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WHEN: Tuesday, September 15, 2009
9:00 a.m.–12:30 p.m.

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 74, No. 169

Wednesday, September 2, 2009

Agency for Healthcare Research and Quality
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45455–45457
Common Formats for Patient Safety Data Collection and Event Reporting, 45457–45458

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45412–45413
Environmental Impact Statements; Availability, etc.:
Pioneer Hi-Bred International, Inc., 45413–45415
Implementation of Revised Lacey Act Provisions, 45415–45418

Civil Rights Commission
NOTICES
Meetings:
Missouri Advisory Committee; Agenda, 45418

Coast Guard
RULES
Safety Zones and Regulated Navigation Areas:
Chicago Sanitary and Ship Canal, Romeoville, IL, 45318–45323
Safety Zones:
IJSBA World Finals, Lower Colorado River, Lake Havasu, AZ, 45323–45325

Commerce Department
See Economic Analysis Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
NOTICES
Meetings:
Water and Energy Conservation; U.S. Department of Commerce Services for Agribusiness, 45419–45420

Consumer Product Safety Commission
NOTICES
Requirements for Accreditation of Third Party Conformity Assessment Bodies, etc.:
Third Party Testing for Certain Childrens Products, 45428–45431

Economic Analysis Bureau
PROPOSED RULES
Direct Investment Surveys:
BE–605, Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate with Foreign Parent, 45383–45385

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45431–45432

Employment and Training Administration
NOTICES
Adjustment Assistance; Applications, Determinations, etc., 45469–45478
Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance, 45478–45485

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Advisory Board, 45433
Environmental Management Site-Specific Advisory Board, Savannah River Site, 45433–45434
National Petroleum Council, 45432
Ultra-Deepwater Advisory Committee, 45432
Unconventional Resources Technology Advisory Committee, 45432–45433

Environmental Protection Agency
RULES
National Oil and Hazardous Substance Pollution Contingency Plan:
National Priorities List, 45335–45336
Pesticide Tolerances:
Methoxyfenozide, 45330–45335
PROPOSED RULES
Approval and Promulgation of Implementation Plans:
Puerto Rico; Guaynabo PM10 Limited Maintenance Plan and Redesignation Request, 45387–45394
NOTICES
Availability of External Peer Review Draft:
Recommended Toxicity Equivalency Factors for Human Health Risk Assessments of Dioxin and Dioxin-Like Compounds, 45437–45438
Project Waivers:
Utah Division of Wildlife Resources, 45438–45440

Executive Office of the President
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 45440

Federal Aviation Administration
RULES
Airworthiness Directives:
BAE Systems (Operations) Limited Model BAe 146–100A and 146–200A Series Airplanes; Correction, 45311
Airworthiness Standards:
Aircraft Engine Standards Overtorque Limits, 45307–45311
PROPOSED RULES
Airworthiness Directives:
SOCATA Model TBM 700 Airplanes, 45381–45383

NOTICES
Advisory Circular 33.70–1:
Guidance Material for Aircraft Engine Life-limited Parts Requirements, 45515
Advisory Circular 33–8:
Guidance for Parts Manufacturer Approval of Turbine Engine and Auxiliary Power Unit Parts Under Test and Computation, 45515–45516
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45516
Intent to Rule on Request to Release Airport Property:
Brigham City Municipal Airport, Brigham City, UT, 45517–45518
Meetings:
Government/Industry Aeronautical Charting Forum, 45519–45520
Research, Engineering And Development Advisory Committee, 45519

Federal Deposit Insurance Corporation
NOTICES
Final Statement of Policy on Qualifications for Failed Bank Acquisitions, 45440–45449

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45434–45435
Meetings:
Columbia Gulf Transmission Co.; Technical Conference, 45435–45436
Records Governing Off-the-Record Communications, 45436
Scoping Comments:
Ha-Best Inc.; Hydroelectric Application Filed, 45436–45437

Federal Maritime Commission
NOTICES
Agreements Filed, 45451–45452

Federal Motor Carrier Safety Administration
NOTICES
Qualification of Drivers; Exemption Renewals; Vision, 45521

Federal Railroad Administration
RULES
State Highway-Rail Grade Crossing Action Plans, 45336–45343
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45516–45517

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 45449–45450
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 45450–45451
Meetings; Sunshine Act, 45451

Federal Transit Administration
NOTICES
Additional Final Guidance on New Starts/Small Starts Policies and Procedures, 45510–45515
Limitation on Claims against Proposed Public Transportation Projects, 45518–45519

Fish and Wildlife Service
RULES
Migratory Bird Hunting:
2009–10 Early Season Migratory Bird Hunting Regulations on Certain Federal Indian Reservations, etc., 45343–45353
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
12-Month Finding on a Petition To List the Sacramento Mountains Checkerspot Butterfly as Endangered with Critical Habitat, 45396–45411

Food and Nutrition Service
RULES
School Food Safety Inspections, 45305–45307

Forest Service
NOTICES
Boundary Establishment:
Whitefish, Indian and Carp National Wild and Scenic Rivers; Hiawatha National Forest; Alger, Delta, Schoolcraft, Mackinac Counties; MI, 45413
Meetings:
Glenn/Colusa County Resource Advisory Committee, 45418

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation:
FAR Case 2008–016, Termination for Default Reporting, 45394–45396
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45452–45453

Health and Human Services Department
See Agency for Healthcare Research and Quality
See National Institutes of Health
NOTICES
Meetings:
HIT Policy Committee, 45453–45454
HIT Standards Committee, 45455
National Committee on Vital and Health Statistics, 45453
Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives (for 2020), 45454–45455

Homeland Security Department
See Coast Guard
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
RULES
Home Equity Conversion Mortgage Counseling Standardization and Roster, 45311–45317
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45460–45461
Electronic Application Submission for Continuum of Care Homeless Assistance Programs; Fiscal Year 2009 Opportunity to Register, etc., 45461–45466
Funding Awards for the Rurual Housing and Economic Development Program (Fiscal Year 2008), 45466–45467

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Partial Rescission of Antidumping Duty Administrative Review:
Wooden Bedroom Furniture from the People's Republic of China, 45424–45427
Solicitation of Applications for Allocation of Tariff Rate Quotas:
Import of Certain Worsted Wool Fabrics to Persons Who Cut and Sew Men's and Boys' Worsted Wool Suits, etc., 45427–45428
Import of Certain Worsted Wool Fabrics to Persons Who Weave Such Fabrics in the United States, 45427

International Trade Commission
NOTICES
Investigations:
Flash Memory and Products Containing Same, 45468–45469

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Filing of Plats of Survey:
New Mexico, 45468

National Highway Traffic Safety Administration
NOTICES
Meetings:
National Emergency Medical Services Advisory Council, 45520–45521

National Institutes of Health
NOTICES
Meetings:
Fogarty International Center, 45459
Recombinant DNA Advisory Committee, 45459

National Oceanic and Atmospheric Administration
RULES
Endangered and Threatened Species:
Critical Habitat for the Endangered Distinct Population Segment of Smalltooth Sawfish, 45353–45378
Fisheries of the Exclusive Economic Zone Off Alaska:
Atka Mackerel in Bering Sea and Aleutian Islands Management Area, 45379–45380
Pacific Cod by Vessels Subject to Amendment 80 Sideboard Limits in Western Regulatory Area of Gulf of Alaska, 45378–45379
Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska, 45378
NOTICES
Endangered Species (File No. 1556), 45421
Evaluation of State Coastal Management Programs and National Estuarine Research Reserves, 45422
Marine Mammals (File No. 14301), 45422–45423
Meetings:
Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas, 45423
Hydrographic Services Review Panel, 45423–45424

