions for the high-throughput detection of protein-protein interactions using a lambda phage display system. One of the central challenges in systems biology is defining the interactome, or set of all protein-protein interactions within a living cell, as a basis for understanding biological processes for early diagnosis of disease and for drug development. The invention provides a novel proteomic toolbox for high-throughput medical research based in combining phage lambda protein display and recent advances in manipulation of the phage's genome. The method uses the bacteriophage lambda vector to express proteins on its surface, and is based on the use of mutant phage vectors such that only interacting phages will be able to reproduce and co-infect an otherwise non-permissive host and produce plaques.

Application: The invention allows for the characterization of bacteriophage display libraries that could be easily adapted to be used in large-scale functional protein chip assays.

Inventors: Sankar Adhya and Amos Oppenheim (NCI).

Patent Status: U.S. Patent Application No. 11/719,925 filed 22 May 2007 (HHS Reference No. E–264–2004/0–US–03).

Licensing Status: Available for licensing.

Licensing Contact: Jeffrey A. James, PhD; 301–435–5474; *jeffreyja@mail.nih.gov.*

Therapeutic Methods Based on In Vivo Modulation of the Production of Interferon Gamma

Description of Technology: The technology offered for licensing is in the field of Therapeutics. More specifically, the technology relates to biological ligands and their use as modulators of the production of Interferon gamma as a means to treat a broad spectrum of diseases. The invention describes and claims antibodies and other ligands that can stimulate Natural Killer (NK) immune cells to produce Interferon gamma which contributes to the combat against foreign pathogens. Conversely, the invention also describes and claims methods that can inhibit such Interferon gamma production for treatment of diseases where excess of Interferon is not desirable. The invention also describes methods and assays to identify both inducing and inhibiting ligands.

The license agreement may include biological materials, such as monoclonal antibodies that were made and identified by the inventors as Interferon gamma stimulators.

Interferon-gamma is a potent antiviral and antimicrobial substance produced by natural killer (NK) white blood cells. NK cells are activated during infections by viruses and by other intracellular pathogens, such as parasites and bacteria. Soluble substances, such as interleukins, produced by infected cells activate NK cells to secrete interferon-gamma. Injection of interleukins into patients to stimulate NK cells to secrete interferon-gamma has not been a successful therapeutic approach because of the toxicity involved. The invention is based on the discovery by the inventors that activation of the KIR2DL4 receptor expressed by all NK cells stimulates them to produce interferon-gamma. The invention claims monoclonal antibodies and derivatives thereof, as well as natural and synthetic ligands of KIR2DL4 that can be utilized to stimulate interferon-gamma production by NK cells without any other stimulus. The possibility of inducing interferon-gamma production by NK cells without the toxic side effects of interleukins could be an effective therapy for various types of infections and of cancers. Also claimed in the invention are methods of treating various cancers and viral infections, methods of treating autoimmune disease, and methods of administration of the antibody or derivatives thereof. Certain diseases benefit from reduction in the amount of Interferon gamma. The instant invention claims such ligands that are capable of inhibiting KIR2DL4 from producing interferon gamma. It also describes methods of identifying such ligands.

Applications:

- Therapeutics of infectious diseases, cancer and autoimmune diseases
- The mAbs can be used as research reagents

Advantages: Absence of toxicity as compared with current methods such as IL–2 treatment.

Development Status: The inventors generated monoclonal antibodies that have demonstrated stimulation of Interferon gamma production. Proof of concept has been demonstrated.

Market: The technology lends itself to treatment of viral and microbial-caused infectious disease and possibly as therapy for certain cancers and autoimmune disease. Collectively, these medical areas represent a huge market of multi billion dollars and thus significant commercial opportunities.

Inventors: Eric O. Long and Sumati Rajagopalan (NIAID).

Relevant Publications:

1. S Rajagopalan, J Fu, EO Long. Cutting edge: induction of IFN-gamma production but not cytotoxicity by the killer cell Ig-like receptor KIR2DL4 (CD158d) in resting NK cells. J Immunol. 2001 Aug 15;167(4):1877–1881.

2. A Kikuchi-Maki, TL Catina, KS Campbell. Cutting edge: KIR2DL4 transduces signals into human NK cells through association with the fc receptor gamma protein. J Immunol. 2005 Apr 1;174(7):3859–3863.

3. S Rajagopalan, YT Bryceson, SP Kuppusamy, DE Geraghty, A van der Meer, I Joosten, EO Long. Activation of NK cells by an endocytosed receptor for soluble HLA–G. PLoS Biol 2006 Jan;4(1):e9.

Patent Status: U.S. Patent 7,435,801 issued 14 Oct 2008 (HHS Reference No. E–255–2000/0–US–03); U.S. Patent Application No. 12/249,703 filed 10 Oct 2008 (HHS Reference No. E–255–2000/0–US–04); both entitled ''Antibodies and Other Ligands Directed Against KIR2DL4 Receptor for Production of Interferon-Gamma''.

Licensing Status: Available for licensing. Monoclonal antibodies made by the inventors and identified as stimulators may be available and provided with the license agreement.

Licensing Contacts: Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov;* Rung C. Tang, JD, LLM; 301–435–5031; *tangrc@mail.nih.gov.*

Dated: April 17, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–9348 Filed 4–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with

35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Identification of Subjects Likely To Benefit From Copper Treatment

Description of Technology: Menkes disease is an infantile onset X-linked recessive neurodegenerative disorder caused by deficiency or dysfunction of a copper-transporting ATPase, ATP7A. The clinical and pathologic features of this condition reflect decreased activities of enzymes that require copper as a cofactor, including dopamine-β-hydrolase, cytochrome c oxidase and lysyl oxidase. Recent studies indicate that ATP7A normally responds to N-methyl-D-aspartate receptor activation in the brain, and an impaired response probably contributes to the neuropathology of Menkes disease. Affected infants appear healthy at birth and develop normally for 6 to 8 weeks. Subsequently, hypotonia, seizures and failure to thrive occur and death by 3 years of age is typical. Occipital horn syndrome (OHS) is also caused by mutations in the copper transporting ATPase ATP7A, although its symptoms are milder than Menkes syndrome, including occipital horns and lax skin and joints.

Treatment with daily copper injections may improve the outcome in Menkes disease if commenced within days after birth; however, newborn screening for this disorder is not available and early detection is difficult because clinical abnormalities in affected newborns are absent or subtle. Moreover, the usual biochemical markers (low serum copper and ceruloplasmin) are unreliable predictors in the neonatal period, since levels in healthy newborns are low and overlap with those in infants with Menkes disease. Although molecular diagnosis is available, its use is complicated by the diversity of mutation types and the large size of ATP7A (about 140kb). Thus, there is a need for improved methods for early detection of infants with Menkes disease or OHS in order to improve outcomes.

This technology relates to methods of identifying individuals who may benefit from treatment with copper, particularly those having Menkes disease or Occipital Horn Syndrome.

Inventor: Stephen G. Kaler (NICHD).

Publication: SG Kaler, CS Holmes, DS Goldstein, JR Tang, SC Godwin, A Donsante, CJ Liew, S Sato, N Patronas. Neonatal diagnosis and treatment of Menkes disease. N Engl J Med. 2008 Feb 7;358(6):605–614.

Patent Status: PCT Application No. PCT/US2008/078966 filed 06 Oct 2008 (HHS Reference No. E–186–2008/0–PCT–01).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@hhs.nih.gov*.

Collaborative Research Opportunity: The National Institute of Child Health and Human Development, Division of Intramural Research, Molecular Medicine Program, Unit on Pediatric Genetics, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize population-based newborn screening for Menkes disease and related disorders of copper transport in order to identify subjects likely to benefit from copper injections and other treatments. Please contact Alan Hubbs, PhD at 301–594–4263 or *hubbsa@mail.nih.gov* for more information.

Polyclonal Antibody Against Bloom's Syndrome Protein (BLM) for Research and Diagnostic Use

Description of Technology: Investigators at the National Institutes of Health have generated a polyclonal antibody against Bloom's syndrome protein (BLM). The BLM protein is a DNA helicase enzyme and a key component of the DNA damage response signaling pathway. Several protein kinases including ATM, DNA–PK, and ATR can mediate the phosphorylation of BLM. The polyclonal antibody is generated by using a phosphorylated peptide belonging to the N-terminus of BLM. The antibody shows a rapid phosphorylation of BLM on threonine 99 (T99p-BLM) following DNA damage by anti-cancer agents and could serve as a therapeutic marker of drug action on DNA. The antibody is also useful for microscopic and biochemical analysis of DNA damage signaling.

Applications:

- A therapeutic marker of drug action on DNA
- A diagnostic indicator of inherent genomic instability

Inventors: Yves Pommier and V. Ashutosh Rao (NCI)

Patent Status: HHS Reference No. E–053–2006/0—Research Tool. Patent protection is not being sought for this technology.

Licensing Status: Threonine 99 specific polyclonal antibody against the BLM protein is available for licensing.

Licensing Contact: Betty Tong, PhD; 301–594–6565; *tongb@mail.nih.gov*.

Dated: April 16, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–9345 Filed 4–22–09; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, April 28, 2009, 1 p.m. to April 28, 2009, 4 p.m., National Institutes of Health, Bethesda, MD which was published in the **Federal Register** on April 6, 2009, 7415501.

The meeting will be held April 29, 2009. The meeting is closed to the public.

Dated: April 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–9204 Filed 4–22–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

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

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Secondary Data Analysis Review.
Date: May 20, 2009.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.
Contact Person: Nadine Rogers, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–402–2105, *rogersn2@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Exploratory Translational Centers on Clinical Neurobiology.
Date: May 28, 2009.
Time: 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Sofitel Washington DC Lafayette Square, 806 15th Street, NW., Washington, DC 20005.
Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Behavioral Pharmacology and Genetics: Translating and Targeting Individual Differences.
Date: June 4, 2009.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Omni Hotel, 2500 Calvert Street NW., Washington, DC 20037.
Contact Person: Scott Chen, PhD, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892, 301–443–9511, *chensc@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Centers Review.
Date: June 8–11, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont, Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–451–4530, *elazarwe@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–9210 Filed 4–22–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

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

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

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ESRD Endocrinopathy.
Date: May 18, 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; Immunogenetics of Human Diabetes.
Date: June 16, 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: 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; Training Applications.
Date: June 30, 2009.
Time: 2 p.m. to 5 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: July 14, 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 Democrac 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: April 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–9341 Filed 4–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

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

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel. *PAR–08–261:* Research on Emergency Medical Services for Children.

Date: May 12–13, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Suzanne Ryan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, Bethesda, MD 20892. (301) 435–1712. *ryansj@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences. Integrated Review Group. Oral, Dental and Craniofacial Sciences Study Section.

Date: May 27–28, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hilton Alexandria Old Town, 1767 King Street, Salon A/B, Alexandria, VA 22314.

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814,Bethesda, MD 20892. 301–451–1327. *tthyagar@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems. Integrated Review Group. Clinical and Integrative Gastrointestinal Pathobiology Study Section.

Date: May 29, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892. 301–435–1778. *khanm@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences. Integrated Review Group. Lung Injury, Repair, and Remodeling Study Section.

Date: June 2–3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Seattle Hotel, 401 Lenora Street, Seattle, WA 98121.

Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892. *301–594–1321. diramig@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group. Molecular and Integrative Signal Transduction Study Section.

Date: June 2, 2009.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Raya Mandler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892. (301) 402–8228. *rayam@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience. Integrated Review Group. Neurobiology of Learning and Memory Study Section.

Date: June 2–3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892. (301) 435–1242. *driscolb@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience. Integrated Review Group. Somatosensory and Chemosensory Systems Study Section.

Date: June 2–3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892. 301–435–1255. *kenshalod@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–9208 Filed 4–22–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

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

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Allergy and Infectious Diseases Special Emphasis Panel, Non-Human Primate Reagent Resource.

Date: May 14, 2009.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3200, Bethesda, MD 20817.

Contact Person: Ellen S. Buczko, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@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: April 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–9349 Filed 4–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Board Meeting Times and Dates (All times are Mountain Time):

9 a.m.–5 p.m., May 12, 2009.

9 a.m.–3:45 p.m., May 13, 2009.

Public Comment Times and Dates (All times are Mountain Time):

7 p.m.–8 p.m., May 12, 2009.

4 p.m.–5 p.m., May 13, 2009.

Place: Holiday Inn Amarillo Hotel, 1911 I–40 East, Amarillo, TX 79102; Phone: (806) 372–8741; Fax: (806) 372–7045. Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537 with a pass code of 9933701.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 100 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program (EEOICP) Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the Advisory Board meeting includes: NIOSH Program Status Update; Department of Labor (DOL) Update; Department of Energy (DOE) Update; Board Security Plan; Special Exposure Cohort (SEC) Petitions for: Linde Ceramics Plant (Residual Period); Standard Oil Development Company of New Jersey; Blockson Chemical Company (radon-related dose reconstruction); and Dow Chemical Company (Madison, Illinois); Special Exposure Cohort (SEC) Petition Status Updates; Work Group reports; Reports of the Subcommittees on Dose Reconstruction Reviews and Procedures Reviews; and Board Future Plans and Meetings.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted according to the policy provided below. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Policy on Redaction of Board Meeting Transcripts (Public Comment), (1) if a person making a comment gives his or her name, no attempt will be made to redact that name. (2) NIOSH will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comment; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** Notice that announces Board and Subcommittee meetings. (3) If an individual in making a statement reveals personal information (*e.g.*, medical information) about themselves that information will not usually be redacted. The NIOSH FOIA coordinator will, however, review such revelations in accordance with the Freedom of Information Act and the Federal Advisory Committee Act and if deemed appropriate, will redact such information. (4) All disclosures of information concerning third parties will be redacted. (5) If it comes to the attention of the Designated Federal Officer (DFO) that an individual wishes to share information with the Board but objects to doing so in a public forum, the DFO will work with that individual, in accordance with the Federal Advisory Committee Act, to find a way that the Board can hear such comments.

Contact Person for More Information: Theodore Katz, M.P.A., Executive Secretary, NIOSH, CDC, 1600 Clifton Road, MS E–20, Atlanta, GA 30333, Telephone (513)533–6800, Toll Free 1(800) CDC–INFO, e-mail *ocas@cdc.gov*.

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.

Dated: April 16, 2009.

Elaine L. Baker,

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

[FR Doc. E9–9332 Filed 4–22–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Public Teleconference Regarding Licensing and Collaborative Research Opportunities for: A Double-Barreled Attack: Azatoxins, A New Hope for Treating Cancer

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

Technology Summary

This technology describes a novel class of Topoisomerase II (top2) inhibitors that are useful in treating cancer. Drugs that inhibit the top2 enzyme are among the most active anticancer agents discovered. However, many of the currently available inhibitors produce toxic side effects, have poor pharmacokinetics, or eventually become ineffective because malignant cells readily acquire resistance. Therefore, there is a need for developing new top2 inhibitor drugs that will overcome these limitations.

Azatoxin and its derivatives, which are derived by combining two parent compounds etoposide and ellipticine, are the first compounds rationally designed as inhibitors of top2. Azatoxins are also potent inhibitors of tubulin polymerization. These two anti-cancer activities can be successfully separated by synthesizing azatoxin derivatives to yield compounds which can be pharmacologically advantageous against tumor proliferation. The azatoxin platform represents an unexploited class of top2 inhibitors that could be developed into especially potent chemotherapeutics.

Competitive Advantage of Our Technology

Currently, several top2 inhibitors are approved for clinical use; however, they produce serious side effects. Etoposide, for example, causes problems with myelosuppression, drug resistance, and has poor bioavailability. Moreover, it appears to have carcinogenic properties as it has been linked to the development of acute myelogenous leukemia—an effect also observed with mitoxantrone. Anthracyclines, like doxorubicin, have the same limitations as etoposide, but they also possess cardiotoxic effects. Azatoxins have the potential to be developed into chemotherapeutics that outperform these currently used top2 inhibitors.

Azatoxins have been substantially characterized through years of pre-clinical research demonstrating that

they possess properties from both of its parental compounds, etoposide and ellipticine. They act by stabilizing the top2–DNA cleavage complex, like etoposide does, instead of inhibiting top2 catalytic activity, the mechanism by which ellipticine acts. With regard to DNA cleavage activity, azatoxins show similar activity to etoposide. In addition to acting as a top2 inhibitor, azatoxin is also a potent inhibitor of tubulin polymerization.

The anti-cancer activity of azatoxins has been validated by cell line screening. The Developmental Therapeutics Program (DTP) of the National Cancer Institute (NCI) has tested azatoxins in its tumor cell panel and established their effectiveness against disseminated leukemia and localized tumors, such as non-small cell lung and colon cancer. These results are very encouraging showing that certain azatoxin derivatives are 100 times more active than etoposide, which is the common top2 inhibitor used in chemotherapy. Azatoxins are a novel class of potent top2 and/or tubulin inhibitors that could outperform current chemotherapeutic agents.

Technology Description

Topoisomerase enzymes are critical for normal cell division because they prevent tangles and knots from forming during DNA replication by cleaving and religating DNA. Several compounds have been discovered that block topoisomerases and stop its ability to religate DNA resulting in an increased number of double strand DNA breaks that kill the cell. These inhibitors are especially effective against rapidly dividing malignant cells that express high levels of top2, which represents a main reason these top2 enzymes have become an important therapeutic target. The problem is that currently used drugs are limited by their toxicity, insolubility, and their susceptibility to induce drug resistance.

In an effort to produce top2 inhibitors with increased therapeutic efficiency, well established top2 inhibitors were compared by molecular modeling to produce a composite top2 inhibitor pharmacophore of the diverse inhibitors. Based on this model, azatoxin was designed as an analogue hybrid of etoposide and ellipticine. Subsequently, several modifications of azatoxin have been synthesized to generate derivatives, such as anilinoazatoxins, which have improved pharmacological profiles.

Market

Despite further discoveries leading to a greater understanding and treating of cancer, it continues to be a burden to the public health. After heart disease, cancer is the most common cause of death in the United States. In 2008, it was estimated that about 565,650 Americans were expected to die of cancer. Although, the incidence of cancer has been dropping over the years, it was estimated that over 1.4 million Americans would be diagnosed with cancer in 2008.

Cancer is not only a health burden but also a financial burden to the country. The NIH estimated the overall cost of cancer in 2007 to be $219.2 billion dollars with $89 billion attributable to direct medical costs. It is expected that cancer will continue to be a public health problem for the foreseeable future which prompts the need for the development of new therapeutics.

Chemotherapy is still the standard approach for treating cancers even though there were high expectations that targeted therapeutics would become the preferred drugs in cancer treatment. Current topoisomerase inhibitors have demonstrated to be effective chemotherapy drugs and they continue being developed for use in combination therapy with targeted therapeutics. However, top2 inhibitors need to be improved in order to overcome their limitations. A next-generation top2 inhibitor like azatoxins has potential in meeting this need.

Patent Estate

The National Institutes of Health holds a substantial portfolio of patents in U.S., Europe, Canada, and Australia which claim compositions of azatoxin and its derivatives, pharmaceutical formulations, and methods of use for chemotherapy.

The portfolio includes the following issued patents:

I. United States Patent No. 5,622,960 entitled ''Topoisomerase II inhibitors and therapeutic uses therefor'' issued April 22, 1997 (HHS Ref. No. E–119–1992/1–US–01).

II. United States Patent No. 5,747,520 entitled ''Topoisomerase II inhibitors and therapeutic uses therefor'' issued May 5, 1998 (HHS Ref. No. E–119–1992/1–US–17).

III. European Patent No. 0665846 entitled ''Topoisomerase II inhibitors and therapeutic uses therefor'' issued July 29, 1998 (HHS Ref. No. E–119–1992/1–EP–10) validated in Austria, Belgium, Denmark, France, Germany, Great Britain, Ireland, Italy, Luxembourg, Switzerland, and The Netherlands.

IV. Canadian Patent No. 2147608 entitled ''Topoisomerase II inhibitors and therapeutic uses therefor'' issued December 12, 2006 (HHS Ref. No. E–119–1992/1–CA–06).

V. Australian Patent No. 676511 entitled ''Topoisomerase II inhibitors and therapeutic uses therefor'' issued June 13, 1997 (HHS Ref. No. E–119–1992/1–AU–04).

Next Step: Teleconference

There will be a teleconference where the principal investigator, Dr. Yves Pommier, will explain this technology. Licensing and collaborative research opportunities will also be discussed. If you are interested in participating in this teleconference please call or e-mail Samuel Bish; (301) 435–5282; *bishse@mail.nih.gov.* The NIH Office of Technology Transfer (OTT) will then e-mail you the date, time, and number for the teleconference.

Dated: April 16, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–9344 Filed 4–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2006–0037]

Expansion of Global Entry Pilot Program

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: U.S. Customs and Border Protection (CBP) is currently conducting an international trusted traveler pilot program, referred to as Global Entry, at seven U.S. airports. This document announces that pursuant to an arrangement between the United States and the Netherlands, CBP is expanding eligibility for participation in the Global Entry pilot to include citizens of the Netherlands who participate in Privium, an expedited travel program in the Netherlands, and who otherwise satisfy the requirements for participation in Global Entry. Currently, eligibility is limited to U.S. citizens, U.S. nationals, and U.S. lawful permanent residents (LPRs). Pursuant to this same arrangement, U.S. citizens who participate in the Global Entry pilot will have the option to also apply for participation in Privium.

DATES: *Effective Dates:* Applications for the Global Entry pilot are currently

being accepted from U.S. citizens, U.S. nationals, and U.S. lawful permanent residents and will be accepted for the duration of the pilot. The expansion of eligibility to qualified citizens of the Netherlands will occur on April 23, 2009. Applications will be accepted from qualified citizens of the Netherlands beginning April 23, 2009. Comments concerning this notice and all aspects of the announced pilot may also be submitted throughout the duration of the Global Entry pilot.

ADDRESSES: You may submit comments, identified by ''USCBP–2006–0037,'' by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Border Security Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 9th Street, NW., Washington, DC 20229.

Instructions: All submissions received must include the agency name, document title, and docket number (USCBP–2006–0037) for this notice. All comments received will be posted without change *to http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

Applications for the Global Entry pilot are available through the Global On-Line Enrollment System (GOES) at *http://www.globalentry.gov*. Applications must be completed and submitted electronically.

FOR FURTHER INFORMATION CONTACT: Fiorella Michelucci, Office of Field Operations, (202) 344–2564.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** (73 FR 19861) on April 11, 2008, CBP announced an international trusted traveler pilot program, then referred to as International Registered Traveler (IRT) program, which was scheduled to commence operations at three initial U.S. airports on June 10, 2008. In a subsequent notice published in the **Federal Register** (73 FR 30416) on May 27, 2008, CBP changed the name of the pilot program from IRT to Global Entry and moved up the starting date to June 6, 2008.

The Global Entry pilot program allows for the expedited clearance of pre-approved, low-risk travelers into the United States. The initial **Federal Register** notice published on April 11, 2008 contained a detailed description of the program, the eligibility criteria and the application and selection process, and the initial airport locations: John F. Kennedy International Airport, Jamaica, New York, Terminal 4 (JFK); the George Bush Intercontinental Airport, Houston, Texas (IAH); and the Washington Dulles International Airport, Sterling, Virginia (IAD). CBP chose these initial airports due to the large numbers of travelers that arrive at those locations from outside the United States.

On August 13, 2008, in a notice published in the **Federal Register** (73 FR 47204), CBP announced that the pilot had expanded to include all terminals at JFK and four additional airports: Los Angeles International Airport, Los Angeles, California (LAX); Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia (ATL); Chicago O'Hare International Airport, Chicago, Illinois (ORD); and Miami International Airport, Miami, Florida (MIA).

Operations

The Global Entry pilot project allows pilot participants expedited entry into the United States at any of the designated airport locations by using automated kiosks located in the Federal Inspection Services (FIS) area of each airport. Global Entry uses fingerprint biometrics technology to verify a participant's identity and confirm his or her status as a participant.

After arriving at the FIS area, participants proceed directly to the Global Entry kiosk. A sticker affixed to the participant's passport at the time of acceptance in Global Entry will provide visual identification that the individual can be referred to the kiosk. Global Entry participants need not wait in the regular passport control primary inspection lines.

After arriving at the kiosk, participants activate the system by inserting into the document reader either a machine-readable passport or a machine-readable U.S. permanent resident card. On-screen instructions guide participants to provide fingerprints electronically. These fingerprints are compared with the fingerprint biometrics on file to validate identity and confirm that the individual is a member of the program. Participants are also prompted to look at the camera for a digital photograph and to respond to several customs declaration questions by use of a touch-screen.

When the procedures at the kiosk have been successfully completed, participants are issued a transaction receipt. This receipt must be provided along with the passport or permanent resident card to the CBP Officer at the exit control area who will examine and inspect these documents. CBP Officers stationed in booths next to the kiosk lanes also oversee activities at the kiosk.

Declarations

When using the Global Entry kiosks, Global Entry participants are required to declare all articles being brought into the U.S. pursuant to 19 CFR 148.11.

If a Global Entry participant declares any of the following, the kiosk redirects that user to the head of the line at the nearest, open passport control, primary inspection station:

(a) Commercial merchandise or commercial samples, or items that exceed the applicable personal exemption amount;

(b) More than $10,000 in currency or other monetary instruments (checks, money orders, etc.), or foreign equivalent in any form; or

(c) Restricted/prohibited goods, such as agricultural products, firearms, mace, pepper spray, endangered animals, birds, narcotics, fireworks, Cuban goods, and plants.

Global Entry participants may also be subject to further examination and inspection as determined by CBP Officers at any time during the arrival process.

For a more detailed description of the Global Entry pilot program, please refer to the April 11, 2008 **Federal Register** notice, 73 FR 19861.

Expanded Eligibility

Eligibility criteria for participation in the Global Entry pilot are set forth in detail in the April 11, 2008 **Federal Register** notice. To date, only U.S. citizens, U.S. nationals, and U.S. LPRs are eligible to participate in the pilot. However, as explained in the April 11, 2008 **Federal Register** notice, CBP is working with other countries to recognize comparable programs operated by these countries and, as these arrangements are finalized, CBP will expand its eligibility criteria. The notice stated that such expansions of the pilot would be announced by publication in the **Federal Register**.

Expansion of Global Entry to Certain Citizens of the Netherlands

The United States has entered into an arrangement with the Netherlands concerning Global Entry. Pursuant to this arrangement, CBP is expanding eligibility for the Global Entry pilot. Specifically, citizens of the Netherlands who participate in Privium, an expedited travel program in the Netherlands, will now be able to apply for participation in the Global Entry pilot. In order to participate, these citizens of the Netherlands will be required to complete the on-line application, pay the non-refundable $100 per person applicant processing fee, and satisfy all the requirements of the Global Entry pilot. Based on the terms of the arrangement reached with the Government of the Netherlands, these citizens will be permitted to participate in the Global Entry pilot only upon successful completion of a thorough risk assessment by both U.S. Customs and Border Protection and the Government of the Netherlands.

No person who is inadmissible to the United States under U.S. immigration law is eligible to participate in the Global Entry pilot. Applications from such individuals will automatically be rejected. Applications for the Global Entry pilot may also be rejected if the applicant has ever been convicted of a criminal offense, or the individual has ever been found in violation of the customs or immigration laws of the United States, or of any criminal law. Additionally, no applicant will be accepted for participation in the Global Entry pilot if CBP determines that the individual presents a potential risk for terrorism, criminality or smuggling, or if CBP cannot sufficiently determine that the applicant meets all the program eligibility criteria. CBP will be accepting applications from eligible citizens of the Netherlands beginning April 23, 2009. Additional information on eligibility will be announced at *http://www.globalentry.gov*.

The Netherlands is also a participant in the Visa Waiver Program (VWP). The VWP enables citizens and nationals from participating countries to travel to and enter the United States for business or pleasure purposes for up to 90 days without obtaining a visa.[1] VWP travelers are now required to obtain a travel authorization via ESTA (Electronic System for Travel Authorization) prior to traveling to the United States under the VWP. ESTA is accessible online at *https://esta.cbp.dhs.gov*. The ESTA requirements will continue to be applicable to Global Entry applicants who are VWP travelers. Global Entry applicants from the Netherlands who wish to travel to the United States under the VWP who have not already received a travel authorization via ESTA will be able to do so as part of the Global Entry application and enrollment process. During the Global Entry enrollment and interview phase the applicant will be asked whether he or she is in possession of an ESTA authorization number. If not in possession of an ESTA authorization number, the applicant will be asked questions from which it can be determined whether the applicant is VWP-eligible, and a determination regarding ESTA authorization will be made.

All other aspects of the program as described in the April 11, 2008 notice are still in effect.

U.S. Citizen Participation in Privium

Pursuant to the reciprocal arrangement with the Government of the Netherlands, U.S. citizens who participate in the Global Entry pilot will have the option to also apply for participation in Privium. Privium is an automated border passage system in the Netherlands that provides expedited entry and exit at Amsterdam Airport Schiphol. It uses iris scans to provide quick and secure biometric confirmation of a traveler's identity. Enrollment includes an eligibility assessment by the Dutch border police. Upon a positive determination of eligibility, pictures of each iris are taken and stored on a personalized smart card. Upon entry and exit, Privium members place their Privium smart card into a reader and a passport validity check is performed with the Dutch authorities and valid membership is verified. The individual's iris information is then compared against the iris information stored on the card. This border passage process takes approximately twelve seconds.

Additional fees and information sharing beyond CBP's Global Entry requirements are needed for U.S. citizens who wish to participate in Privium through Global Entry. If approved, U.S. citizens would be able to take advantage of expedited travel into, and out of, the Netherlands at Amsterdam Airport Schiphol. More information about how to apply for Privium membership is available at *http://www.globalentry.gov*.

Dated: April 16, 2009.

Susan T. Mitchell,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. E9–9221 Filed 4–22–09; 8:45 am]

BILLING CODE 9111–14–P

[1] Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRPTA), 118 Stat. 3638, as amended by section 565 of the Consolidated Appropriations Act, 2008, 121 Stat. 1844, codified at 8 U.S.C. 1365b, directs the Secretary to establish an international registered traveler program in coordination with US–VISIT, other prescreening initiatives, and the Visa Waiver Program. *See* 8 U.S.C. 1365b(k)(3).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–14]

Notice of Proposed Information Collection: Comment Request; FHA Insured Title I Property Improvement and Manufactured Home Loan Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 22, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Title I Property Improvement and Manufactured Home Loan Program.

OMB Control Number, if applicable: 2502–0328.

Description of the need for the information and proposed use: Title I loans are made by private sector lenders and insured by HUD against loss from defaults. HUD uses this information to evaluate individual lenders on their overall program performance. The information collected is used to determine insurance eligibility and claim eligibility.