National Park Service
NOTICES
Draft General Management Plan/Wilderness Management Plan/Environmental Impact Statement:
Apostle Islands National Lakeshore, WI, 45467–45468

National Science Foundation
NOTICES
Permit Applications Received under the 1978 Antarctic Conservation Act, 45485–45486

National Telecommunications and Information Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45420–45421

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 45486

Postal Regulatory Commission
RULES
New Postal Product, 45327–45330
NOTICES
Meetings; Sunshine Act, 45486–45487

Postal Service
RULES
First-Class Mail Incentive Program, 45325–45327

Presidential Documents
PROCLAMATIONS
Special Observances:
National Historically Black Colleges and Universities Week, 45525–45528
Trade:
North American Free Trade Agreement; Rules of Origin, Adjustment, 45529–45531
ADMINISTRATIVE ORDERS
Government Agencies and Employees:
International Boundary and Water Commission; Designation of Officers to Act as Commissioner (Memorandum of August 31, 2009), 45533–45534

Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45412

Securities and Exchange Commission
NOTICES
Applications:
DNP Select Income Fund Inc., et al., 45492–45495
Highland Capital Management, L.P., et al., 45496–45498
Jackson National Life Insurance Co., et al., 45487–45492
Rafferty Asset Management, LLC, et al., 45495–45496
Self–Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 45498–45500
NASDAQ OMX BX Inc., 45502–45504
NASDAQ Stock Market LLC, 45504–45506
New York Stock Exchange LLC, 45500–45502
NYSE Amex LLC, 45506–45508

Social Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45508–45510

State Department
PROPOSED RULES
Exchange Visitor Program—Secondary School Students, 45385–45387

Surface Transportation Board
NOTICES
Trackage Rights Exemptions:
Indiana Rail Road Co., CSX Transportation, Inc., 45521–45522

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45522–45523

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45459–45460

Veterans Affairs Department
NOTICES
Meetings:
Voluntary Service National Advisory Committee, 45523

Separate Parts In This Issue

Part II
Presidential Documents, 45525–45531, 45533–45534

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

8404 45527
8405 45529

Administrative Orders:

Memorandums:
Memorandum of August 31, 2009 45533

7 CFR

210 45305
220 45305

14 CFR

1 45307
33 45307
39 45311

Proposed Rules:

39 45381

15 CFR

Proposed Rules:

806 45383

22 CFR

Proposed Rules:

62 45385

24 CFR

206 45311

33 CFR

165 (2 documents) 45318, 45323

39 CFR

111 45325
3020 45327

40 CFR

180 45330
300 45335

Proposed Rules:

52 45387
81 45387

48 CFR

Proposed Rules:

8 45394
12 45394
15 45394
42 45394
49 45394

49 CFR

234 45336

50 CFR

20 45343
226 45353
679 (3 documents) 45378, 45379

Proposed Rules:

17 45396

Rules and Regulations

Federal Register
Vol. 74, No. 169
Wednesday, September 2, 2009

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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

[FNS–2005–0002]

RIN 0584–AD64

School Food Safety Inspections

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

ACTION: Final rule.

SUMMARY: This final rule adopts without change the food safety inspections requirements for the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) set forth in a previous interim rule issued by the Food and Nutrition Service as a result of the Child Nutrition and WIC Reauthorization Act of 2004. Schools participating in the lunch and breakfast programs must obtain two inspections per year, post the most recent inspection report in a visible location, and release a copy of the report to members of the public upon request. This rule enhances the safety of over 38 million meals served to school children daily.

DATES: This final rule is effective October 2, 2009.

FOR FURTHER INFORMATION CONTACT: William Wagoner or Marisol Benesch, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265; June 30, 2004) amended section 9(h) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758(h)) by increasing the number of mandatory food safety inspections for schools participating in the NSLP and SBP from one to two per school year, and by requiring schools to post the most recent inspection report in a visible location and to release a copy of the report to the public upon request. Section 111 also requires State agencies to submit to the Food and Nutrition Service (FNS) the number of inspections obtained by schools for each of fiscal years 2006 through 2009. These statutory requirements became effective July 1, 2005.

To implement the above requirements, FNS published an interim rule in the **Federal Register** on June 15, 2005 (70 FR 34627) and received a total of 75 public comments (59 from school food authorities (SFAs) or school districts, 3 from State agencies (SAs), 5 from regulatory agencies responsible for food safety inspections, and 8 from other individuals).

II. Public Comments

The main comments or concerns are the following:

Need for Second Inspection

Most commenters stated that the second inspection is not necessary because school cafeterias are safe places to eat, with well-trained staff and/or a manager who is certified in safe food handling practices.

Inspection Cost

Commenters noted that funds to pay for the second inspection and to increase inspection staff were not provided by law. For some schools, expanding the inspection requirement has more than doubled the cost for food safety inspections.

Risk Assessment

Commenters said that State/local regulatory agencies should assess the risk level that school food operations present and establish the frequency of inspections. Some said that schools rarely have critical violations and that regulatory agencies need to focus their resources on high risk food establishments.

Reporting Requirement

One commenter mistakenly thought that SFAs are required to send paper copies of the inspection reports to the SA. Another commenter stated that collecting data for the required SA report on the number of inspections obtained by schools has no practical utility for the SA and results in additional paperwork and costs. One commenter, however, indicated that data collected for the report could be useful for planning food safety training activities.

Operational Issues

In some SFAs, the requirement for a second inspection has created issues or questions surrounding inspection fees, scope of the second inspection, self-inspections, and third-party inspections. Some States exempt schools from paying food service license fees, which limits the ability of the regulatory agencies to financially support school inspections. Commenters noted that in large counties and in rural areas where schools are spread apart, it is difficult for schools to obtain a second food safety inspection.

III. Suggestions

Although most commenters opposed the increased inspection requirement, a number of them offered the following suggestions:

- Allow agencies responsible for food inspections to assess the need for additional school inspections.
- Exempt individual schools from the second inspection if they have no major violations on the initial inspection or if they have a food safety program based on Hazard Analysis and Critical Control Point (HACCP) principles.
- Allow schools to do self-inspections based on standards established by the inspection agency.
- Instead of a second inspection, require school food service staff to be certified in food safety principles.
- Minimize the burden of information collection on the respondent schools by allowing the SAs to collect the inspections data as part of an existing data collection system.
- Provide funding to meet all requirements established by Public Law 108–265.
- A director of a local health department recommended that school inspections should only be conducted by the State regulatory agencies. The commenter noted that the Food and Drug Administration Food Code is adopted by a State and, typically, not by local government. The commenter also said that self-inspections should not be allowed because a third-party review of the sanitation conditions in kitchens is needed.

Furthermore, the commenter said the second inspection should not be a routine food safety inspection, and instead it should be a validation of an effective HACCP-based food safety program by a third party such as the State regulatory agency, State-approved local governmental agency, or a private consultant.

IV. FNS Response

Food safety has always been a priority for the Child Nutrition Programs. Parents, the public and Congress also have a strong interest in the safety of lunches and breakfasts served to millions of school children daily. The 2005 Dietary Guidelines for Americans, which is the nutritional foundation of the school meal programs, emphasizes food safety as well.

Increasing food safety inspections to two per school year should help program operators identify and correct food safety problems faster, thereby enhancing food safety in meal preparation and service sites. We recognize that obtaining two food safety inspections annually may be difficult for a limited number of schools. However, the reports submitted by the State agencies for school years 2005–2006, 2006–2007, and 2007–2008 show an increase in the number of schools meeting the twice annual inspection requirement. The compliance rate increased from 58 percent in school year 2005–2006 to 70 percent in school year 2007–2008. This increase was possible with FNS' outreach efforts and the collaboration between State/local program operators and inspecting agencies.