Agency form numbers, if applicable: HUD–637, 646, 27029, 27030, 55013, 55014, 56001, 56001–MH, 56002, 56002–MH, 56004, 92802, & SF 3881.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 14,522, the number of responses is 136,634, the frequency of response is on occasion, and the number of burden hours is 31,838.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 16, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–9302 Filed 4–22–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–32]

FHA–Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection involves mortgage loan servicers, ''mortgagees'' that service Federal Housing Administration ''FHA''-insured mortgage loans and the home owners, ''mortgagors'' who are involved with those activities. The revised information request for OMB review seeks to combine the requirements of several existing OMB collections under one comprehensive collection primarily for mortgagees that service FHA-insured mortgage loans and the mortgagors who are the home owners.

DATES: *Comments Due Date:* May 26, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0429) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: FHA–Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation.

OMB Approval Number: 2502–0429.

Form Numbers: HUD–09519–A Property Inspection Report, HUD–09539 Request for Occupied Conveyance, HUD–27011, Parts A, B, C, D Single Family Application for Insurance Benefits, HUD–50002 Request to Exceed Cost Limits for Preservation and Protection, HUD–50012 Mortgagees Request for Extension of Time Requirements, HUD–91022 Mortgagee Notice of Foreclosure Sales.

Description of the Need for the Information and Its Proposed Use: This information collection involves mortgage loan servicers, ''mortgagees'' that service Federal Housing Administration ''FHA''-insured mortgage loans and the home owners, ''mortgagors'' who are involved with those activities. The revised information request for OMB review seeks to combine the requirements of several existing OMB collections under one comprehensive collection primarily for mortgagees that service FHA-insured mortgage loans and the mortgagors who are the home owners.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	223	2757		1.126		692,359

Total Estimated Burden Hours: 692,359.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 16, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–9305 Filed 4–22–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–33]

Continuum of Care Homeless Assistance Grant Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Pre-established communities, called Continuums of Care (CoC), will complete the Exhibit 1 of the Continuum of Care Homeless Assistance application which collects data about the CoC's strategic planning activities, performance, homeless populations, and data collection methods. This information will be scored using the rating factors listed in the NOFA to determine CoC rank and level of new and renewal funding. State and local governments, public housing authorities and nonprofit organizations will concurrently submit project proposals electronically. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

DATES: *Comments Due Date: May 26, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0112) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Continuum of Care Homeless Assistance Grant Application.

OMB Approval Number: 2506–0112.

Form Numbers: SF–424, SF424–SUPP, HUD–2991, HUD–2992, HUD–2880, HUD–96010, HUD–92041, HUD–27300, OMB–SF–LLL.

Description of the Need for the Information and Its Proposed Use: Pre-established communities, called Continuums of Care (CoC), will complete the Exhibit 1 of the Continuum of Care Homeless Assistance application which collects data about the CoC's strategic planning activities, performance, homeless populations, and data collection methods. This information will be scored using the rating factors listed in the NOFA to determine CoC rank and level of new and renewal funding. State and local governments, public housing authorities and nonprofit organizations will concurrently submit project proposals electronically. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	10,510	2.178		8.07		184,812

Total Estimated Burden Hours: 184,812.

Status: Reinstatement, without change, of previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 16, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–9304 Filed 4–22–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–13]

Notice of Proposed Information Collection: Comment Request; Previous Participation Certification

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 22, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports

Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian.L.Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Devasia Karimpanal, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 402–7682 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Previous Participation Certification.

OMB Control Number, if applicable: 2502–0118.

Description of the need for the information and proposed use: This information is necessary to ensure that responsible individuals and organizations participate in HUD's multifamily housing programs. The information will be used to evaluate participants' previous participation in government programs and ensure that the past record is acceptable prior to granting approval to participate in HUD's multifamily housing programs. The collection of this information is designed to be 100 percent automated and digital submission of all data and certifications is available via HUD's secure Internet systems. However HUD will provide for both electronic and paper submissions until it publishes revised regulations. Regulations are presently being reviewed for revision.

Agency form numbers, if applicable: HUD–2530.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 10,000; the frequency of responses is 1 unless additional actions require additional submissions; estimated time to gather and enter the information into the automated system is estimated to be 30 minutes per submission, and the estimated total annual burden hours are 5,000.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 16, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–9303 Filed 4–22–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0110

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collection of information for two technical training program course effectiveness evaluation forms. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance number 1029–0110.

DATES: Comments on the proposed information collection activity must be received by June 22, 2009, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or by e-mail at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for renewed approval. This collection is for OSM's Technical Training Program Course Effectiveness Evaluations (1029–0110). OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Technical Training Program Course Effectiveness Evaluation.

OMB Control Number: 1029–0110.

Summary: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The information supplied by this evaluation will determine customer satisfaction with OSM's training program and identify needs of respondents.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: State regulatory authority and Tribal employees and their supervisors.

Total Annual Responses: 475.
Total Annual Burden Hours: 79 hours.

Dated: April 17, 2009.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. E9–9308 Filed 4–22–09; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Continuation of Visitor Services

AGENCY: National Park Service, Interior.

ACTION: Public notice.

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

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202–513–7156.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contract listed below has been extended to the maximum allowable period under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
LARO001–92	Dakota Columbia Rentals, LLC	Lake Roosevelt National Recreation Area.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202–513–7156.

Dated: January 28, 2009.

Katherine H. Stevenson,

Assistant Director, Business Services.

Editorial Note: This document was received in the Office of the Federal Register on April 17, 2009.

[FR Doc. E9–9199 Filed 4–22–09; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, June 1, 2009.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at Schoodic Education and Research Center, Acadia National Park, Winter Harbor, Maine, at 1 p.m., to consider the following agenda:

1. Review and approval of minutes from the meeting held February 2, 2009.

2. *Committee reports:*

—Land Conservation.

—Park Use.

—Science and Education.

—Historic.

3. Old business.

4. Superintendent's report.

5. Public comments.

6. Proposed agenda for next Commission meeting in September 2009.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: April 7, 2009.

Sheridan Steele,

Superintendent.

[FR Doc. E9–9200 Filed 4–22–09; 8:45 am]

BILLING CODE 4310–2N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–PO]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The next regular meeting of the Eastern Montana Resource Advisory Council will be held on May 27, 2009 in Billings, MT. The meeting will start at 8 a.m. and adjourn at approximately 3:30 p.m. When determined, the meeting location will be announced in a news release.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301. Telephone: (406) 233–2831.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior through the Bureau of Land Management on a variety of planning and management issues associated with public land management in Montana. At these meetings, topics will include: Miles City and Billings Field Office manager

updates, subcommittee briefings, work sessions and other issues that the council may raise. All meetings are open to the public and the public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

Dated: April 16, 2009.

M. Elaine Raper,

Field Manager.

[FR Doc. E9–9329 Filed 4–22–09; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Chesapeake and Ohio Canal National Historical Park.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 9:30 a.m., on Friday, May 15, 2009, at the Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Hagerstown, Maryland 21740.

DATES: Friday, May 15, 2009.

ADDRESSES: Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Hagerstown, Maryland 21740.

FOR FURTHER INFORMATION CONTACT: Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, telephone: (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairperson.
Mr. Charles J. Weir.
Mr. Barry A. Passett.
Mr. James G. McCleaf II.
Mr. John A. Ziegler.
Mrs. Mary E. Woodward.
Mrs. Donna Printz.
Mrs. Ferial S. Bishop.
Ms. Nancy C. Long.
Mrs. Jo Reynolds.
Dr. James H. Gilford.
Brother James Kirkpatrick.
Dr. George E. Lewis, Jr.
Mr. Charles D. McElrath.
Ms. Patricia Schooley.
Mr. Jack Reeder.
Ms. Merrily Pierce.

Topics that will be presented during the meeting include:

1. Update on park operations.
2. Update on major construction/development projects.
3. Update on partnership projects.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park. Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: March 27, 2009.

Kevin D. Brandt,

Regional Director, National Capital Region.

[FR Doc. E9–9298 Filed 4–22–09; 8:45 am]

BILLING CODE 4310–6U–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1146–1147 (Final)]

1-Hydroxyethylidene-1,1–Diphosphonic Acid (HEDP) From China and India

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China and India of 1-Hydroxyethylidene-1,1-diphosphonic acid (HEDP), provided for in statistical reporting number 2931.00.9043 of the Harmonized Tariff Schedule of the United States, that have been found by the United States Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).[2] In addition, the Commission determines that it would not have found material injury but for the suspension of liquidation.

Background

The Commission instituted these investigations effective March 19, 2008, following receipt of a petition filed with the Commission and Commerce by Compass Chemical International, LLC, Huntsville, TX. The final phase of these investigations was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of HEDP from China and India were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 14, 2008 (73 FR 67545) (subsequently revised in a notice published on January 30, 2009 (74 FR 5677)). The hearing was held in Washington, DC, on March 3, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on April 17, 2009. The views of the Commission are contained in USITC Publication 4072 (April 2009), entitled HEDP from China and India: Investigation Nos. 731–TA–1146–1147 (Final).

By order of the Commission.

Issued: April 17, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–9279 Filed 4–22–09; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Charlotte R. Lane determines that an industry in the United States is materially injured by reason of such imports.

DEPARTMENT OF JUSTICE

[OMB Number 1105–0085]

Executive Office for United States Trustees; Agency Information Collection Activities: Collection; Comments Requested

ACTION: 60-Day Notice of Application Under Review: Application for Approval as a Provider of a Personal Financial Management Instructional Course.

The Department of Justice, Executive Office for United States Trustees, will be submitting the following application to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The application is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until June 22, 2009.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the application with instructions, should be directed to Wendy Tien, Deputy Assistant Director, at the Executive Office for United States Trustees, Department of Justice, 20 Massachusetts Avenue, NW., Suite 8000, Washington, DC 20530, or by facsimile at (202) 305–8536.

Written comments and suggestions from the public and affected agencies concerning the collection of information are encouraged. Comments should address one or more of the following four points:

1. Evaluate whether the application is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

OVERVIEW OF THE INFORMATION

Type of information collection	Application form.
The title of the form/collection	Application for Approval as a Provider of a Personal Financial Management Instructional Course.
The agency form number, if any, and the applicable component of the department sponsoring the collection.	No form number. Executive Office for United States Trustees, Department of Justice.
Affected public who will be asked or required to respond, as well as a brief abstract.	Primary: Individuals who wish to offer instructional courses to student debtors concerning personal financial management. Other: None. Congress passed a bankruptcy law that requires individuals who file for bankruptcy to complete an approved personal financial management instructional course as a condition of receiving a discharge.
An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply.	It is estimated that 300 respondents will complete the application in approximately ten (10) hours.
An estimate of the total public burden (in hours) associated with the collection.	The estimated total annual public burden associated with this application is 3,000 hours.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 20, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–9355 Filed 4–22–09; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0084]

Executive Office for United States Trustees; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Application Under Review: Application for Approval as a Nonprofit Budget and Credit Counseling Agency.

The Department of Justice, Executive Office for United States Trustees, will be submitting the following application to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The application is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until June 22, 2009.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed application with instructions, should be directed to Wendy Tien, Deputy Assistant Director, at the Executive Office for United States Trustees, Department of Justice, 20 Massachusetts Avenue, NW., Suite 8000, Washington, DC 20530, or by facsimile at (202) 305–8536.

Written comments and suggestions from the public and affected agencies concerning the collection of information are encouraged. Comments should address one or more of the following four points:

1. Evaluate whether the application is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

OVERVIEW OF THE INFORMATION

Type of information collection	Application form.
The title of the form/collection	Application for Approval as a Nonprofit Budget and Credit Counseling Agency.
The agency form number, if any, and the applicable component of the department sponsoring the collection.	No form number. Executive Office for United States Trustees, Department of Justice.
Affected public who will be asked or required to respond, as well as a brief abstract.	Primary: Agencies who wish to offer credit counseling services. Other: None. Congress passed a bankruptcy law that requires any individual who wishes to file for bankruptcy to, within 180 days of filing for bankruptcy relief, first obtain credit counseling from a nonprofit budget and credit counseling agency that has been approved by the United States Trustee.
An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply.	It is estimated that 300 respondents will complete the application in approximately ten (10) hours.
An estimate of the total public burden (in hours) associated with the collection.	The estimated total annual public burden associated with this application is 3,000 hours.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 20, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–9356 Filed 4–22–09; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office for Victims of Crime

[OMB Number 1121–0115]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Extension of a currently approved collection; Victim of Crime Act, Crime Victim Assistance Grant Program, Performance Report.

Department of Justice (DOJ), Office of Justice Programs (OJP), Office for Victims of Crime (OVC) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 22, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact DeLano Foster (202) 616–3612, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Victims of Crime Act, Victim Assistance Grant Program, Performance Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form number:* 1121–0115. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State government. *Other:* None. The VOCA, Crime Victim Assistance Grant Program, State Performance Report is a required annual submission by State grantees to report to the Office for Victims of Crime (OVC) on the uses and effects VOCA victim assistance grant funds have had on services to crime victims in the State, to certify compliance with the eligibility requirement of VOCA, and to provide a summary of supported activities carried out within the State during the grant period. This information will be aggregated and serve as supporting documentation for the Director's biennial report to the President and to the Congress on the effectiveness of the activities supported by these grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The information to compile these reports will be drawn from victim assistance program data from the 57 respondents (grantees). The number of victim assistance programs varies widely from State to State. A State could be responsible for compiling subgrant data for as many as 391 programs (Ohio) to as few as 12 programs (District of Columbia). Therefore, the estimated clerical hours can range from 1 to 70 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The current estimated burden is 1,197 (20 hours per respondent (estimate median) + 1 hour per respondent for recordkeeping × 57

respondents = 1,197 hours). There is no increase in the annual recordkeeping and reporting burden.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 20, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–9357 Filed 4–22–09; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 09–037]

NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration. ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Tuesday, May 19, 2009, 9 a.m. to 5 p.m.; Wednesday, May 20, 2009, 8:30 a.m. to 5 p.m.; and Thursday, May 21, 2009, 8:30 a.m. to 1 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., rooms 7H45, 7H45, and 9H40 respectively, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Heliophysics Division Overview and Program Status.
—Review of Heliophysics Community Roadmap.
—Revision of Heliophysics Data Policy.
—Solar Orbiter Selections and Plans.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 7 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: April 16, 2009.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–9295 Filed 4–22–09; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

Briefing on Postal Technology

AGENCY: Postal Regulatory Commission.

ACTION: Notice of briefing.

SUMMARY: There will be a presentation by Dr. Leon Pinsov, Vice President, International Standards and Advanced Technology, Pitney Bowes Corporation, on ''Postal Product Innovation and New Opportunities for Postal Commerce'' on Thursday, April 30, 2009, beginning at 1 p.m., in the Postal Regulatory Commission's hearing room. The briefing is open to the public; however, seating is limited, and those wishing to reserve a seat should telephone Leona Anasiewiez at 202–789–6877. The program will be Webcast at *http://www.prc.gov*.

DATES: April 30, 2009.

ADDRESSES: Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Ann Fisher, director, Office of Public Affairs and Government Relations, Postal Regulatory Commission, 202–789–6803.

Steven W. Williams,

Secretary.

[FR Doc. E9–9287 Filed 4–22–09; 8:45 am]

BILLING CODE 7710–FW–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

March 9, 2009 Presidential Memo on Scientific Integrity: Request for Public Comment

ACTION: Request for public comment on response to Presidential Memorandum.

SUMMARY: On March 9, 2009, the President issued a memorandum for the heads of executive departments and agencies on the subject of scientific integrity (*http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3–9–09/*). The memorandum requires the Director of the Office of Science and Technology Policy (OSTP) to craft recommendations for Presidential action to ensure scientific integrity in the executive branch. This notice solicits public input to inform the drafting of those recommendations. The notice asks a series of questions to help guide the public in responding to this request.

DATES: There is a 21 day period for public comment from April 23, 2009 to May 13, 2009.

ADDRESSES: You may submit comments by any of the following methods:

Web Site—*http://www.ostp.gov.* Click the link to ''Scientific Integrity'' and follow the instructions for submitting comments electronically.

Electronic Mail—*scientificintegrity@ostp.gov.*

Mail—Office of Science and Technology Policy, Attn: Scientific Integrity Recommendations, 725 17th Street, NW., Washington, DC 20502.

Please note that all submissions may be posted without change to *http://www.ostp.gov,* including any personal information provided.

The public comment period will close on May 13, 2009 at 5 p.m. EST. Any comments received after the close of the comment period will not be considered.

The full text of the Presidential memorandum is posted at *http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3–9–09/.* The fact sheet on the Presidential memorandum is posted at *http://www.whitehouse.gov/the_press_office/*

Fact-Sheet-on-Presidential-Memorandum-on-Scientific-Integrity/.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact *scientificintegrity@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION: In his March 9, 2009 memorandum on Scientific Integrity, the President states that ''science and the scientific process must inform and guide decisions of my Administration on a wide range of issues'' and assigns the Director of the Office of Science and Technology Policy (the Director) responsibility for ensuring scientific integrity throughout the executive branch. To this end, the memorandum requires the Director to submit within 120 days a set of recommendations for Presidential action to ensure scientific integrity. If possible, for each comment you submit, please note to which of the six principles below your comment relates. This will assist in properly categorizing the public comments and responding to the President's memorandum on Scientific Integrity. The six principles from the memorandum are as follows:

(a) The selection and retention of candidates for science and technology positions in the executive branch should be based on the candidate's knowledge, credentials, experience, and integrity;

(b) Each agency should have appropriate rules and procedures to ensure the integrity of the scientific process within the agency;

(c) When scientific or technological information is considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate, and each agency should appropriately and accurately reflect that information in complying with and applying relevant statutory standards.

(d) Except for information that is properly restricted from disclosure under procedures established in accordance with statute, regulation, Executive Order, or Presidential Memorandum, each agency should make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions;

(e) Each agency should have in place procedures to identify and address instances in which the scientific process or the integrity of scientific and technological information may be compromised; and

(f) Each agency should adopt such additional procedures, including any appropriate whistleblower protections, as are necessary to ensure the integrity of scientific and technological information and processes on which the agency relies in its decision-making or otherwise uses or prepares.

Comments from the public will help the OSTP determine what should be included in these recommendations. Respondents are invited to suggest: (1) Recommendations that would be responsive to the aims of the President, (2) specific implementing strategies, and (3) data and empirical evidence related to the effectiveness of strategies to promote scientific integrity. Comments submitted are encouraged to:

- Be as succinct as possible (1000 words or less recommended);
- Specify which of the prior six principles (a–f) are being addressed with each comment;
- Explain views and reasoning clearly; and
- Describe how the success of particular strategies might be evaluated or measured.

M. David Hodge,

Operations Manager, OSTP.

[FR Doc. E9–9307 Filed 4–22–09; 8:45 am]

BILLING CODE 3170–W9–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Act Manufacturing, Inc., Aerovox, Inc. (n/k/a New Bedford Capacitor, Inc.), Agility Capital, Inc., Air Water International Corp. (f/k/a Universal Communications Systems, Inc.), Allegiant Physician Services, Inc., and Alpha Microsystems, Inc. (n/k/a NQL, Inc.); Order of Suspension of Trading

April 21, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Act Manufacturing, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aerovox, Inc. (n/k/a New Bedford Capacitor, Inc.) because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Agility Capital, Inc. because it has not filed any periodic reports since the period ended June 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Air Water International Corp. (f/k/a Universal Communications Systems, Inc.) because it has not filed any periodic reports since the period ended June 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Allegiant Physician Services, Inc. because it has not filed any periodic reports since the period ended June 30, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alpha Microsystems, Inc. (n/k/a NQL, Inc.) because it has not filed any periodic reports since the period ended September 30, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 21, 2009, through 11:59 p.m. EDT on May 4, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–9418 Filed 4–21–09; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59778; File No. SR–NYSEAmex–2009–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Adopt a Policy Relating to Its Treatment of Trade Reports That It Determines To Be Inconsistent With the Prevailing Market

April 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, on April 6, 2009, NYSE Amex LLC (''NYSE Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as eligible for immediate effectiveness pursuant to Securities Exchange Act Rule 19b–4(f)(6).[3] The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a policy relating to its treatment of trade reports that it determines to be inconsistent with the prevailing market.

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

Trades in listed securities occasionally occur at prices that deviate significantly from prevailing market prices and those trades sometimes establish a high, low or last sale price for a security that does not reflect the true market for the security.

The Consolidated Tape Association (''CTA'') offers each Participant in the CTA Plan the discretion to append an indicator (an ''Aberrant Report Indicator'') to a trade report to indicate that the market believes that the trade price in a trade executed on that market does not accurately reflect the prevailing market for the security. The CTA recommends that data recipients should exclude the price of any trade to which the Aberrant Report Indicator has been appended from any calculation of the high, low and last sale prices for the security.

During the course of surveillance by the Exchange or as a result of notification by another market, listed company or market participant, the Exchange may become aware of trade prices that do not accurately reflect the prevailing market for a security. In such a case, the Exchange proposes to adopt as policies that it:

- May determine to append an Aberrant Report Indicator to any trade report with respect to any trade executed on the Exchange that the Exchange determines to be inconsistent with the prevailing market; and
- Shall discourage vendors and other data recipients from using prices to which the Exchange has appended the Aberrant Report Indicator in any calculation of the high, low or last sale price of a security.

The Exchange will urge vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy. Upon initial adoption of the Aberrant Report Indicator, the Exchange will also contact all of its listed companies to explain the aberrant trade policy and will notify users of the information that these are still valid trades. The Exchange will inform the affected listed company each time the Exchange or another market appends the Aberrant Report Indicator to a trade in an NYSE Amex listed stock and will remind the users of the information that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

While the CTA disseminates its own calculations of high, low and last sale prices, vendors and other data recipients—and not the Exchange—frequently determine their own methodology by which they wish to calculate high, low and last sale prices. Therefore, the Exchange shall endeavor to explain to those vendors and other data recipients the deleterious effects that can result from including in the calculations a trade to which the Aberrant Report Indicator has been appended.

In making the determination to append the Aberrant Report Indicator, the Exchange shall consider all factors related to a trade, including, but not limited to, the following:

- Material news released for the security;
- Suspicious trading activity;
- System malfunctions or disruptions;
- Locked or crossed markets;
- A recent trading halt or resumption of trading in the security;
- Whether the security is in its initial public offering;
- Volume and volatility for the security;
- Whether the trade price represents a 52-week high or low for the security;
- Whether the trade price deviates significantly from recent trading patterns in the security;
- Whether the trade price reflects a stock-split, reorganization or other corporate action;
- The validity of consolidated tape trades and quotes in comparison to national best bids and offers; and
- The general volatility of market conditions.

In addition, the Exchange proposes that its policy shall be to consult with other markets (in the case of executions that take place across multiple markets) and to seek a consensus as to whether the trade price is consistent with the prevailing market for the security.

In determining whether trade prices are inconsistent with the prevailing market, the Exchange proposes that Exchange policy shall be to follow the following general guidelines: The Exchange will determine whether a trade price does not reflect the prevailing market for a security if the trade occurs during regular trading hours (*i.e.*, 9:30 a.m. to 4 p.m.) and occurs at a price that deviates from the ''Reference Price'' by an amount that meets or exceeds the following thresholds:

Trade price	Numerical threshold
Between $0 and $15.00	Seven percent.
Between $15.01 and $50.00	Five percent.
In excess of $50.00	Three percent.

The ''Reference Price'' refers to (a) if the primary market for the security is open at the time of the trade, the national best bid or offer for the security, or (b) if the primary market for the security is not open at the time of the trade, the first executable quote or print for the security on the primary market after execution of the trade in question. However, if the circumstances suggest that a different Reference Price would be more appropriate, the Exchange will use the different Reference Price. For instance, if the national best bid and offer for the security are so wide apart as to fail to reflect the market for the security, the Exchange might use as the Reference Price a trade price or best bid or offer that was available prior to the trade in question.

If the Exchange determines that a trade price does not reflect the prevailing market for a security and the trade represented the last sale of the security on the Exchange during a trading session, the Exchange may also

[3] 17 CFR 240.19b–4(f)(6).

determine to remove that trade's designation as the last sale. The Exchange may do so either on the day of the trade or at a later date, so as to provide reasonable time for the Exchange to conduct due diligence regarding the trade, including the consideration of input from markets and other market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6[4] of the Act in general and furthers the objectives of Section 6(b)(5)[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder,[8] the Exchange has designated this proposal as one that effects a change that: (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative for 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)(iii)[10] 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 and designate the proposed rule change to become operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to a proposal previously approved by the Commission.[11] The Commission believes that the Exchange's proposal to append an Aberrant Report Indicator to certain trade reports is a reasonable means to alert investors and others that the Exchange believes that the trade price for a trade executed in its market does not accurately reflect the prevailing market for the security. In addition, the Commission notes that the Exchange will use objective numerical thresholds in determining whether a trade report is eligible to have an Aberrant Trade Indicator appended to it. The Commission further notes that the Exchange's appending the Aberrant Trade Indicator to a trade report has no effect on the validity of the underlying trade. Finally, waiving the 30-day operative delay will allow the Exchange to apply the proposed change to aberrant trades immediately.[12] Based on the above, the Commission designates the proposal to become 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 the 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–NYSEAmex–2009–12 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–NYSEAmex–2009–12. 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

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] The Commission notes that, in the filing's purpose section, the Exchange provided a more complete statutory basis for the proposed rule change, as follows:

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Aberrant Report Indicator is consistent with the protection of investors and the public interest in that the Exchange will seek to ensure a proper understanding of the Aberrant Report Indicator among securities market participants by: (i) Urging vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy; (ii) informing the affected listed company each time the Exchange or another market appends the Aberrant Report Indicator to a trade in an NYSE Amex listed stock; and (iii) reminding the users of the information that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii). 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. The Exchange has satisfied this requirement.

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 58736 (October 6, 2008), 73 FR 60380 (October 10, 2008) (SR–NYSE–2008–91). *See also* Securities Exchange Act Release No. 59151 (December 23, 2008), 74 FR 158 (January 2, 2009) (SR–NASDAQ–2008–100).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–NYSEAmex–2009–12 and should be submitted on or before May 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9240 Filed 4–22–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59779; File No. SR–Phlx–2009–32]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Amendment No. 1 to Proposed Rule Change Relating to the Exchange's Enhanced Electronic Trading Platform for Options, Phlx XL II

April 16, 2009.

On April 3, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement several enhancements to its electronic options trading system, Phlx XL. The proposed rule change was published for comment in the **Federal Register** on April 14, 2009.[3] Pursuant to Section 19(b)(1) of the Act,[4] and Rule 19b–4 thereunder,[5] notice is hereby given that on April 15, 2009, Phlx filed with the Commission Amendment No. 1 to the proposed rule change as described in Item I below. The Commission is publishing this notice of Amendment No. 1 to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of Amendment No. 1 to the Proposed Rule Change

The Exchange is filing Amendment No. 1 to clarify and correct discrete portions of File No. SR–Phlx–2009–32, which proposes to implement several enhancements to its electronic options trading system, Phlx XL, with the enhanced system to be named Phlx XL II. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

Changes to the ''Purpose'' Section of the Previously Submitted Form 19b–4

References to ''page numbers'' mean the page numbers in the previously submitted Form 19b–4 for SR–Phlx–2009–32. In addition to the proposed changes below, the Exchange proposes conforming changes to the previously submitted *Exhibit 1* to SR–Phlx–2009–32.

1. Delete from footnote 3 the Federal Register citation to ''44612'' and replace it with ''46612.''

2. Add a closing parenthesis to footnote 6 after the phrase, ''the ''Linkage Plan,''.''

3. Delete the following phrase from the third sentence of the first full paragraph on page 12:

''a number of contracts with a size equal to the size of the interest at other markets at prices better than interest on the Exchange,''

Replace the deleted phrase with the following:

''all marketable contracts on the Exchange to such better priced away markets,''

4. Delete the following phrase from the first sentence of the first full paragraph on page 15:

''conduct a Provisional Opening''

Replace the deleted phrase with the following:

''open as many contracts as possible''

5. Delete the final sentence of the first full paragraph on page 15 which states:

''The Exchange opening price will always be equal to or better than the OQR.''

6. Delete the following sentence from footnote 39:

''The duration of the brief period will be published in an Options Trader Alert, which will be available on the Exchange's web site.''

This is consistent with footnote 65. The brief period is not on a timer.

7. Add the following at the end of footnote 44 on page 20:

''All references to a ''Quote Exhaust Timer'' in the Phlx XL II system and in the proposed rules mean a system pause for a brief period. Phlx XL II participants will not receive any notification that a Quote Exhaust Timer has been initiated.''

8. In the seventh line of the second paragraph on page 24, delete ''B'' in parentheses and replace it with ''E'' in parentheses and delete the ''C'' in parentheses and replace it with ''F'' in parentheses.

9. Delete the following sentences from Page 30 under Example II ''After the Quote Exhaust Timer'':

''The initiating order buys 20 contracts from Market Maker 1 at 2.70 and the Phlx XL II system will contemporaneously route the unexecuted balance of the initiating order to the away market, 10 to buy at 2.70. This should result in a buy of 10 contracts at 2.65 on the away market.

The disseminated PBBO is 2.20 bid, 2.70 offer, with a size of 20x5''

Replace the deleted sentences with the following:

''The initiating order has 30 unexecuted contracts to buy. The Phlx XL II system will route 10 contracts to buy at 2.65 to the ABBO market, which is the best available price and size. The remaining balance is posted in the PBBO at the ABBO price.

The disseminated PBBO is 2.65 bid, 2.70 offer, with a size of 20x25.''

10. Delete the following phrase from the second sentence of the last paragraph on page 34 (and continuing to page 35):

''a number of contracts that will satisfy interest at''

Replace the deleted phrase with the following:

''all marketable contracts on the Exchange to''

11. Delete the following phrase from the second sentence of the first full paragraph on page 35:

''a number of contracts that will satisfy interest at other markets at prices better than''

Replace the deleted phrase with the following:

''any remaining contracts to away markets at''

12. Delete the word ''or'' from the third line of the first full paragraph on page 38, and replace it with the phrase ''if the Exchange Auction Price is no more than''

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009).

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

13. Add the letter ''i'' to the second line of the third full paragraph on page 41 immediately before the last letter of the line, to spell the word ''is.''

14. Add the word ''be'' at the end of the third line from the bottom of page 45, after the word ''not'' and before the word ''eligible.''

15. Add the following at the beginning of the second full paragraph on page 45:

''In the circumstances described in the preceding paragraph,''

Delete the capital ''W'' from the word ''What'' and replace it with a lower case ''w.''

16. Add the following at the beginning of the second full paragraph on page 46:

''In the circumstances described in the preceding paragraph,''

Delete the capital ''W'' from the word ''What'' and replace it with a lower case ''w.''

17. Add the following at the beginning of the second full paragraph on page 48:

''In the circumstances described in the preceding paragraph,''

Delete the capital ''W'' from the word ''What'' and replace it with a lower case ''w.''