Prior to Public Law 108–265, the NSLA statutory provisions and NSLP and SBP regulatory provisions required schools to obtain at least one school food safety inspection per year, or more if mandated by a State or local agency responsible for food safety inspections. In Public Law 108–265, Congress preempted the mandates of State and local agencies to determine the number of food safety inspections required for schools operating the NSLP and SBP.

FNS does not have authority to waive the food safety requirements for individual schools because of food safety certification or implementation of a HACCP-based food safety program. Public Law 108–265 established food safety requirements that apply uniformly to all schools participating in the NSLP and SBP. Furthermore, food safety inspections and a HACCP-based food safety program are two separate but complementary statutory requirements.

Despite the noted cost and administrative burden that may result from the additional inspection, there is a need to require high food safety standards in the NSLP and SBP. These school meal programs serve over 38 million lunches and breakfasts daily to children ages 2 and above. A foodborne illness in the school meal programs could have devastating consequences, as young children are particularly vulnerable.

This final rule retains the authority of the State and local regulatory agencies to determine the nature and scope of each school food safety inspection. However, a follow-up inspection due to critical violations discovered at the first inspection does not qualify as a second annual inspection. Self-inspections are not qualified inspections, per the regulatory language. The inspections must be conducted by a State or local agency responsible for inspections, or by another entity formally authorized by the State/local regulatory agency.

Regarding the reporting requirement, SAs are only required to collect the number of inspections obtained by schools during the school year and transmit this data to FNS. This information allows the SA and FNS to monitor the level of compliance with this requirement and detect any problems associated with it. FNS provides the SAs a simple optional template to transmit the inspections data electronically.

We are aware that in some states the state or local agency responsible for inspections transmits the inspection data directly to the SA. Although this arrangement is acceptable to FNS, this rule does not place any responsibility on the inspecting agency to provide such information to the SA or to develop a specific tracking and reporting system for this purpose.

In summary, this final rule adopts without change the requirements set forth in the interim rule published on June 15, 2005 at 70 FR 34627 and thus reflects the statutory requirements in Public Law 108–265.

IV. Procedural Matters

Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office Management and Budget in conformance with Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule increases the number of food safety inspections in schools participating in the National School Lunch Program and School Breakfast Program.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555, and the School Breakfast Program is listed under No. 10.553. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State and Local Officials

Shortly after passage of Public Law 108–265, FNS held discussions with

State education agencies that administer child nutrition programs and with organizations representing State and local inspection agencies. These discussions provided FNS an opportunity to inform State and local officials about the new inspection requirement and to hear their concerns. FNS also issued an interim rule to solicit pubic comments.

Nature of Concerns and Need To Issue This Rule

The main concern of the State and local program operators and inspection agencies is the cost associated with the increased inspection requirement. Some schools now have to pay or pay more for the food safety inspections, and some inspection agencies have limited staff to handle the increased inspection load. Although we are aware that compliance with this requirement may still be difficult in some areas, it is our responsibility to implement these mandatory statutory requirements which are non-discretionary.

Extent to Which FNS Meets Those Concerns

FNS has considered the comments and suggestions offered by State and local program operators, inspection agencies and others, but we are unable to make changes that are inconsistent with the inspection requirement as prescribed by the law. We will continue to provide information and guidance to those affected by this rule and to encourage regulatory agencies to help schools comply with this rule.

To minimize the impact of this rule, FNS will continue to apply the inspections requirement to preparation and service sites rather than to individual meal programs (NSLP and SBP). FNS will allow inspections performed under the Summer Food Service Program and the Child and Adult Care Food Program to count toward this requirement if all the meal programs use the same food service facility.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule has a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Date paragraph of this rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures under section 210.18(q) must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on children on the basis of race, color, national origin, sex, age or disability. After a careful review of the rule's intent and provisions, FNS has determined that it does not affect the participation of protected individuals in the National School Lunch and School Breakfast Programs.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35, see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The information collection requirements associated with this action were approved by the Office of Management and Budget on May 29, 2009 under OMB Control Number 0584–0006, Expiration date May 31, 2012, which contains the information collection activities in the NSLP.

The entire School Food Safety Inspection data collection burden for both NSLP and SBP operators is contained only in OMB Control Number 0584–0006 and not the SBP (OMB Control Number 2, Expiration May 31, 2012) because the NSLP is a larger nutrition program and food safety inspections conducted in the NSLP count toward the inspection requirement in both meal programs. The burden hours estimate provided in the notice of proposed information collection published on May 12, 2005 (70 FR 25014) has increased from 9,483,231 to 9,558,282 due to an adjustment in the number of School Food Authorities and schools participating in the NSLP and SBP.

E-Government Act Compliance

FNS is committed to compliance with the E-Government Act (E-Gov), 2002 which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. FNS has requested that State agencies submit electronically the inspections report required by this rule.

Public Participation

In Section 501(b) of Public Law 108–265, Congress specifically afforded the Secretary the option to implement the inspections requirement through an interim rule, while soliciting public comments. State and local program operators and inspection agencies commented on the interim rule published in the **Federal Register** (70 FR 34627) on June 15, 2005.

List of Subjects

7 CFR Part 210

Food and Nutrition Service, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 220

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

Accordingly, the interim rule that was published at 70 FR 34627 on June 15, 2005 amending 7 CFR parts 210 and 220 is adopted as a final rule without changes.

Dated: August 24, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–21133 Filed 9–1–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 33

[Docket No. 2007–28502; Amendment No. 1–65, 33–30]

RIN 2120–AJ06

Airworthiness Standards; Aircraft Engine Standards Overtorque Limits

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will amend the certification standards for aircraft engines to establish requirements for approval of maximum engine overtorque. Specifically, this action will add a new engine overtorque test, amend engine ratings and operating limits, and define maximum engine overtorque for certain turbopropeller and turboshaft engines. The rule will

harmonize applicable United States (U.S.) and European standards and simplify airworthiness approvals for import and export of aircraft engines.

DATES: This amendment becomes effective November 2, 2009.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact Tim Mouzakis, Engine and Propeller Directorate, Standards Staff, ANE–110, Federal Aviation Administration (FAA), New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7114; facsimile (781) 238–7199; electronic mail ''*Timoleon.Mouzakis@faa.gov*.''

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, the FAA is charged 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, including minimum safety standards for aircraft engines. This regulation is within the scope of that authority because it updates the existing regulations for aircraft engine standards overtorque limits.

Background

Part 33 of Title 14, Code of Federal Regulations (14 CFR part 33) prescribes airworthiness standards for original and amended type certificates for aircraft engines. The European Aviation Safety Agency (EASA) Certification Specification—Engines (CS–E) prescribes corresponding airworthiness standards to certify aircraft engines in Europe. While part 33 and the CS–E are similar, they differ in several respects. These differences result in added costs, delays, and time required for certification. In addition, U.S. aircraft engine manufacturers face additional costs when seeking certification of their engine designs by the EASA for export. CS–E contains specific standards for approval of maximum overtorque limits.

Currently, part 33 does not contain explicit standards for a maximum engine overtorque limit. Engine manufacturers apply for and obtain FAA approvals of maximum overtorque limits based on the results of certification engine tests and analysis that do not directly address considerations for maximum overtorque limits.

The FAA tasked the Aviation Rulemaking Advisory Committee (ARAC), through its Engine Harmonization Working Group (EHWG), to provide advice and recommendations on proposed standards for engine overtorque. We published that tasking in the **Federal Register** on October 20, 1998 (63 FR 56059). This final rule is based on ARAC's recommendations.

Summary of the NPRM

The FAA published a notice of proposed rulemaking (NPRM) on March 26, 2008 (73 FR 15955). The proposal adds a new definition to § 1.1, changes to § 33.7, and introduces § 33.84. These proposed changes would add a new engine overtorque test, amend engine ratings and operating limitations, and define maximum engine overtorque for certain turbopropeller and turboshaft engines. The proposal would harmonize U.S. and European standards for approving engine overtorque transients for turbopropeller and turboshaft engines with free power turbines. The comment period closed June 24, 2008.