18. Add the following at the beginning of the second full paragraph on page 49:

''In the circumstances described in the preceding paragraph,''

Delete the capital ''W'' from the word ''What'' and replace it with a lower case ''w.''

19. Add the following at the beginning of the second full paragraph on page 50:

''In the circumstances described in the preceding paragraph,''

Delete the capital ''W'' from the word ''What'' and replace it with a lower case ''w.''

20. In the last line on page 54, delete the lower case ''m'' and add a capital ''M'' to form the word ''Management.''

Changes to Previously Submitted Proposed Rule Text

1. Delete currently proposed Rule 1017(l)(ii)(E) and replace it with:

''A different opening price will not require the Phlx XL II system to repeat the entire opening process.''

2. Amend the first sentence of proposed Rule 1017(l)(iii)(B) to state:

''If there is sufficient size on the Exchange and on away markets on the opposite side of the market from the imbalance to execute all opening marketable interest at a price that is at or within the established OQR and the Away Best Bid or Offer (''ABBO'') without leaving an imbalance, the Phlx XL II system will open the affected series for trading at that price by executing opening marketable interest on the Phlx XL II system, as long as the system does not trade through the ABBO.''

3. Amend proposed Rule 1017(l)(iv)(B) to state:

''If opening quotes, Opening Sweeps and orders submitted during the Imbalance Timer, or other changes to the ABBO, would allow the entire imbalance amount to trade at the Exchange at or within the OQR without trading through the ABBO, the Imbalance Timer will end and the Phlx XL II system will execute at the appropriate opening price.''

4. Delete from proposed Rule 1017(l)(iv)(C)(3) the phrase:

''a number of contracts with a size equal to the size of the interest at other markets at prices better than interest on the Exchange,''

Replace that deleted phrase with the following:

''all marketable contracts on the Exchange to such better priced away markets,''

5. Delete the first two sentences from Rule 1017(l)(iv)(C)(7) and replace with the following:

''If after that number of times, the Phlx XL II system still cannot route and/or trade the entire imbalance amount, the Phlx XL II system will open as many contracts as possible by routing to other markets at prices better than the Exchange opening price for their disseminated size, trading available contracts on the Exchange at the Exchange opening price, and routing contracts to other markets at prices equal to the Phlx opening price at their disseminated size.''

6. Make a marking correction to Proposed Rule 1080(c)(iv)(E) by underlining the new capital ''R'' in the proposed rule text.

7. Delete from the first line of proposed Rule 1080(h), the capital ''A'' and replace it with a lower case ''a.''

8. Make a marking correction to the first three lines of Proposed Rule 1080(m) by underlining the following proposed rule text:

''only customer FIND and SRCH Orders (as defined below) with no other contingencies. IOC Orders will be cancelled immediately if not executed, and will not be routed.''

9. Add the word ''be'' to the last sentence of the third paragraph of proposed Rule 1080(m)(iv)(B) between the words ''not'' and ''eligible.''

10. Add the following to the beginning of the fifth paragraph of proposed Rule 1080(m)(iv)(B):

''In the circumstances described in the preceding paragraph,''

Delete the capital ''W'' from the word ''What'' and replace it with a lower case ''w.''

11. Add the following to the beginning of the seventh paragraph of proposed Rule 1080(m)(iv)(B):

''In the circumstances described in the preceding paragraph,''

Delete the capital ''W'' from the word ''What'' and replace it with a lower case ''w.''

12. Add the word ''be'' to the last sentence of the seventh paragraph of proposed Rule 1080(m)(iv)(B) between the words ''not'' and ''eligible.''

13. Amend the final paragraph of proposed Rule 1080(m)(iv)(B) by adding a space between ''Phlx XL'' and ''II'' in the seventh line. Also delete the lower case ''b'' in parentheses at the end of the seventh line and replace it with a capital ''B.''

14. Add the following to the beginning of the fifth paragraph of proposed Rule 1080(m)(iv)(C):

''In the circumstances described in the preceding paragraph,''

Delete the capital ''W'' from the word ''What'' and replace it with a lower case ''w.''

15. Add the following to the beginning of the seventh paragraph of proposed Rule 1080(m)(iv)(C):

''In the circumstances described in the preceding paragraph,''

Delete the capital ''W'' from the word ''What'' and replace it with a lower case ''w.''

16. Correct a typographical error in the sixth paragraph of proposed Rule 1080(m)(iv)(C) by adding an ''i'' to the word ''Timer'' in the last sentence.

17. Add the following to the beginning of the ninth paragraph of proposed Rule 1080(m)(iv)(C):

''In the circumstances described in the preceding paragraph,''

Delete the capital ''W'' from the word ''What'' and replace it with a lower case ''w.''

18. Delete the capital ''I'' from the first line of proposed Rule 1082(a)(ii)(B)(3)(g)(iii)(B)(3) and replace it with a lower case ''i.''

19. Add the word ''to'' to the first line of proposed Rule 1082(a)(ii)(B)(3)(g)(iv)(A)(4) between the words ''equal'' and ''both.''

20. Delete the capital ''I'' from the first line of proposed Rule 1082(a)(ii)(B)(3)(g)(iv)(B)(3) and replace it with a lower case ''i.''

21. Delete the words ''quote or'' from the first line of proposed Rule 1082(a)(ii)(B)(3)(g)(v).

22. Delete from proposed Rule 1082(a)(ii)(B)(4)(d)(iv)(A) the following phrase:

''a number of contracts that will satisfy interest at''

Replace the deleted phrase with the following:

''all marketable contracts on the Exchange to''.

23. Delete from proposed Rule 1082(a)(ii)(B)(4)(d)(iv)(B) the following phrase:

''a number of contracts that will satisfy interest at other markets at prices better than''

Replace the deleted phrase with the following:

''any remaining contracts to away markets at''

24. Underline the new text ''OQR'' in proposed OFPA A–14.

The following proposed rules have been changed from the previously submitted Exhibit 5: 1017(l)(ii)(E); 1017(l)(iii)(B); 1017(l)(iv)(B); 1017(l)(iv)(C)(3); 1017(l)(iv)(C)(7); 1080(c)(iv)(E); 1080(h); 1080(m); 1080(m)(iv)(B); 1080(m)(iv)(C); 1082(a)(ii)(B)(3)(g)(iii)(B)(3); 1082(a)(ii)(B)(3)(g)(iv)(A)(4); 1082(a)(ii)(B)(3)(g)(v); 1082(a)(ii)(B)(4)(d)(iv)(A); 1082(a)(ii)(B)(4)(d)(iv)(B); and OFPA A–14.

The Exhibit 5 included in Amendment No. 1 replaces the previously submitted Exhibit 5 to SR–Phlx–2009–32 in its entirety.[6]

III. Date of Effectiveness of Amendment No. 1 to the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this Amendment No. 1 to the proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register.** The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning this Amendment No. 1, including whether this Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–32 and should be submitted on or before May 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9241 Filed 4–22–09; 8:45 am]

BILLING CODE 8010–01–P

[6] The text of Exhibit 5 to Amendment No. 1 is also available on the Commission's Web site.

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11711 and # 11712]

Mississippi Disaster # MS–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 04/16/2009.

Incident: Severe Storms and Flooding.

Incident Period: 03/25/2009 through 03/28/2009.

Effective Date: 04/16/2009.

Physical Loan Application Deadline Date: 06/15/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 01/19/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Jackson.

Contiguous Counties:

Mississippi: George, Harrison, Stone.

Alabama: Mobile.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.187
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
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 11711 6 and for economic injury is 11712 0.

The States which received an EIDL Declaration # are Mississippi, Alabama.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 16, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–9309 Filed 4–22–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11713]

Missouri Disaster # MO–00035; 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 Missouri, dated 04/16/2009.

Incident: Severe Winter Storm System.

Incident Period: 01/26/2009 Through 01/28/2009.

Effective Date: 04/16/2009.

EIDL Loan Application Deadline Date: 01/19/2010.

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: Butler, Douglas, Dunklin, Mississippi, Oregon, Pemiscot, Shannon, Stoddard, Stone.

Contiguous Counties:

Missouri: Barry, Bollinger, Cape Girardeau, Carter, Christian, Dent, Howell, Lawrence, New Madrid, Ozark, Reynolds, Ripley, Scott, Taney, Texas, Wayne, Webster, Wright.

Arkansas: Carroll, Clay, Craighead, Fulton, Greene, Mississippi, Randolph, Sharp.

Illinois: Alexander.

Kentucky: Ballard, Carlisle, Fulton, Hickman.

Tennessee: Dyer, Lake.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 117130.

The States which received an EIDL Declaration # are Missouri, Arkansas, Illinois, Kentucky, Tennessee.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: April 16, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–9312 Filed 4–22–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver to the Nonmanufacturer Rule for Conductor and Control Cable (Aluminum); Conductor and Control Cable (Copper); Truck Trailer; All terrain vehicles (ATVs), wheeled or tracked; Snowmobiles and parts; Off-road ATV, wheeled or tracked; Noncurrent-Carrying Wiring Device Manufacturing, *i.e.,* dead end tees and connectors, guy strain and link assemblies, bolts, washers, turnbuckles, twisted clips, steel angle assemblies, yoke plates, compression T connectors, press dies, anchor shackles, Y clevis ball and Y clevis sockets, yoke plates, and grounding clamps.

SUMMARY: The U.S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Conductor and Control Cable (Aluminum); Conductor and Control Cable (Copper); Truck Trailer; ATV, wheeled or tracked; Snowmobiles and parts; Off-road All terrain vehicles ATV, wheeled or tracked; Noncurrent-Carrying Wiring Device Manufacturing, dead end tees and connectors, guy strain and link assemblies, bolts, washers, turnbuckles, twisted clips, steel angle assemblies, yoke plates, compression T connectors, press dies, anchor shackles, Y clevis ball and Y clevis sockets, yoke plates, and grounding clamps.

The basis for waiver is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

DATE: This waiver is effective May 8, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Edith G. Butler, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), and SBA's implementing regulations provide that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or participants in the SBA's 8(a) Business Development Program must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b),125.15(c). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. 13 CFR 121.1202(1). The SBA defines ''class of products'' based on the Office of Management and Budget North American Industry Classification System (NAICS). In addition, SBA uses Product Service Codes (PSC) to identify particular products within the NAICS code to which a waiver would apply.

The SBA received a request on February 13, 2009, to waive the Nonmanufacturer Rule for Conductor and Cable (Aluminum), NAICS code 331319, PSC 6145; Conductor and Control Cable (Copper), NAICS code 331422, PSC 6145; Truck Trailer Manufacturing; NAICS code 336212, PSC 2330; ATV, wheeled or tracked, Manufacturing; Snowmobiles and parts; Off-road ATV and wheeled or tracked Manufacturing, NAICS code 336999, PSC 2330; and Noncurrent-Carrying Wiring Device Manufacturing, *i.e.,* dead end tees and connectors, guy strain and link assemblies, bolts, washers, turnbuckles, twisted clips, steel angle assemblies, yoke plates, compression T connectors, press dies, anchor shackles, & clevis ball and & clevis sockets, yoke plates and grounding clamps, NAICS code 335932, PSC 5975.

On March 9, 2009, SBA published in the **Federal Register** a notice of intent

to waive the Nonmanufacturer Rule for the above listed items. SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of these classes of products. No comments were received in response to this notice. SBA has determined that there are no small business manufacturers of these classes of products, and is therefore granting the waiver of the Nonmanufacturer Rule for Conductor and Cable (Aluminum), NAICS code 331319, PSC 6145; Conductor and Control Cable (Copper), NAICS code 331422, PSC 6145; Truck Trailer Manufacturing; NAICS code 336212, PSC 2330; ATV, wheeled or tracked, Manufacturing; Snowmobiles and parts; Off-road ATV and wheeled or tracked Manufacturing, NAICS code 336999, PSC 2330; and Noncurrent-Carrying Wiring Device Manufacturing, *i.e.,* dead end tees and connectors, guy strain and link assemblies, bolts, washers, turnbuckles, twisted clips, steel angle assemblies, yoke plates, compression T connectors, press dies, anchor shackles, & clevis ball and & clevis sockets, yoke plates and grounding clamps, NAICS code 335932, PSC 5975.

Authority: 15 U.S.C. 637(a)(17).

Dated: April 15, 2009.

Karen C. Hontz,

Director for Government Contracting.

[FR Doc. E9–9306 Filed 4–22–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and

Budget of a Currently Approved Information Collection Activity, Request for

Comments; FAA Acquisition Management System (FAAAMS) Including ARRA Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Pursuant to Public Law 104–50. the FAA has implemented an acquisition management system that addresses the unique needs of the agency. This document established the policies and internal procedures for the FAA's acquisition system.

DATES: Please submit comments by June 22, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: FAA Acquisition Management System (FAAAMS) Including ARRA Requirements.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0595.

Forms(s): Forms available at *http://fast.faa/gov/docs/forms.*

Affected Public: A total of 15,298 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 7.5 hours per response.

Estimated Annual Burden Hours: An estimated 2,003,059 hours annually.

Abstract: Pursuant to Public Law 104–50, the FAA has implemented an acquisition management system that addresses the unique needs of the agency. This document established the policies and internal procedures for the FAA's acquisition system. This collection includes burden requirements per the American Recovery and Reimbursement Act of 2009 (ARRA).

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility: The accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected: and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 15, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–9205 Filed 4–22–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 13, 2009, vol. 74, no. 29, page 7281. The information garnered from a signed Specific Release form will be used by FAA Special Agents to obtain information related to a specific investigation.

DATES: Please submit comments by May 26, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Specific Release Form.

Type of Request: New collection.

OMB Control Number: 2120–XXXX.

Forms(s): 1600–XX.

Affected Public: An estimated 270 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 22.5 hours annually.

Abstract: The information garnered from a signed Specific Release form will be used by FAA Special Agents to obtain information related to a specific investigation. That information is then provided to the FAA decision making authority to make FAA employment and/or pilot certification/revocation determinations.

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 the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102,

725 17th Street, NW., Washington, DC 20503.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to mnininiize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 15, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–9206 Filed 4–22–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2009–0019]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection:

49 U.S.C. Section 5317, New Freedom Program.

DATES: Comments must be submitted before June 22, 2009.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *http://www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

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

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *http://www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *http://www.regulations.gov.*

Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Schneider, FTA Office of Program Management (202) 493–017, or e-mail: *David.Schneider@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Section 5317, New Freedom Program.

(*OMB Number:* 2132–0565)

Background: 49 U.S.C. 5317, the New Freedom Program, authorizes the Secretary of Transportation to make grants to States for areas with a population of less than 200,000 and designated recipients in urbanized areas of 200,000 persons or greater to reduce barriers to transportation services and expand the transportation mobility options available to people with disabilities beyond the requirements of the Americans with Disabilities Act (ADA) of 1990. Grant recipients are required to make information available to the public and to publish a program of projects which identifies the subrecipients and projects for which the State or designated recipient is applying for financial assistance. FTA uses the information to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. FTA collects performance information annually from designated recipients in rural areas, small urbanized areas, other direct recipients for small urbanized areas, and designated recipients in urbanized areas of 200,000 persons or greater. FTA collects milestone and financial status reports from designated recipients in large urbanized areas on a quarterly basis. The information submitted ensures FTA's compliance with applicable Federal laws and OMB Circular A–102.

Respondents: State and local government, private non-profit organizations and public transportation authorities.

Estimated Annual Burden on Respondents: 251 hours for each of the 206 respondents.

Estimated Total Annual Burden: 122,374 hours.