Summary of Comments

The FAA received four comment letters, one from a British engine manufacturer (Rolls-Royce Corporation), one from a foreign regulatory authority (Transport Canada), and two from law students at the University of Central Missouri. All four comment letters support the general intent of the proposed rule. However, Transport Canada raised specific concerns that were addressed by clarifying revisions to proposed §§ 33.7 and 33.84. A detailed discussion of changes to the final rule is presented below.

Discussion of the Final Rule

The final rule establishes a standard for applicants to use when applying for and obtaining approval of a maximum engine overtorque limit. This rule harmonizes FAA and EASA standards and simplifies airworthiness approvals for the import and export of turbopropeller and turboshaft engines with free power turbines. The rule also improves safety by stating clear requirements for maximum engine overtorque limits.

Below are specific comments from Transport Canada and our responses to them.

1. The approach proposed, to seek an ''approval'' for overtorque, is inconsistent with the approach used for ''overspeed'' and ''overtemperature''. Transport Canada suggested the approach for ''overtorque'' be similar to ''overspeed'' and ''overtemperature''.

We do not agree. Overspeed and overtemperature are transients which are approved when they occur during normal engine operation, *e.g.*, a short duration transient exceedance of a rating (speed, temperature, or torque) as the engine stabilizes at a new operating condition following an acceleration. As proposed in the NPRM, the ''maximum engine overtorque'' is optional to the applicant. This optional operating condition is not an approved transient, but an ''over limit'' condition which may occur due to a failure. The applicant can choose whether to declare any maximum engine overtorque. However, to ensure the regulation is clear, we have revised proposed § 33.7 to clarify that engine ratings and operating limitations include both the existing transient engine overtorque and the new maximum engine overtorque ''over limit''. We also revised § 33.87(a)(8) to clarify the requirement applies to all transient functions, including engine overtorque. This makes clear that transient engine overtorque is addressed in § 33.87(a)(8) and maximum engine overtorque in § 33.84.

2. The definition of ''Maximum engine overtorque'' in § 1.1 is not necessary since part 33 does not have similar definitions for ''overspeed'' or ''overtemperature''.

The FAA does not agree. Overspeed and overtemperature in part 33 are transient events and part of the normal operation of the engine as defined in the type design. Maximum engine overtorque is an ''over limit'' condition that could last up to 20 seconds and is a result of some failure. A definition in § 1.1 is necessary as maximum engine overtorque is unique in its application to turbopropeller and turboshaft engines. Explanation is required to define the context in which this condition would apply and specific exclusions related to it. Transient overspeed and overtemperature are general and well understood terms used widely throughout part 33. No maintenance action is necessary by the aircraft operator provided the cause of the failure is corrected, and the engine meets the new maximum engine overtorque limit requirement.

3. The proposed § 33.84 overtorque test requirement should be independent from the § 33.87 endurance test requirement. Transport Canada also proposed the overtorque test requirement be at least 10% torque over

the highest torque limit for any rating longer than 2 minutes.

We agree, in part, that the overtorque and endurance tests may be performed separately. However, we did not set an overtorque limit because it is the applicant's responsibility to decide the maximum engine overtorque for the engine.

Lastly, we made a clarifying change to wording in the first sentence of § 33.84(b)(4). This change did not alter our intent or the meaning of the proposed regulation.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and determined there are no differences with these regulations.

Regulatory Evaluation Summary

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This final rule coordinates FAA engine requirements with existing EASA engine requirements that manufacturers must currently meet in order for their engines to be used in European operations. Consequently, this rule will allow engine manufacturers to meet one requirement rather than separate requirements for FAA/EASA certification. There were no public comments on the economic impact of the NPRM. As a result, the expected outcome will be a minimal impact with positive net benefits.

A regulatory evaluation was not prepared. This final rule incorporates existing certification practices, while maintaining the existing level of safety. The benefits of this rule justify the costs and the existing level of safety will be preserved. The Office of Management and Budget has determined that this final rule is a ''significant regulatory action'' because it harmonizes U.S. aviation standards with those of other civil aviation authorities.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

We stated in the initial Regulatory Flexibility Analysis that we believed the rule would be a cost-relieving rule as it harmonizes with the EASA aviation regulations. We received no comments to the contrary.

Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This rule uses international standards as the basis for regulation and thus is consistent with the Trade Agreements Act.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant

regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This final rule does not contain such a mandate, therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d, and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

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) or you may visit *http://DocketsInfo.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulationspolicies/rulemaking/sbre_act/*.

List of Subjects

14 CFR Part 1

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends parts 1 and 33 of Title 14, Code of Federal Regulations (14 CFR parts 1 and 33) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

■ 2. Amend § 1.1 by adding the definition of ''Maximum engine overtorque'' in alphabetical order, to read as follows:

§ 1.1 General definitions.

* * * * *

Maximum engine overtorque, as it applies to turbopropeller and turboshaft engines incorporating free power turbines for all ratings except one engine inoperative (OEI) ratings of two minutes or less, means the maximum torque of the free power turbine rotor assembly, the inadvertent occurrence of which, for periods of up to 20 seconds, will not require rejection of the engine from service, or any maintenance action other than to correct the cause.

* * * * *

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

■ 3. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

■ 4. Amend § 33.7 by redesignating paragraph (c)(16) as (c)(18) and adding new paragraphs (c)(16) and (c)(17) to read as follows:

§ 33.7 Engine ratings and operating limitations.

* * * * *

(c) * * *

(16) Transient engine overtorque, and number of overtorque occurrences.

(17) Maximum engine overtorque for turbopropeller and turboshaft engines incorporating free power turbines.

* * * * *

■ 5. Section 33.84 is added to read as follows:

§ 33.84. Engine overtorque test.

(a) If approval of a maximum engine overtorque is sought for an engine incorporating a free power turbine, compliance with this section must be demonstrated by testing.

(1) The test may be run as part of the endurance test requirement of § 33.87. Alternatively, tests may be performed on a complete engine or equivalent testing on individual groups of components.

(2) Upon conclusion of tests conducted to show compliance with this section, each engine part or individual groups of components must meet the requirements of § 33.93(a)(1) and (a)(2).

(b) The test conditions must be as follows:

(1) A total of 15 minutes run at the maximum engine overtorque to be approved. This may be done in separate runs, each being of at least 2½ minutes duration.

(2) A power turbine rotational speed equal to the highest speed at which the maximum overtorque can occur in service. The test speed may not be more than the limit speed of take-off or OEI ratings longer than 2 minutes.

(3) For engines incorporating a reduction gearbox, a gearbox oil temperature equal to the maximum temperature when the maximum engine overtorque could occur in service; and for all other engines, an oil temperature within the normal operating range.

(4) A turbine entry gas temperature equal to the maximum steady state temperature approved for use during periods longer than 20 seconds when operating at conditions not associated with 30-second or 2 minutes OEI ratings. The requirement to run the test at the maximum approved steady state temperature may be waived by the FAA if the applicant can demonstrate that other testing provides substantiation of the temperature effects when considered in combination with the other parameters identified in paragraphs (b)(1), (b)(2) and (b)(3) of this section.

■ 6. Amend § 33.87 by revising paragraph (a)(8) to read as follows:

§ 33.87 Endurance test.

(a) * * *

(8) If the number of occurrences of either transient rotor shaft overspeed, transient gas overtemperature or transient engine overtorque is limited, that number of the accelerations required by paragraphs (b) through (g) of this section must be made at the limiting overspeed, overtemperature or overtorque. If the number of occurrences is not limited, half the required accelerations must be made at the limiting overspeed, overtemperature or overtorque.

* * * * *

Issued in Washington, DC, on August 21, 2009.

J. Randolph Babbitt,

Administrator.

[FR Doc. E9–20960 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0432; Directorate Identifier 2008–NM–168–AD; Amendment 39–15982; AD 2009–15–19]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146–100A and 146–200A Series Airplanes

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

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on July 29, 2009. The error resulted in an incorrect AD number appearing in one location of the document. This AD applies to certain BAE Systems (Operations) Limited Model BAe 146–100A and 146–200A series airplanes. This AD requires inspecting for damage of the horizontal stabilizer lower skin and joint plates, and doing related investigative and corrective actions.

DATES: Effective September 2, 2009.

ADDRESSES: 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On July 13, 2009, the FAA issued AD 2009–15–19, amendment 39–15982 (74 FR 37528, July 29, 2009), for certain BAE Systems (Operations) Limited Model BAe 146–100A and 146–200A series airplanes. This AD requires inspecting for damage of the horizontal stabilizer lower skin and joint plates, and doing related investigative and corrective actions.

As published, the final rule incorrectly specified the AD number in a single location in the AD as ''2008–15–19'' instead of ''2009–15–19.''

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains September 2, 2009.

§ 39.13 [Corrected]

■ In the **Federal Register** of July 29, 2009, on page 37529, in the first column, paragraph 2. of PART 39—AIRWORTHINESS DIRECTIVES is corrected to read as follows:

* * * * *

2009–15–19 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–15982. Docket No. FAA–2009–0432; Directorate Identifier 2008–NM–168–AD.

* * * * *

Issued in Renton, Washington, on August 24, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–21039 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR–4989–F–02]

RIN 2502–AI34

Home Equity Conversion Mortgage (HECM) Counseling Standardization and Roster

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's HECM program regulations by establishing testing standards to qualify individuals as HECM counselors eligible to provide HECM counseling to prospective HECM borrowers. The rule also establishes a HECM Counseling Roster (Roster) of eligible HECM counselors and provides for their removal for cause. This rule is intended to contribute to improving the quality of HECM counseling. HECM counseling enables elderly homeowners to make more informed decisions when considering mortgage options and whether to pursue a HECM loan. This final rule follows the publication of a January 8, 2007, proposed rule, takes into consideration the public comments received on the proposed rule, and makes certain changes in response to public comment and upon further consideration of certain issues by HUD.

DATES: *Effective Date:* October 2, 2009.

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9278, Washington, DC 20410–8000; telephone number 202–708–2121 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The January 8, 2007 Proposed Rule

Section 255 of the National Housing Act (12 U.S.C. 1715z–20) (NHA)

authorizes HUD to insure reverse mortgages, referred to as HECMs, which can be used by senior homeowners, age 62 and older, to convert the equity in their homes to monthly streams of income or a line of credit to be accessed as needed. HECMs must be repaid when the borrower no longer occupies the home. A HECM is originated by a lending institution, such as a mortgage lender, bank, credit union, or savings and loan association, and the mortgage is insured by HUD. HUD's regulations implementing the HECM program are codified at 24 CFR part 206.

To assist the senior homeowner in making an informed decision of whether a HECM meets their needs, the homeowner, consistent with section 255 of the NHA, is required to receive counseling by a HUD-approved HECM counselor. Section 255(f) of the NHA requires the provision of consumer education and information to HECM mortgagors by entities other than the lender. Each mortgagee must make available to a homeowner, at the time of the loan application, a written list of the names and addresses of third-party information sources that are approved by HUD as responsible to provide the statutorily required counseling. The counseling must include information on options other than a HECM, the financial implications of entering into a HECM, the tax consequences of a HECM, and any other information that HUD or the prospective borrower may request.

On January 8, 2007, at 72 FR 870, HUD published a proposed rule to amend HUD's HECM regulations by establishing testing standards to qualify individuals as counselors eligible to provide HECM counseling to prospective borrowers. In addition, HUD proposed to establish a Roster of eligible HECM counselors and provide for their removal for cause. The regulatory amendments were designed to improve the quality of HECM counseling, which would enable elderly homeowners to make more informed decisions when considering whether to pursue a HECM loan.

In addition to soliciting comments generally, the proposed rule solicited specific comments on two areas of interest. First, the proposed rule requested input from housing counseling agencies and counselors concerning the implementation of the HECM Roster for HECM counselors who have already passed the HECM counseling exam. Specifically, the rule asked whether HUD should adopt a delayed implementation for those counselors who have already passed the exam, or, alternatively, should those counselors automatically be included in the Roster for a period of time before they must repeat the exam. Second, the rule invited comments that address whether a counselor should be required to take the exam on a regular basis, for example, every 2 years, in order to remain on the Roster, and if a counselor should be required to take the exam on a regular basis, how often should the counselors take the exam to remain on the Roster.

II. The Housing and Economic Recovery Act of 2008 (HERA)

Section 255 of the NHA was recently amended by the FHA Modernization Act, Title I of Division B of the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, approved July 30, 2008), which was enacted to modernize, streamline, and expand the scope of several Federal Housing Administration (FHA) programs. Section 2122 of the FHA Modernization Act amended section 255 of the NHA to provide, among other things, that: (1) Adequate counseling must be provided to HECM mortgagors; (2) such counseling shall be provided by counselors who meet qualification standards; and (3) adequate HECM counseling must be provided from an independent third party not associated with or compensated by a party involved in originating or servicing the mortgage, funding the loan underlying the mortgage, or the sale of annuities or other financial or insurance products. Accordingly, the final rule incorporates these statutory changes.

III. This Final Rule; Changes to the January 8, 2007 Proposed Rule

This final rule follows publication of the January 8, 2007, proposed rule and takes into consideration the public comments received on the proposed rule. Moreover, this final rule makes certain changes in response to those comments, and conforms the regulations provided by this final rule to the statutory amendments made to section 255 of the NHA by section 2122 of the FHA Modernization Act. The final rule makes five changes to the proposed regulatory language:

1. *Automatic placement on the counselor Roster of counselors who passed HUD examination.* The final rule provides that HECM counselors who have taken and passed the exam as of the effective date of this final rule will be automatically included on the HECM counseling Roster.

2. *Reinstatement of counselors removed from Roster.* The final rule provides that a counselor who has been removed from the Roster and seeks reinstatement must submit evidence that the deficiencies previously cited by HUD have been addressed and that program improvements have been made that justify reinstatement. The evidence to be provided shall be written documentation attesting to the fact that deficiencies previously identified by HUD have been addressed and corrected and that improvements have been made that justify the reinstatement of the counselor.

3. *Eligibility of counselors for placement on Roster.* The final rule provides that to be eligible for placement on the Roster a counselor must not be listed on the General Services Administration's Suspension and Debarment List, HUD's Limited Denial of Participation List, or HUD's Credit Alert Interactive Response System.

4. *Identified period to submit a written appeal.* The final rule provides that a counselor shall have 30 days to submit a written appeal of a proposed removal from the Roster.

5. *Maximum duration for the period of removal.* The final rule provides that a counselor may be removed for a maximum period of one year.

In addition to the five changes described above, HUD has taken the opportunity afforded by the final rule to reorganize portions of the proposed rule and to make other nonsubstantive, technical changes to the regulatory language for purposes of clarity and organization.