Frequency: Annual.

Issued: April 17, 2009.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. E9–9342 Filed 4–22–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Airports Grants Program; Supplementary Notice

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This request is a change to FAA Form 5100–127, Operating and Financial Summary, where we will now collect limited statistical information on airport operations. This new information will add 10 lines to the Form and 1 hour to the Form's preparation time. Large, medium, and small hub commercial service airports will be asked to provide this information. A copy of the modified Form is available for public inspection at FAA Docket-2009–0257. This notice is supplementary to the notice of this Airport Grants Program revision published in the **Federal Register** on February 3, 2009 [74 FR 5968]. Additionally, since that notice of revision, the burden for this collection has increased due to new requirements imposed by the American Recovery and Reimbursement Act of 2009 (ARRA). A letter of public notification of this emergency increase was published in the **Federal Register** on April 10, 2009 [74 FR 16439].

DATES: Please submit comments by June 22, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Airports Grants Program Including ARRA Requirements.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0569.

Forms(s): Forms 5100–100, 5100–101, 5100–108, 5100–126, 5100–127, 5370–1.

Affected Public: A total of 1,950 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 9 hours per response.

Estimated Annual Burden Hours: An estimated 86,379 hours annually.

Abstract: The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants Program. Data is used to determine eligibility, ensure proper use of Federal Funds, and ensure project accomplishments.

ADDRESSES: You may send comments by any of the following methods: *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Fax: (202) 493–2251.

Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor. Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the Docket: You may examine the docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the docket shortly after receipt.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 15, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–9207 Filed 4–22–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35222]

Nittany and Bald Eagle Railroad Company—Temporary Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR), pursuant to a written trackage rights agreement entered into between NSR and Nittany and Bald Eagle Railroad Company (N&BE),[1] has agreed to grant temporary, non-exclusive, overhead trackage rights to N&BE over a portion of NSR's line of railroad between Lock Haven, PA (milepost BR 194.2), and Driftwood, PA (milepost BR 139.2), a distance of approximately 55 miles.

The transaction is scheduled to be consummated on or after May 7, 2009, the effective date of the exemption (30 days after the exemption was filed). The temporary trackage rights will expire on December 15, 2009. The purpose of the temporary trackage rights is to allow N&BE to operate bridge train service for temporary, seasonal traffic originating on N&BE for delivery to an off-line destination.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any stay petition must be filed by April 30, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35222, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, Esq., 127 Lexington Avenue, Ste. 100, Altoona, PA 16601.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

[1] A redacted version of the trackage rights agreement was filed with the notice of exemption. The full version was concurrently filed under seal along with a motion for protective order, which will be addressed in a separate decision.

Decided: April 16, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–9176 Filed 4–22–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–8398; FMCSA–2002–12294; FMCSA–2002–12844; FMCSA–2004–17984; FMCSA–2005–20027]

Qualification of Drivers; Exemption Renewals; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on March 30, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 13 renewal applications, FMCSA renews the Federal vision exemptions for David F. Breuer, Wilford F. Christian, Richard S. Cummings, Joseph A. Dean, Jimmy C. Killian, Daniel L. Jacobs, Jimmy C. Killian, Jose M. Limon-Alvarado, Eugene R. Lydick, John W. Montgomery, Billy L. Riddle, Scottie Stewart, and Artis Suitt.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: April 17, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–9346 Filed 4–22–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009–0038]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ISLAND SPIRIT.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0038 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in 388.4 of MARAD's regulations at 46 CFR part 388.

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

ADDRESSES: Comments should refer to docket number MARAD–2009–0038. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel ISLAND SPIRIT is:

Intended Use: ''As a vessel in which sailing skills and navigation are taught by a licensed (USCG MASTER) and certified instructor. Additional use as a skippered charter vessel operated by a USCG MASTER which could include multi day trips as well as day and evening charters. Use as a bareboat charter vessel.''

Geographic Region: ''Washington State, Oregon, California and Alaska''.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: April 14, 2009.

By Order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–9130 Filed 4–22–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for O'Hare International Airport, John F. Kennedy International Airport, and Newark Liberty International Airport for the Winter 2009/10 Scheduling Season

AGENCY: Department of Transportation, Federal Aviation Administration (FAA).

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of May 14, 2009, for Winter 2009/10 flight schedules at Chicago's O'Hare International Airport (ORD), New York's John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR) in accordance with the International Air Transport Association (IATA) Worldwide Scheduling Guidelines. The deadline of May 14, 2009, coincides with the schedule submission deadline for the IATA Schedules Conference for the Winter 2009/10 scheduling season.

SUPPLEMENTARY INFORMATION: The FAA has designated ORD as an IATA Level 2, Schedules Facilitated Airport, and JFK and EWR as Level 3, Coordinated Airports. Scheduled operations at JFK and EWR are currently limited by the FAA under orders that expire on October 24, 2009.[1] In addition, the FAA adopted a final rule for Congestion Management at John F. Kennedy International Airport and Newark Liberty International Airport that would have continued limits beyond October 2009. 73 FR 60,544 (Oct. 10, 2008). The rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit prior to the December 9, 2008, effective date. The FAA is presently reconsidering whether to go forward with the rule and is evaluating whether to propose its rescission. Accordingly, the FAA requested that the briefing schedule be held in abeyance. The court granted the FAA's request on April 1, 2009. Given the uncertainty surrounding the rule, it is likely that the orders at JFK and EWR will be extended through the Winter 2009/10 scheduling season.

The hourly capacity at JFK and EWR has not increased significantly since the orders took effect last spring. Because the demand for operations at New York-area airports remains high, and in light of the judicial stay, obtaining schedule information by the standard industry deadline and reviewing those schedules under the current procedures is the most practical way to proceed at this time.

The FAA is primarily concerned about planned passenger and cargo operations during peak hours, but carriers may submit schedule plans for the entire day. At ORD, the peak hours are between 7 a.m. and 9 p.m. Central Standard Time (1300–0300 UTC) and at EWR and JFK between the hours of 6 a.m. and 11 p.m. Eastern Standard Time (1100–0400 UTC). Carriers should submit schedule information in sufficient detail including, at minimum, the operating carrier, flight number, scheduled time of operation, frequency, and effective dates. IATA standard schedule information format and data elements (Standard Schedules Information Manual) may be used.

The U.S. winter scheduling season is from October 25, 2009, through March 27, 2010, in recognition of the IATA scheduling season dates. The FAA understands there may be differences in schedule times due to the U.S. daylight saving time dates, and we will accommodate these differences to the extent that it is possible.

DATES: Schedules must be submitted no later than May 14, 2009.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC–240, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile: 202–267–7277; ARINC: DCAYAXD; or by e-mail to: *7-AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: James Tegtmeier, Associate Chief Counsel for the Air Traffic Organization, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–8323; fax number: 202–267–7971; e-mail: *james.tegtmeier@faa.gov.*

Issued in Washington, DC, on April 17, 2009.

Rebecca B. Macpherson,

Assistant Chief Counsel for Regulations.

[FR Doc. E9–9299 Filed 4–22–09; 8:45 am]

BILLING CODE 4910–13–P

[1] Operating Limitations at John F. Kennedy International Airport, 73 FR 3,510 (Jan. 18, 2008); Operating Limitations at Newark Liberty International Airport, 73 FR 29,550 (May 21, 2008).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council (IRSAC); Nominations

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Request for applications.

SUMMARY: The Internal Revenue Service (IRS) requests applications of individuals to be considered for selection as Internal Revenue Service Advisory Council (IRSAC) members. Applications will be accepted for current vacancies and should describe and document the applicant's qualifications for membership. IRSAC is comprised of up to thirty-five (35) appointed members; approximately eight of these appointments will expire in December 2009. It is important that the IRSAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection is based on the applicant's qualifications as well as areas of expertise. The Internal Revenue Service Advisory Council (IRSAC) provides an organized public forum for IRS officials and representatives of the public to discuss relevant tax administration issues. The council advises the IRS on issues that have a substantive effect on federal tax administration. As an advisory body designed to focus on broad policy matters, the IRSAC reviews existing tax policy and/or recommends policies with respect to emerging tax administration issues. The IRSAC suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and advises the IRS with respect to issues having substantive effect on Federal tax administration.

DATES: Written applications must be postmarked or faxed on or before June 16, 2009.

ADDRESSES: Applications should be sent to National Public Liaison, CL:NPL:P, Room 7559 IR, 1111 Constitution Avenue, NW., Washington, DC 20224,

Attn: Lorenza Wilds; or by e-mail: *public_liaison@irs.gov. Applications may be submitted by mail to the address above or faxed to 202–927–4123. Application packages are available on the Tax Professional's Page, which is located on the IRS Internet Web site at *http://www.irs.gov/taxpros/index.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Lorenza Wilds at 202–622–6440 (not a toll-free number).

SUPPLEMENTARY INFORMATION: IRSAC was authorized under the Federal Advisory Committee Act, Public Law No. 92–463. The first Advisory Group to the Commissioner of Internal Revenue—or the Commissioner's Advisory Group (''CAG'')—was established in 1953 as a ''national policy and/or issue advisory committee.'' Renamed in 1998, the Internal Revenue Service Advisory Council (IRSAC) reflects the agency-wide scope of its focus as an advisory body to the entire agency. The IRSAC's primary purpose is to provide an organized public forum for senior IRS executives and representatives of the public to discuss relevant tax administration issues. Conveying the public's perception of IRS activities, the IRSAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds on the Council's activities. Membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, state tax administration, and the payroll community. IRSAC members are appointed by the Commissioner of the Internal Revenue Service and serve a term of three years. There are four subcommittees of IRSAC, the Small Business/Self Employed (SB/SE); Large Mid-Size Business (LMSB); Wage & Investment (W&I); and the Office of Professional Responsibility (OPR) subcommittee. Members are not paid for their services. However, travel expenses for working sessions, public meetings and orientation sessions, such as airfare, per diem, and transportation to and from airports, train stations, etc., are reimbursed within prescribed federal travel limitations. Receipt of applications will be acknowledged, these individuals contacted, and immediately thereafter, biographical information must be completed and returned to Ms. Lorenza Wilds in National Public Liaison within fifteen (15) days. In accordance with Department of Treasury Directive 21–03, a clearance process including annual tax checks, a Federal Bureau of Investigation (FBI) fingerprint check, and a practitioner check with the Office of Professional Responsibility will be conducted.

Equal opportunity practices will be followed for all appointments to the IRSAC in accordance with the Department of Treasury and IRS policies. To ensure that the recommendations of the IRSAC have taken into account the needs of the diverse groups served by the IRS, membership shall include individuals who demonstrate the ability to represent minorities, women, and persons with disabilities.

Dated: April 14, 2009.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. E9–9293 Filed 4–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Narcotics Traffickers Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of two individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers*.

DATES: The unblocking and removal from the list of Specially Designated Narcotics Traffickers of the individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on April 17, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) to play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On April 17, 2009, the Director of OFAC removed from the list of Specially Designated Narcotics Traffickers the individuals listed below, whose property and interests in property were blocked pursuant to the Order.

The listing of the unblocked individuals follows:

GUTIERREZ CANCINO, Fernando Antonio, c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogota, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogota, Colombia; c/o SERVICIOS SOCIALES LTDA., Cali, Colombia; c/o ALFA PHARMA S.A., Bogota, Colombia; c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o CREACIONES DEPORTIVAS WILLINGTON LTDA., Cali, Colombia; c/o FARMATODO S.A., Bogota, Colombia; c/o INVERSIONES GEELE LTDA., Bogota, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DECOLOMBIA S.A., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota,

Colombia; c/o DROCARD S.A., Bogota, Colombia; c/o BONOMERCAD S.A., Bogota, Colombia; c/o DECAFARMA S.A., Bogota, Colombia; DOB 4 Dec 1941; Cedula No. 6089071 (Colombia); Passport 6089071 (Colombia) (individual) [SDNT]

RODRIGUEZ HERRERA, Jorge Alberto, c/o FUNDASER, Cali, Colombia; DOB 8 Dec 1962; Cedula No. 79290554 (Colombia); Passport 79290554 (Colombia) (individual) [SDNT]

Dated: April 17, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–9294 Filed 4–22–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0321]

Agency Information Collection (Appointment of Veterans Service Organization/or Individuals as Claimant's Representative) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 26, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0321'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0321.''

SUPPLEMENTARY INFORMATION:

Titles: Appointment of Veterans Service Organization as Claimant's Representative, VA Form 21–22 and Appointment of Individual as Claimant's Representative, VA Form 21–22a.

OMB Control Number: 2900–0321.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Forms 21–22 and 21–22a to appoint a veterans service organization or an individual to assist in the preparation, representation, and prosecution of claims for VA benefits and to authorize VA to disclose any or all records to the appointed representative.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 10, 2009, at pages 6696–6697.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 21–22—27,083 hours.

b. VA Form 21–22a—533 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents:

a. VA Form 21–22—325,000.

b. VA Form 21–22a—6,400.

Dated: April 17, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–9249 Filed 4–22–09; 8:45 am]

BILLING CODE A320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0110]

Agency Information Collection (Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 26, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0110'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0110.''

SUPPLEMENTARY INFORMATION:

Title: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan, VA Form 26–6381.

OMB Control Number: 2900–0110.

Type of Review: Extension of a currently approved collection.

Abstract: Veteran-borrowers complete VA Form 26–6381 to sell their home by assumption rather than requiring the purchaser to obtain their own financing to pay off the VA guaranteed home loan. In order for the veteran-borrower to be released from personal liability, the loan must be current and the purchaser must assume all of the veteran's liability to the Government and to the mortgage holder and meet the credit and income requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 2, 2009, at page 5897.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 42 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Dated: April 17, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–9250 Filed 4–22–09; 8:45 am]

BILLING CODE A320–01–P

Federal Register

Thursday,
April 23, 2009

Part II

Securities and Exchange Commission

17 CFR Parts 210, 211, 229 et al.
Technical Amendments to Rules, Forms, Schedules, and Codification of Financial Reporting Policies; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 211, 229, 239, 240, and 249

[Release Nos. 33–9026; 34–59775; FR–79]

Technical Amendments to Rules, Forms, Schedules, and Codification of Financial Reporting Policies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendment.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting technical amendments to various rules, forms and schedules under the Securities Act of 1933 (''Securities Act'') and the Securities Exchange Act of 1934 (''Exchange Act''). The Commission also is making certain technical changes to the Codification of Financial Reporting Policies (''CFRP''). These revisions are necessary to conform those rules, forms, schedules and the CFRP to two recently issued Statements of Financial Accounting Standards (''SFAS'') issued by the Financial Accounting Standards Board (''FASB''). SFAS 141 (revised 2007), *Business Combinations*, and SFAS 160, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51* (collectively ''Statements'') were both issued in December 2007. The technical amendments include revision of certain rules in Regulation S–X, certain items in Regulation S–K, certain sections in the CFRP and various forms and schedules prescribed under the Securities Act and Exchange Act.

DATES: *Effective Date:* April 23, 2009.