IV. Discussion of the Public Comments on the January 8, 2007 Proposed Rule

The public comment period on the proposed rule closed on March 9, 2007. HUD received 29 public comments on the proposed rule, covering a range of issues. Comments were received from housing counselors, counseling agencies, and industry organizations. This section of the preamble presents a summary of the key issues raised by public commenters and HUD's responses to those issues. As will be reflected in the discussion that follows, some of the issues raised by commenters were not directed to placement or removal of counselors on the Roster, but rather focused on other aspects of HUD's housing counseling regulations. Proposed changes to HUD's Housing Counseling regulations were not the subject of this rulemaking. Nevertheless, several good suggestions for changes were submitted. HUD is taking these suggestions under consideration and may, as a result, through separate rulemaking, propose changes to HUD's Housing Counseling regulations,

consistent with the suggestions proposed.

Comment: Several commenters offered general support for HUD's effort to establish a HECM Roster. One commenter requested that HUD certify organizations rather than individual counselors.

Response: HUD has not revised the rule in response to these comments. Approval of an organization would not assure that the individual counselors employed by the organization are trained and qualified to provide the necessary counseling. HUD continues to feel strongly that a roster of HECM exam-qualified individual counselors is critical to ensure that the counselors providing these services are qualified to do so.

Comment: One commenter requested that all counselors on the Roster follow a standard protocol of topics covered.

Response: HUD has not revised the rule in response to this comment. However, the adoption of a standard counseling protocol is required by section 255 of the NHA, as amended by the FHA Modernization Act, no later than July 30, 2009. Section 255(f), as recently amended, directs HUD to establish qualification standards and protocols for HECM counselors. Section 2132 of the FHA Modernization Act of 2008 authorizes HUD to issue additional requirements, by notice, for the purpose of facilitating implementation of the provisions of the FHA Modernization Act. Accordingly, the standard counseling protocols will be issued by notice, in accordance with section 2132, on or prior to the statutory deadline.

Comment: Several commenters asked HUD to clarify the requirements that lenders provide the list of counselors to clients. The commenters suggested that HUD should permit HECM lenders to provide less than the complete list of HECM counselors for a client's State because the full list of counselors may be overwhelming in number. One of these commenters recommended that a mortgagee should have the option of providing a list of HUD-approved HECM counselors with whom the mortgagee has experience, a list of such counselors within the geographic area, or any other criteria that enables the mortgagee to provide a reasonably limited list.

Response: HUD will take the suggestion made by the commenters under advisement. However, the comment was outside the scope of the proposed rule, which was exclusively concerned with the placement and removal procedures for the proposed new HECM Roster. Accordingly, HUD has not revised the proposed rule in response to the commenters' suggestion.

Comment: One commenter suggested that counselors should have to disclose relationships that a counseling agency may have with some of the lenders.

Response: HUD agrees that all HUD-approved housing counseling agencies must take precautions to eliminate any appearance of a conflict of interest or preferential treatment to any particular lender or lenders. In accordance with HUD's Housing Counseling Program regulations, agencies providing such services are required, pursuant to 24 CFR 214.303(g), to provide all clients with a disclosure statement that explicitly describes the various types of services provided by the agency and any financial relationships between the agency and any other industry partners. Further, the disclosure must clearly state that the client is not obligated to receive any other services offered by the organization or its exclusive partners.

Any language that permits a party directly or indirectly associated with funding or origination of an HECM to provide housing counseling, or any language allowing compensation to an agency by a third party originating or funding the HECM, has been and will be removed from guidance or revised to conform with section 255(d)(2)(B) of the National Housing Act, as recently amended by section 2122 of HERA. In this regard, see FHA Mortgagee Letter 2008–28, entitled ''Prohibition on Mortgagee Funded Home Equity Conversion Mortgage (HECM) Counseling,'' which states that mortgagees are no longer permitted to pay for HECM counseling on behalf of mortgagors. The mortgagee letter advises FHA mortgagee lenders of the conflict-of-interest provisions that the FHA Modernization Act directs counseling agencies to avoid. As noted earlier in this preamble, section 255 of the National Housing Act, as amended by the FHA Modernization Act, requires that counseling must come from an independent third party that is neither directly or indirectly associated with or compensated by a party involved in originating or servicing the mortgage, the funding of the loan underlying the mortgage, or the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product. A copy of Mortgagee Letter 2008–28 may be downloaded from the HUD Client Information and Policy System (HUDCLIPS) Web site at *http://www.hud.gov/hudclips.*

Comment: Several commenters stated the regulation governing provision of counseling services, 24 CFR 206.41(a), should be revised to clarify that clients are referred to counselors and agencies within their State or local area to encourage face-to-face counseling, and that a Roster listing counselors by State would promote this. HUD should encourage counseling to take place face-to-face, and permit telephone counseling only in limited cases.

Response: This suggestion is outside the scope of the proposed rule, which was exclusively concerned with the policies and procedures governing placement and removal from the new HECM Roster. However, it is HUD's position that the client should have a choice regarding whether to have face-to-face counseling or telephone counseling. Clients have various reasons for requiring telephone counseling, such as limited mobility, either as a result of physical impairment or lack of transportation, or because they live in a remote rural area where the distance to the nearest counseling agency is prohibitive.

Comment: Several commenters requested additional information on how the names of counselors would be made available to the public. The commenters suggested that HUD should post the names on its Web site.

Response: Exam-qualified HECM counselors eligible to provide HECM counseling services will be listed on HUD's Web site. Lenders also will be able to access this list through HUD's Web site. Only exam-qualified counselors who are meeting the continuing education and other requirements will be listed on the HUD Web site, and the Web site will be updated regularly.

Comment: A commenter wrote that the Roster should include relevant dates, including the date that the counselor was placed on the Roster, the termination date, *etc.*

Response: HUD will include relevant dates, including when a counselor was added to HUD's Web site as a provider of HECM counseling services. HUD is developing an electronic certification that can be created only by counselors on the Roster.

Comment: A commenter asked HUD to state whether HUD or another entity will maintain the Roster. Another commenter suggested that HUD establish a single contact to manage the Roster, to ensure consistency.

Response: HUD's Office of Single Family Housing will maintain the Web site and the list of counselors approved to provide HECM counseling services.

Comment: As noted earlier in the preamble, HUD specifically requested comments on the implementation of the proposed regulatory requirements for counselors who have already passed the HECM counseling program. The commenters who submitted comments

on this issue uniformly recommended that counselors who have already taken and passed the exam be automatically included on the Roster. The commenters differed on whether such counselors should be required to retake the examination within a certain time period. For example, one commenter suggested that counselors who passed the exam within the past 2 years should have 2 years to retake the exam, and that counselors who passed the exam more than 2 years ago should be required to retake the exam within one year.

Response: HUD agrees with the commenters that counselors who have already taken and passed the exam should be automatically included on the Roster. The final rule provides that HECM counselors who have passed the standardized HECM counseling exam on or before the effective date of this final rule will be automatically included on the Roster, without needing to submit an application for placement on the Roster. Such counselors will not be required to retake the examination immediately, but must comply with all other eligibility criteria to maintain their listing on the Roster, including taking the examination every 3 years, or be subject to removal in accordance with § 206.306 of the final rule.

Comment: As noted above, the preamble to the proposed rule specifically requested comments on whether counselors should be required to retake the examination on a regular basis to maintain their listing on the Roster. In response to this solicitation, several commenters submitted comments on the frequency of testing. The majority of comments opposed a retesting requirement. Several commenters suggested that, in lieu of the need to retake the test on a periodic basis, counselors should be subject to continuing education requirements. Those commenters writing in support of a retesting requirement differed on the time period for retaking the test. For example, several commenters suggested that testing should take place every 2 years, while another commenter wrote that testing should take place every 3 years. Two commenters wrote that counselors should be tested every 3 years, to eliminate the need to demonstrate continuing education, which would be administratively burdensome.