FOR FURTHER INFORMATION CONTACT: Steven C. Jacobs, Associate Chief Accountant, at (202) 551–3400, Division of Corporation Finance, or Eric C. West, Associate Chief Accountant, at (202) 551–5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Regulation S–X,[1] Regulation S–K,[2] rules, forms and schedules under the Securities Act of 1933[3] and the Securities Exchange Act of 1934[4] and making technical changes to the CFRP. In Regulation S–X, we are adopting amendments to Rules 1–02, 3–01, 3–04, 3–05, 3–10, 3A–02, 4–08, 5–02, 5–03, 5–04, 7–03, 7–04, 7–05, 8–03, 8–04, 8–08, 9–03, 9–04, 9–06, 10–01, 11–01, and 11–02.[5] In Regulation S–K, we are adopting amendments to Items 301, 302, 305, and 503.[6] We are making technical changes to CFRP sections 201.01, 201.02, 213.02(b), and 507.03. We are amending Exchange Act Rule 12b-2.[7] We are amending Securities Act Forms S–3, S–4, F–3, and 1–A.[8] We are amending Exchange Act Schedule 14A.[9] Finally, we are amending Exchange Act Form 20–F.[10]

I. Background and Summary

On April 25, 2003, the Commission issued a policy statement recognizing the FASB's financial accounting and reporting standards as ''generally accepted'' for purposes of the Federal securities laws.[11] The Commission's rules and regulations generally require compliance with U.S. generally accepted accounting principles (''GAAP''),[12] and the requirements of the Commission's rules, forms and schedules generally are used to interpret, supplement, or expand upon GAAP requirements. The purpose of these technical amendments and revisions is to eliminate obsolete terminology and revise reporting and disclosure requirements as necessary to achieve consistency between the Commission's compliance requirements and SFAS 141(R) and SFAS 160, both issued by the FASB in December 2007.

II. Business Combinations

The FASB issued SFAS 141(R), *Business Combinations*, in December 2007. SFAS 141(R) is effective at the beginning of the first annual reporting period beginning on or after December 15, 2008. SFAS 141(R) addresses the accounting for all transactions in which an enterprise obtains control of one or more other businesses. The new standard retains the fundamental requirement in SFAS 141 that the acquisition method of accounting (called the ''purchase method'' in SFAS 141) be used for all business combinations. The existing requirement that an acquirer be identified for each business combination also was not modified. SFAS 141(R) defines the acquirer as the enterprise that obtains control of one or more businesses and establishes the acquisition date as the date control is achieved. The application of SFAS 141 was limited to business combinations in which control was obtained by transfer of consideration. SFAS 141(R) requires that the acquisition method of accounting be applied to all transactions and other events in which one entity obtains control over one or more businesses. In addition, SFAS 141(R) generally requires an acquirer to recognize assets acquired, liabilities assumed and any noncontrolling interest in the acquiree at their fair values as of the acquisition date (rather than the announcement date as required in SFAS 141). SFAS 141(R) also makes significant changes in accounting for contingencies, goodwill, bargain purchases and income taxes related to business combinations.

III. Noncontrolling Interests in Consolidated Financial Statements

The FASB issued SFAS 160, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB 51*, in December 2007. SFAS 160 is effective for fiscal years and interim periods within those fiscal years beginning on or after December 15, 2008. SFAS 160 amends ARB 51[13] to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. It specifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. Prior to the advent of SFAS 160, little guidance existed for reporting noncontrolling interests. As a result, there were widely divergent practices for reporting such outside interests.

Most significantly, SFAS 160 changes the way the consolidated income statement is presented. It requires consolidated net income to be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. In this regard, it requires disclosure on the face of the consolidated statement of income of the consolidated net income attributable to the parent and to the noncontrolling interest. Further, SFAS 160 establishes that all changes in a parent's ownership interest in a subsidiary shall be accounted for as equity transactions as

[1] 17 CFR 210.

[2] 17 CFR 229.

[3] 15 U.S.C. 77a *et seq.*

[4] 15 U.S.C. 78a *et seq.*

[5] 17 CFR 210.1–02, 210.3–01, 210.3–04, 210.3–05, 210.3–10, 210.3A–02, 210.4–08, 210.5–02, 210.5–03, 210.5–04, 210.7–03, 210.7–04, 210.7–05, 210.8–03, 210.8–04, 210.8–08, 210.9–03, 210.9–04, 210.9–06, 210.10–01, 210.11–01, and 210.11–02.

[6] 17 CFR 229.301, 229.302, 229.305, and 229.503.

[7] 17 CFR 240.12b–2.

[8] 17 CFR 239.13, 239.25, 239.33, and 239.90.

[9] 17 CFR 240.14a–101.

[10] 17 CFR 249.220f.

[11] See Financial Reporting Release No. 70.

[12] See, *e.g.*, Rule 4–01(a)(1) of Regulation S–X [17 CFR 210.4–01(a)(1)].

[13] ARB 51 is Accounting Research Bulletin No. 51, *Consolidated Financial Statements*, adopted in August 1959 by the Committee on Accounting Procedure of the Accounting Principles Board.

long as the parent retains a controlling financial interest in the subsidiary. In addition, SFAS 160 requires that a parent recognize a gain or loss when a subsidiary is deconsolidated. Finally, SFAS 160 significantly expands disclosures in the consolidated financial statements regarding the interests of the parent's owners and the interests of noncontrolling owners.

IV. Summary of Amendments

The table which follows is presented as a guide to assist the reader in understanding the various changes being made by the technical amendments that are described at the end of this release. The table presents a brief description of each category of the changes and an explanation of the rationale for each change. Conforming amendments are being made to update the CFRP.

Amendment	Rationale
Amend various rules in Regulation S–X, items in Regulation S–K, and forms and schedules filed under the Securities Act and the Exchange Act to replace references to ''minority interests'' with ''noncontrolling interests.''	These amendments will replace references to ''minority interests'' with ''noncontrolling interests'' in order to be consistent with SFAS 160.
Under Regulation S–X, delete paragraphs 12 of Rule 5–03, 10 of Rule 7–04, and 14(e) of Rule 9–04.	SFAS 160 requires that consolidated financial statements report the net income attributable to the parent (or controlling interest) and the net income attributable to the noncontrolling interest. These amendments will make the rules consistent with this requirement.
Under Regulation S–X, delete paragraphs 27 of Rule 5–02, 20 of Rule 7–03, and 18 of Rule 9–03.	SFAS 160 requires that noncontrolling interests be presented in the consolidated statement of financial position within the equity section separate from the parent's equity. These amendments will eliminate the Commission's current requirement to present equity attributable to the noncontrolling interest outside of the consolidated equity section.
Amend various rules in Regulation S–X, items in Regulation S–K, and forms and schedules filed under the Securities Act and the Exchange Act to rescind guidance related to business combinations accounted for as ''pooling of interests'' and update references to specify which rules apply to combinations of entities under common control.	These amendments will eliminate ''pooling of interests'' accounting by registrants in accordance with the requirements of SFAS 141(R).
Amend various rules in Regulation S–X, items in Regulation S–K, and forms and schedules filed under the Securities Act and the Exchange Act to distinguish between income attributable to a noncontrolling interest and income attributable to a controlling interest.	SFAS 160 requires net income or loss be attributed to the parent (or controlling interest) and the noncontrolling interest. These amendments will make the rules consistent with this requirement.
Amend various rules in Regulation S–X, items in Regulation S–K, and forms and schedules filed under the Securities Act and the Exchange Act to remove the term ''purchase method.''	Under SFAS 141(R), a business combination can occur in the absence of a purchase transaction. These amendments will update the terminology in order to achieve consistency with SFAS 141(R).
Amend Rule 3–04 under Regulation S–X to require a separate schedule in the notes to the financial statements that shows the effects of any changes in the registrant's ownership interest in a subsidiary to the equity attributable to the registrant.	This amendment will conform Rule 3–04 to the requirements of SFAS 160.

V. Certain Findings

Under the Administrative Procedure Act, a notice of proposed rulemaking is not required when the agency, for good cause, finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[14] These amendments are technical changes to eliminate obsolete terminology and revise reporting and disclosure requirements as necessary to achieve consistency between the Commission's compliance requirements and SFAS 141(R) and SFAS 160. Because no one is likely to want to comment on such non-substantive, technical amendments, the Commission finds that it is unnecessary to publish notice of these amendments.[15]

The Administrative Procedure Act also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.[16] Due to the need to coordinate the effectiveness of the amendments with the effective dates of SFAS 141(R) and SFAS 160 and for the same reasons described with respect to opportunity for notice and comment, the Commission finds there is good cause for the amendments to take effect on April 23, 2009.

VI. Consideration of Competitive Effects of Amendments

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[17] Because these amendments merely make technical changes to update references to applicable FASB pronouncements, we do not anticipate any competitive advantages or disadvantages will be created.

VII. Update to Codification of Financial Reporting Policies

The Commission amends the ''Codification of Financial Reporting Policies'' announced in Financial Reporting Release 1 (April 15, 1982) [47 FR 21028] as follows:

1. By removing and reserving Sections 201.01 and 201.02.

2. By revising Section 213.02(b) to replace the term ''minority interest'' in each place it appears with the term ''noncontrolling interest''.

3. By revising Section 507.03 to replace the term ''minority interest'' in each place it appears with the term ''noncontrolling interest''.

[14] 5 U.S.C. 553(b).

[15] For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analysis, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term ''rule'' does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

[16] *See* 5 U.S.C. 553(d)(3).

[17] 15 U.S.C. 78w(a)(2).

The CFRP is a separate publication issued by the Commission. It will not be published in the **Federal Register** or Code of Federal Regulations. For more information about the CFRP, contact the Commission's Public Reference Room at (202) 551–5850.

VIII. Statutory Basis and Text of Amendments

We are adopting these technical amendments pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act,[18] and Sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act.[19]

List of Subjects in 17 CFR Parts 210, 211, 229, 239, 240, and 249

Accounting, Reporting and recordkeeping requirements, Securities.

Text of Amendments

■ For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l,* 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

■ 2. Amend § 210.1–02 by revising paragraphs (w)(1) and (w)(3), the Computational Notes 1 and 2 following the Note to paragraph (w), (bb)(1)(i) and (bb)(1)(ii) to read as follows:

§ 210.1–02 Definitions of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(w) * * *

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed combination between entities under common control, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

* * * * *

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exclusive of amounts attributable to any noncontrolling interests exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

* * * * *

Computational note: * * *

1. When a loss exclusive of amounts attributable to any noncontrolling interests has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary exclusive of amounts attributable to any noncontrolling interests should be excluded from such income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated exclusive of amounts attributable to any noncontrolling interests for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be submitted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

* * * * *

(bb) * * *

(1) * * *

(i) Current assets, noncurrent assets, current liabilities, noncurrent liabilities, and, when applicable, redeemable preferred stocks (see § 210.5–02.27) and noncontrolling interests (for specialized industries in which classified balance sheets are normally not presented, information shall be provided as to the nature and amount of the majority components of assets and liabilities);

(ii) Net sales or gross revenues, gross profit (or, alternatively, costs and expenses applicable to net sales or gross revenues), income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principle, net income or loss, and net income or loss attributable to the entity (for specialized industries, other information may be substituted for sales and related costs and expenses if necessary for a more meaningful presentation); and

* * * * *

■ 3. Amend § 210.3–01 by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 210.3–01 Consolidated balance sheets.

* * * * *

(c) * * *

(2) For the most recent fiscal year for which audited financial statements are not yet available the registrant reasonably and in good faith expects to report income attributable to the registrant, after taxes but before extraordinary items and cumulative effect of a change in accounting principle; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the registrant reported income attributable to the registrant, after taxes but before extraordinary items and cumulative effect of a change in accounting principle.

* * * * *

■ 4. Revise § 210.3–04 to read as follows:

§ 210.3–04 Changes in stockholders' equity and noncontrolling interests.

An analysis of the changes in each caption of stockholders' equity and noncontrolling interests presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be filed with all significant reconciling items described by appropriate captions with contributions from and distribution to owners shown separately. Also, state-separately the adjustments to the balance at the beginning of the earliest period presented for items which were retroactively applied to periods prior to that period. With respect to any dividends, state the amount per share and in the aggregate for each class of shares. Provide a separate schedule in the notes to the financial statements that shows the effects of any changes in the registrant's ownership interest in a subsidiary on the equity attributable to the registrant.

■ 5. In § 210.3–05, revise paragraphs (a)(1)(i) and (a)(1)(ii), and remove the authority citation at the end of the section to read as follows:

§ 210.3–05 Financial statements of businesses acquired or to be acquired.

(a) * * *

(1) * * *

(i) A business combination has occurred or is probable (for purposes of this section, this encompasses the acquisition of an interest in a business accounted for by the equity method); or

[18] 15 U.S.C. 77f, 77g, 77j, and 77s(a).

[19] 15 U.S.C. 78*l,* 78m, 78n(a), 78o(d), and 78w(a).

(ii) Consummation of a combination between entities under common control is probable.

* * * * *

■ 6. Amend § 210.3–10 by revising paragraph (i)(3) to read as follows:

§ 210.3–10 Financial statements of guarantors and issuers of guaranteed securities registered or being registered.

* * * * *

(i) * * *

(3) The parent company column should present investments in all subsidiaries based upon their proportionate share of the subsidiary's net assets;

* * * * *

§ 210.3A–02 [Amended]

■ 7. Amend § 210.3A–02 by:

■ a. Revising paragraph (a), third sentence, the phrase ''or in bankruptcy, or when control is likely to be temporary).'' to read ''or in bankruptcy).''; and

■ b. Revising paragraph (b)(2), first sentence, the reference ''*pooling of interests*'' to read ''combination between entities under common control''.

§ 210.4–08 [Amended]

■ 8. In § 210.4–08, in the last sentence of paragraph (e)(3) introductory text, remove the phrase ''(§ 210.5–02.28) and minority interests'' and add in its place the phrase ''(§ 210.5–02.27) and noncontrolling interests''.

■ 9. Amend § 210.5–02 by:

■ a. Removing the undesignated heading ''*Minority Interests*'' following paragraph 26;

■ b. Removing paragraph 27;

■ c. Redesignating paragraphs 28, 29, 30, and 31 as paragraphs 27, 28, 29, and 30;

■ d. Revising the reference ''§ 210.5–02.29'' in newly redesignated paragraph 27, last sentence, to read ''§ 210.5–02.28'';

■ e. Adding an undesignated heading following newly redesignated paragraph 30 and a new paragraph 31; and

■ f. Revising paragraph 32.

■ g. Remove the authority citation at the end of the section.

The additions and revisions read as follows:

§ 210.5–02 Balance sheets.

* * * * *

30. * * *

Noncontrolling Interests

31. *Noncontrolling interests in consolidated subsidiaries.* State separately in a note the amounts represented by preferred stock and the applicable dividend requirements if the preferred stock is material in relation to the consolidated equity.

32. *Total liabilities and equity.*

■ 10. Amend § 210.5–03 by:

■ a. Removing paragraph 12 and redesignating paragraphs 13, 14, 15, 16, 17, 18, and 19 as paragraphs 12, 13, 14, 15, 16, 17, and 18;

■ b. Redesignating paragraph 20 as paragraph 21; and

■ c. Adding new paragraphs 19 and 20.

The additions read as follows:

§ 210.5–03 Income statements.

* * * * *

19. *Net income attributable to the noncontrolling interest.*

20. *Net income attributable to the controlling interest.*

* * * * *

§ 210.5–04 [Amended]

■ 11. Amend § 210.5–04, Schedule I, last sentence, by revising the phrase ''(§ 210.5–02.28) and minority interests'' to read ''(§ 210.5–02.27) and noncontrolling interests''.

■ 12. Remove the authority citation for §§ 210.7–01 through 210.7–05 following the undesignated heading ''Insurance Companies''.

■ 13. Amend § 210.7–03 by:

■ a. Removing the undesignated heading ''Minority Interests'' preceding paragraph 20;

■ b. Removing paragraph 20;

■ c. Redesignating paragraphs 21, 22, 23, and 24 as paragraphs 20, 21, 22, and 23;

■ d. Revising newly redesignated paragraphs 20, 21, 22, and 23(b);

■ e. Adding an undesignated heading following newly redesignated paragraph 23(c) and a new paragraph 24; and

■ f. Revising paragraph 25.