Response: HUD agrees with the commenters who wrote in favor of a retesting requirement, and the final rule requires that counselors periodically retake the HECM counseling examination. Testing is required as part of the application process for placement on the Roster. After placement on the Roster, counselors are required to take the examination every 3 years to maintain their listing on it. HUD is in favor of periodic testing because the HECM program is a complicated program that will change over time, and it is vital that counselors remain aware of changes to the HECM program and be conversant in them. Testing is an efficient and effective way to measure knowledge of and familiarity with new and sophisticated elements of the program. Counselors listed on the Roster are required to meet continuing education requirements. Specifically, this final rule requires continuing education for all HECM counselors no less than once every 2 years. For purposes of satisfying this requirement, continuing education encompasses HUD-approved training, as well as professional courses selected by the counselor. Proof of continuing education must be kept on file at the counseling agency and must be made available to HUD for inspection upon request.

Comment: One commenter asked that HUD clarify in 24 CFR 206.302 the time frame for certification of a counselor and the time frame in which the counselor will appear on the Roster following certification. This same commenter wrote that HUD should consider a HECM counseling certificate valid as long as the counselor who signed the certificate appeared on the Roster at the time the counseling took place and that the lender is not required to validate this information.

Response: HUD is developing an electronic certification that can be created only by counselors on the Roster. Although no changes are being made to the regulatory text, the automatic Internet-based certification addresses the concerns raised by the commenter concerning time frame and validity issues. Internet-based certification is automatic and will be available within a day or two of applying, provided that counselor meets all of the requirements. No lender verification will be needed so long as the certification appears in the system. A lender will be able to view the certificate so long as he or she knows the certification number. The counselor's certificate will be valid on the day the certificate was produced electronically.

Comment: Several commenters wrote that the current HECM counseling exam is too difficult and complicated. The commenters wrote that the test questions should be more relevant to HECM counseling and the current exam questions do not reflect relevance to HECM counseling to the degree they should. One commenter wrote that the exam should focus on counseling situations rather than on underwriting technicalities.

Response: It is highly important that HECM counselors understand the features of HECMs and reverse mortgages in general. Because reverse mortgages are a relatively complex product available to seniors, it is important for counselors to be able to explain the various technical aspects of a reverse mortgage to their clients. The test reflects the knowledge required of counselors so that they are fully familiar with HECMs and can provide the advice sought by senior homeowners about this product.

Comment: Several commenters wrote that the exam, in the past, has been available on a limited basis and that this, coupled with staffing level difficulties, may present barriers for agencies in their efforts to maintain staff listed on the Roster. These commenters suggested that the exam be widely publicized and more widely available.

Response: The exam is available to people at testing centers across the United States. The locations of these testing centers are available online at *http://www.hecmexam.org.* Explicit instructions in reference to scheduling an appointment to take the exam are provided on the Web site. Testing is available at testing centers, within their respective business hours.

Comment: One commenter wrote that HECM testing should be provided by an objective third party, to avoid the possibility of excluding candidates from competing agencies or intermediaries.

Response: The tests are administered by objective third parties at test centers throughout the United States. HUD will review and update the exam on a periodic basis as program requirements change.

Comment: Several commenters submitted comments on the continuing education requirements. Some of the commenters wrote that training and training materials should be available from HUD without cost to counselors. One commenter wrote that training should be provided by objective, third-party providers and not by lenders.

Response: Training and professional development for counselors is very important to the success of the HECM program. HUD currently provides funding for scholarships, travel, and lodging to make training and technical assistance available to HECM counselors. HUD funds are limited and may not be available to pay for continuing education of all counselors providing HECM services. Objective

training is available from a variety of nonprofit organizations.

Comment: One commenter wrote that HUD should require that counselors on the Roster be employed by a HUD-approved housing counseling agency.

Response: HUD agrees with this commenter. However, no change to the language of the proposed rule is necessary. That is because, as provided in the proposed rule (and the final rule), to be eligible for placement on the Roster, a counselor must be employed by a HUD-approved housing counseling agency or an affiliate of a HUD-approved intermediary or State housing finance agency.

Comment: One commenter wrote that HUD should prohibit the listing on the Roster of counselors who have been convicted of a felony or who work for lenders or for any commercial entity that sells goods or services to reverse mortgage borrowers. This commenter wrote that consumers need to know that counselors do not have a personal financial interest in the outcome of the counseling.

Response: Housing counseling agencies must adhere to the regulation found in 24 CFR part 214, Housing Counseling Program. The regulation at 24 CFR 214.103(c), regarding ineligible activities, states that an agency's directors, partners, officers, principals, or employees must not be indicted for or convicted of a criminal offense that reflects upon the responsibility, integrity, or ability of the agency to participate in housing counseling activities. These offenses include criminal offenses that can be prosecuted at a local, State, or Federal level. This provision of the Housing Counseling Program regulations is strengthened by section 255(d)(2)(B) of the National Housing Act, which, as recently amended, provides that counseling must be provided by an independent third party not directly or indirectly associated with or compensated by a party originating a mortgage, funding a mortgage, or selling annuities or other financial or insurance products.

Further, as noted above, HUD has revised the rule to help ensure that only high-performing counselors are eligible for placement on the Roster. Specifically, the final rule provides that to be eligible for placement on the Roster a counselor must not be listed on the General Services Administration's Suspension and Debarment List, HUD's Limited Denial of Participation List, or HUD's Credit Alert Interactive Response System.

Comment: One commenter wrote that only experience and effective tracking and monitoring methods can ensure effective HECM counseling.

Response: HUD recognizes the importance of good documentation, tracking, and monitoring efforts. HUD performs periodic reviews of housing counseling agencies and reviews files during that process.

Comment: One commenter wrote that HUD should clarify what ''actions'' a counselor must have the appropriate technology to monitor. Another commenter wrote that HUD should not require the use of particular technology that would be redundant to the current client management system in use by a HUD-approved counseling organization.

Response: HUD's Housing Counseling Program regulations at 24 CFR 214.103 require agencies participating in HUD's Housing Counseling Program to utilize a client management system (CMS) in order to collect and report client-level data, including the results of the counseling. A CMS provides for collection and reporting of client-level information, including, but not limited to, financial and demographic data, counseling services provided, and outcomes data. HUD does not require any particular technology, so long as the technology is compatible with the HUD Agency Reporting Module (ARM) system and can transmit data to the ARM database. For reporting purposes, there is no lender involvement required. HUD requires counselors to follow up to determine from the client the outcome of the counseling.

Comment: Two commenters suggested that HUD revise 24 CFR 206.306(c) to provide maximum duration for the period of removal.

Response: HUD has the administrative duty to remove counselors from the Roster for the amount of time it deems necessary, depending on the issue. HUD agrees with the Commenter and has revised the regulation to specify a maximum 12-month period of removal. Counselors may be removed for a maximum period of one year. A maximum 12-month period of removal is consistent with HUD practice under other Rosters for participation in FHA programs and has proven to be an adequate amount of time for parties to remedy inadequacies and for HUD's Office of Housing to verify such remedies. HUD will determine the duration of the removal on a case-by-case basis, taking into consideration the individual facts of the case and pursuant to the removal procedures described in § 206.306 of the final rule. To be placed on the Roster again, counselors must apply for reinstatement upon completion of their required removal duration.

Comment: A commenter requested that HUD provide 30 days instead of the proposed 20 days for counselors to submit a written appeal.

Response: HUD agrees with the commenter and has revised the rule to provide a counselor with 30 days rather than 20 days to submit a written appeal.

Comment: One commenter asked that HUD revise the removal provisions to remove counselors from the Roster if they receive anything of value from a mortgage lender, broker, servicer, investor, lead generator, or other industry entity.

Response: A HUD-approved counseling agency cannot either directly or indirectly be associated with or compensated by a party involved in originating or servicing the HECM, funding the HECM loan underlying the mortgage, or the sale of annuities, investments, long-term care insurance or any other type of financial or insurance product. As noted earlier, such prohibition is now a statutory requirement under section 255(d)(2)(B) of the NHA.