The revisions and addition read as follows:

§ 210.7–03 Balance sheets.

* * * * *

20. *Preferred stocks subject to mandatory redemption requirements or whose redemption is outside the control of the issuer.* The classification and disclosure requirements of § 210.5–02.27 shall be followed.

* * * * *

21. *Preferred stocks which are not redeemable or are redeemable solely at the option of the issuer.* The classification and disclosure requirements of § 210.5–02.28 shall be followed.

* * * * *

22. *Common stocks.* The classification and disclosure requirements of § 210.5–02.29 shall be followed.

* * * * *

23. * * *

(b) The classification and disclosure requirements of § 210.5–02.30(b) shall be followed for dating and effect of a quasi-reorganization.

* * * * *

Noncontrolling Interests

24. *Noncontrolling interests in consolidated subsidiaries.* The disclosure requirements of § 210.5–02.31 shall be followed.

25. *Total liabilities and equity.*

■ 14. Amend § 210.7–04 by:

■ a. Removing paragraph 10;

■ b. Redesignating paragraphs 11, 12, 13, 14, 15, 16, and 17 as paragraphs 10, 11, 12, 13, 14, 15, and 16;

■ c. Redesignating paragraph 18 as paragraph 19; and

■ d. Adding new paragraphs 17 and 18.

The additions read as follows:

§ 210.7–04 Income statements.

* * * * *

17. *Net income attributable to the noncontrolling interest.*

18. *Net income attributable to the controlling interest.*

* * * * *

§ 210.7–05 [Amended]

■ 15. Amend § 210.7–05:

■ a. In Schedule II, in the last sentence, remove the reference ''(§ 210.7–03.21) and minority interests'' and add in its place the reference ''(§ 210.7–03.20) and noncontrolling interests''.

■ b. Remove the authority citation at the end of the section.

■ 16. In § 210.8–03, revise paragraphs (b)(3) and (b)(4) to read as follows:

§ 210.8–03 Interim financial statements.

* * * * *

(b) * * *

(3) *Significant equity investees.* Sales, gross profit, net income (loss) from continuing operations, net income, and net income attributable to the investee must be disclosed for equity investees that constitute 20 percent or more of a registrant's consolidated assets, equity or income from continuing operations attributable to the registrant.

(4) *Significant dispositions and business combinations.* If a significant disposition or business combination has occurred during the most recent interim period and the transaction required the filing of a Form 8–K (§ 249.308 of this chapter), pro forma data must be presented that reflects revenue, income from continuing operations, net income, net income attributable to the registrant and income per share for the current interim period and the corresponding interim period of the preceding fiscal year as though the transaction occurred at the beginning of the periods.

* * * * *

§ 210.8–04 [Amended]

■ 17. Amend § 210.8–04 by:
■ a. Revising paragraph (a), first sentence, the phrase ''If a business combination accounted for as a 'purchase' has occurred or is probable,'' to read ''If a business combination has occurred or is probable,'';
■ b. Revising paragraph (a)(1) to read ''This encompasses the purchase of an interest in a business accounted for by the equity method.'';
■ c. Revising paragraph (b)(3), the phrase ''of the acquiree'' to read ''of the acquiree exclusive of amounts attributable to any noncontrolling interests''; and
■ d. Revising *Computational note to § 210.8–04(b),* the first sentence, the phrase ''its subsidiaries consolidated'' to read ''its subsidiaries consolidated exclusive of amounts attributable to any noncontrolling interests''.
■ 18. Amend § 210.8–08 by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 210.8–08 Age of financial statements.

* * * * *

(b) * * *

(2) For the most recent fiscal year for which audited financial statements are not yet available, the smaller reporting company reasonably and in good faith expects to report income from continuing operations attributable to the registrant before taxes; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the smaller reporting company reported income from continuing operations attributable to the registrant before taxes.

■ 19. Amend § 210.9–03 by:
■ a. Removing paragraph 18;
■ b. Redesignating paragraphs 19, 20, 21, and 22 as paragraphs 18, 19, 20, and 21;
■ c. Revising redesignated paragraphs 18, 19, 20, and 21;
■ d. Adding an undesignated heading following redesignated paragraph 21;
■ e. Adding new paragraph 22; and
■ f. Revising paragraph 23.
■ g. Remove the authority citation at the end of the section.

The revisions and addition read as follows:

§ 210.9–03 Balance sheets.

* * * * *

18. *Preferred stocks subject to mandatory redemption requirements or whose redemption is outside the control of the issuer.* See § 210.5–02.27.

* * * * *

19. *Preferred stocks which are not redeemable or are redeemable solely at the option of the issuer.* See § 210.5–02.28.

* * * * *

20. *Common stocks.* See § 210.5–02.29.

* * * * *

21. *Other stockholders' equity.* See § 210.5–02.30.

Noncontrolling Interests

22. *Noncontrolling interests in consolidated subsidiaries.* The disclosure requirements of § 210.5–02.31 shall be followed.

23. *Total liabilities and equity.*

■ 20. Amend § 210.9–04 by:
■ a. Removing paragraph 14(e);
■ b. Redesignating paragraph 21 as paragraph 23; and
■ c. Adding new paragraphs 21 and 22.

The additions read as follows:

§ 210.9–04 Income statements.

* * * * *

21. *Net income attributable to the noncontrolling interest.*

22. *Net income attributable to the controlling interest.*

■ 21. Amend § 210.9–06 by revising the last sentence to read as follows:

* * * * *

§ 210.9–06 Condensed financial information of registrant.

* * * Redeemable preferred stocks (§ 210.5–02.27) and noncontrolling interests shall be deducted in computing net assets for purposes of this test.

■ 22. Amend § 210.10–01 by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 210.10–01 Interim financial statements.

* * * * *

(b) * * *

(3) If, during the most recent interim period presented, the registrant or any of its consolidated subsidiaries entered into a combination between entities under common control, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the combined businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate explanations.

(4) Where a material business combination has occurred during the current fiscal year, pro forma disclosure shall be made of the results of operations for the current year up to the date of the most recent interim balance sheet provided (and for the corresponding period in the preceding year) as though the companies had combined at the beginning of the period being reported on. This pro forma information shall, at a minimum, show revenue, income before extraordinary items and the cumulative effect of accounting changes, including such income on a per share basis, net income, net income attributable to the registrant, and net income per share.

* * * * *

§§ 210.11–01—210.11–03 [Amended]

■ 23. Remove the authority citation for §§ 210.11–01 through 210.11–03 following the undesignated heading ''Pro Forma Financial Information''.
■ 24. Amend § 210.11–01 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 210.11–01 Presentation requirements.

(a) * * *

(1) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by § 210.3–01, a significant business combination has occurred (for purposes of these rules, this encompasses the acquisition of an interest in a business accounted for by the equity method);

(2) After the date of the most recent balance sheet filed pursuant to § 210.3–01, consummation of a significant business combination or a combination of entities under common control has occurred or is probable;

* * * * *

■ 25. Amend § 210.11–02 by revising paragraph (b)(3) and the first sentence of Instruction 2 to read as follows:

§ 210.11–02 Preparation requirements.

* * * * *

(b) * * *

(3) The pro forma condensed financial information need only include major captions (*i.e.,* the numbered captions) prescribed by the applicable sections of this Regulation. Where any major balance sheet caption is less than 10 percent of total assets, the caption may be combined with others. When any major income statement caption is less than 15 percent of average net income attributable to the registrant for the most recent three fiscal years, the caption may be combined with others. In calculating average net income attributable to the registrant, loss years should be excluded unless losses were incurred in each of the most recent three years, in which case the average loss shall be used for purposes of this test. Notwithstanding these tests, *de minimis* amounts need not be shown separately.

* * * * *

Instructions: * * *

2. For a business combination, pro forma adjustments for the income

statement shall include amortization, depreciation and other adjustments based on the allocated purchase price of net assets acquired. * * *

* * * * *

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

■ 26. Amend part 211, subpart A, by adding ''Technical Amendments to Rules, Forms, Schedules and Codification of Financial Reporting Policies'', Release No. FR–79 and the release date of April 15, 2009 to the list of interpretive releases.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 27. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l,* 78m, 78n, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§ 229.301 [Amended]

■ 28. Amend § 229.301, Instruction 2 to the *Instructions to Item 301,* first sentence, by revising the reference ''§ 210.5–02.28(a)'' to read ''§ 210.5–02.27(a)''.

■ 29. Amend § 229.302 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 229.302 (Item 302) Supplementary financial information.

(a) * * *

(1) Disclosure shall be made of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income (loss) before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income (loss), net income (loss) and net income (loss) attributable to the registrant, for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Article 3 of Regulation S–X (Part 210 of this chapter).

(2) When the data supplied pursuant to paragraph (a) of this section vary from the amounts previously reported on the Form 10–Q (§ 249.308a of this chapter) filed for any quarter, such as would be the case when a combination between entities under common control occurs or where an error is corrected, reconcile the amounts given with those previously reported and describe the reason for the difference.

* * * * *

§ 229.305 [Amended]

■ 30. Amend § 229.305, Instruction 3.C.ii., *General Instructions to Paragraphs 305(a) and 305(b),* first sentence, by revising the reference ''minority interests'' to read ''noncontrolling interests''.

■ 31. Amend § 229.503 by revising Instruction 1.(C) to the *Instructions to paragraph 503(d)* to read as follows:

§ 229.503 (Item 503) Prospectus summary, risk factors, and ratio of earnings to fixed charges.

* * * * *

Instructions to paragraph 503(d):

1. *Definitions.* * * *

(C) *Earnings.* The term ''earnings'' is the amount resulting from adding and subtracting the following items. Add the following: (a) pre-tax income from continuing operations before adjustment for income or loss from equity investees; (b) fixed charges; (c) amortization of capitalized interest; (d) distributed income of equity investees; and (e) your share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges. From the total of the added items, subtract the following: (a) interest capitalized; (b) preference security dividend requirements of consolidated subsidiaries; and (c) the noncontrolling interest in pre-tax income of subsidiaries that have not incurred fixed charges. Equity investees are investments that you account for using the equity method of accounting. Public utilities following SFAS 71 should not add amortization of capitalized interest in determining earnings, nor reduce fixed charges by any allowance for funds used during construction.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 32. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 33. Amend Form S–3 (referenced in § 239.13) by revising Item 11(b)(iii) to read as follows:

[**Note:** The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.]

Form S–3

Registration Statement Under the Securities Act of 1933

* * * * *

Item 11. Material Changes.

* * * * *

(b) * * * (iii) restated financial statements prepared in accordance with Regulation S–X where a combination of entities under common control has been consummated subsequent to the most recent fiscal year and the transferred businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b), or * * *

* * * * *

■ 34. Amend Form S–4 (referenced in § 239.25) by revising the Instruction to paragraphs (e) and (f) in Item 3 and Item 12(b)(2)(iv) to read as follows:

[**Note:** The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.]

Form S–4

Registration Statement Under the Securities Act of 1933

* * * * *

Item 3. Risk Factors, Ratio of Earnings to Fixed Charges and Other Information.

* * * * *

Instruction to paragraphs (e) and (f).

For a business combination, the financial information required by paragraphs (e) and (f) shall be presented only for the most recent fiscal year and interim period. For a combination between entities under common control, the financial information required by paragraphs (e) and (f) (except for information with regard to book value) shall be presented for the most recent three fiscal years and interim period. For a combination between entities under common control, information with regard to book value shall be presented as of the end of the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the registrant by the exchange ratio so that the per share amounts are equated to the respective

values for one share of the company being acquired.

* * * * *

Item 12. Information with Respect to S–3 Registrants.

* * * * *

(b) * * *

(2) * * *

(iv) restated financial statements prepared in accordance with Regulation S–X where a combination under common control has been consummated subsequent to the most recent fiscal year and the businesses transferred, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X; and

* * * * *

■ 35. Amend Form F–3 (referenced in § 239.33) by revising Item 5(b)(1)(iii) to read as follows:

[**Note:** The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.]

Form F–3

Registration Statement Under the Securities Act of 1933

* * * * *

Item 5. Material Changes.

* * * * *

(b)(1) * * *

(iii) restated financial statements where a combination of entities under common control has been consummated subsequent to the most recent fiscal year and the transferred businesses, considered in the aggregate, are significant under Rule 11–01(b) of Regulation S–X; or

* * * * *

■ 36. Amend Form 1–A (referenced in § 239.90), Part F/S, by revising paragraphs (3)(a)(i), (3)(a)(ii), and (4)(a) to read as follows:

[**Note:** The text of Form 1–A does not, and this amendment will not, appear in the Code of Federal Regulations.]

Form 1–A

Regulation A Offering Statement Under the Securities Act of 1933

* * * * *

Part F/S

* * * * *

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) * * *

(i) A significant business combination has occurred or is probable (for purposes of this rule, this encompasses the acquisition of an interest in a business accounted for by the equity method); or

(ii) Consummation of a combination between entities under common control.

* * * * *

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, ''business combination'' encompasses the acquisition of an interest in a business accounted for by the equity method):

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination has occurred.

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination or a combination between entities under common control has occurred or is probable.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 37. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 38. Amend § 240.12b–2 to revise the definition of ''Significant subsidiary'' and Computational Note following it to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Significant subsidiary. The term *significant subsidiary* means a subsidiary, including its subsidiaries, which meets any of the following conditions:

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed combination between entities under common control, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exclusive of amounts attributable to any noncontrolling interests exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

Computational note: For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss exclusive of amounts attributable to any noncontrolling interests has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary exclusive of amounts attributable to any noncontrolling interests should be excluded from such income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated exclusive of amounts attributable to any noncontrolling interests for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

* * * * *

■ 39. Amend § 240.14a–101, Item 14, by revising Instruction 1 to the *Instructions to paragraphs (b)(8), (b)(9) and (b)(10)* to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 14. * * *

Instructions to paragraphs (b)(8), (b)(9) and (b)(10):

1. For a business combination, present the financial information required by paragraphs (b)(9) and (b)(10) only for the most recent fiscal year and interim period. For a combination between entities under common control, present the financial information required by paragraphs (b)(9) and (b)(10) (except for information with regard to book value) for the most recent three fiscal years and interim period. For purposes of these paragraphs, book value information need only be provided for the most recent balance sheet date.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 40. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 41. Amend Form 20–F (referenced in § 249.220f) by, in Item 11, *General Instructions to Items 11(a) and 11(b),* revising Instruction *3.C.ii* to read as follows:

[**Note:**

The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.]

Form 20–F

* * * * *

Item 11. Quantitative and Qualitative Disclosures About Market Risk.

* * * * *

General Instructions to Items 11(a) and 11(b).

* * * * *

3. * * *

C.i. * * *

ii. Other financial instruments exclude employers and plans obligations for pension and other post-retirement benefits, substantively extinguished debt, insurance contracts, lease contracts, warranty obligations and rights, unconditional purchase obligations, investments accounted for under the equity method, noncontrolling interests in consolidated enterprises, and equity instruments issued by the registrant and classified in stockholders' equity in the statement of financial position (see, e.g., FAS 107, paragraph 8 (December 1991)). For purposes of this item, trade accounts receivable and trade accounts payable need not be considered other financial instruments when their carrying amounts approximate fair value; and

* * * * *

By the Commission.

Dated: April 15, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–9089 Filed 4–22–09; 8:45 am]

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