Comment: One commenter wrote that HUD should confirm that the counselor will be removed on the effective date of the removal notice, to avoid any confusion as to whether the counselor was approved at the time the counseling was provided.

Response: The HECM counselor Roster will remain consistent with other HUD roster programs and the appeal process provided in these programs. If the counselor does not submit a timely written response to the proposed removal notice, the removal will be effective 30 days after the date of the removal notice. If the agency appeals the removal within 30 days of the letter, the effective date will be the date of HUD's notice after the appeal.

Comment: A commenter asked HUD to revise 24 CFR 206.306 to indicate that a counselor applying for reinstatement must submit evidence that the deficiencies previously cited by HUD have been addressed and program improvements have been made to justify reinstatement.

Response: The final rule provides that HUD will require that a counselor seeking reinstatement must submit evidence that the deficiencies previously identified by HUD have been addressed and program improvements have been made that justify reinstatement.

V. Findings and Certifications

Paperwork Reduction Act

The information collection requirements in this final rule have been

approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0582. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, review, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This rule would not impose a Federal mandate on any State, local, or tribal government, nor on the private sector, within the meaning of the UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that would need to be complied with by small entities. The final rule would require that HECM counselors be trained and qualified to perform their particular functions. This may require a financial outlay, but the expense would be relatively small. As such, any new expense to small entities caused by the rule would be negligible. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments, nor does it preempt State law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.183.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 206 to read as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

■ 1. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–1720; 42 U.S.C. 3535(d).

■ 2. Amend § 206.3 by adding, alphabetically, a definition of ''*Home Equity Conversion Mortgage (HECM)* counselor'' to read as follows:

§ 206.3 Definitions.

* * * * *

Home Equity Conversion Mortgage (HECM) counselor means an individual who provides statutorily required counseling to clients who may be eligible for or interested in obtaining an FHA-insured HECM. This counseling assists elderly homeowners who seek to convert equity in their homes into income that can be used to pay for home improvements, medical costs, living expenses, or other expenses.

* * * * *

■ 3. Revise § 206.41(a) to read as follows:

§ 206.41 Counseling.

(a) *List provided.* At the time of the initial contact with the prospective mortgagor, the mortgagee shall give the mortgagor a list of the names, addresses, and telephone numbers of housing counselors and their employing agencies, which have been approved by the Secretary, in accordance with subpart E of this part, as qualified and able to provide the information described in paragraph (b) of this section. The mortgagor must receive counseling.

* * * * *

■ 4. Add a new subpart E to read as follows:

Subpart E—HECM Counselor Roster

Sec.
206.300 General.
206.302 Establishment of the HECM Counselor Roster.
206.304 Eligibility for placement on the HECM Counselor Roster.
206.306 Removal from the HECM Counselor Roster.
206.308 Continuing education requirements of counselors listed on the HECM Counselor Roster.

§ 206.300 General.

This subpart provides for the establishment of the HECM Counselor Roster (Roster) and sets forth the requirements for the operation of the HECM Counselor Roster.

§ 206.302 Establishment of the HECM Counselor Roster.

(a) *HECM Counselor Roster.* HUD maintains a Roster of HECM counselors. Only counselors listed on the Roster are approved to provide HECM counseling. A homeowner applying for an HECM loan to be insured by HUD must receive the required HECM counseling from one of the counselors on the Roster.

(b) *Disclaimer.* The inclusion of a HECM counselor on the Roster does not create or imply a warranty or endorsement by HUD of the listed counselor to a prospective HECM borrower or to any other organization or individual, nor does it represent a warranty of any counseling provided by the listed HECM counselor. The inclusion of a counselor on the Roster means that a listed counselor has met the HUD-prescribed qualifications and conditions for inclusion on the Roster and that the counselor is approved to provide HECM counseling by telephone or face-to-face.

§ 206.304 Eligibility for placement on the HECM Counselor Roster.

(a) *Application.* To be considered for placement on the Roster, a HECM counselor must apply to HUD in a form and in a manner prescribed by HUD.

(b) *Eligibility.* HUD will approve an application for placement on the Roster if the application demonstrates that the HECM counselor:

(1) Is employed by a HUD-approved housing counseling agency or an affiliate of a HUD-approved intermediary or State housing finance agency;

(2) Successfully passed a standardized HECM counseling exam administered by HUD, or a party selected by HUD, within the last 3 years. In order to maintain eligibility, a counselor must successfully pass a standardized HECM counseling exam every 3 years;

(3) Received training and education related to HECMs within the prior 2 years;

(4) Has access to and is supported by technology that enables HUD to track the results of the counseling offered to each loan applicant, *e.g.,* what action(s), if any, did the client take after receiving the HECM counseling; and

(5) Is not listed on:

(i) The General Services Administration's Suspension and Debarment List;

(ii) HUD's Limited Denial of Participation List; or

(iii) HUD's Credit Alert Interactive Response System.

(c) *''Grandfathering'' of counselors who have passed standardized HECM counseling examination.* HECM counselors who have passed the standardized HECM counseling exam described in paragraph (b)(2) of this section on or before October 2, 2009 will automatically be placed on the Roster and will remain on the Roster for 3 years. After 3 years, the counselor is required to take the standardized HECM counseling exam again.

§ 206.306 Removal from the HECM Counselor Roster.

(a) *General.* HUD reserves the right to remove a HECM counselor from the Roster, in accordance with this section.

(b) *Cause for removal.* Cause for removal of a HECM counselor from the Roster includes, but is not limited to:

(1) Failure to comply with the education and training requirements of § 206.308;

(2) Failure to respond within a reasonable time to HUD inquiries or requests for documentation;

(3) Misrepresentation or fraudulent statements;

(4) Promotion, representation, or recommendation of any specific lender;

(5) Failure to comply with applicable fair housing and civil rights requirements;

(6) Failure to comply with applicable statutes and regulations;

(7) Failure to comply with applicable statutory counseling requirements found at section 255(f) of the National Housing Act, which include, but are not limited to, providing information about: options other than a HECM, the financial implications of entering into a HECM, the tax consequences of a HECM, and any other information that HUD or the applicant may request;

(8) Failure to maintain any registration, license, or certification requirements of a State or local authority;

(9) Unsatisfactory performance in providing counseling to HECM loan applicants. HUD may determine that a HECM counselor's performance is unsatisfactory based on a review of counseling files or other monitoring activities, or if the counselor fails to employ the minimum competencies, as measured by the HUD-administered HECM counseling exam; or

(10) For any other reason HUD determines to be so serious as to justify an administrative sanction.

(c) *Automatic removal from HECM Counselor Roster for failure to maintain required State or local licensure.* A HECM counselor who is required to maintain a State or local registration, license, or certification and whose registration or certification is revoked, suspended, or surrendered will be automatically suspended from the Roster until HUD receives evidence demonstrating that the local- or State-imposed sanction has been lifted.

(d) *Removal procedure.* Except as provided in paragraph (c) of this section, the following procedures apply to removal of a HECM counselor from the Roster.

(1) HUD will give the HECM counselor written notice of the proposed removal. The notice will state the reasons for and the duration of the proposed removal.

(2) The HECM counselor will have 30 days from the date of receipt of the notice (or such time as described in the notice, but in no event less than a period of 30 days) to submit a written appeal of the proposed removal, along with a written request for a conference.

(3) A HUD official will review the appeal and render a response affirming, modifying, or canceling the removal. The HUD official will not be a person who was involved in HUD's initial removal decision. HUD will respond with a decision within 30 days after the date of receiving the appeal or, if the counselor has requested a conference, within 30 days after the conference was held. HUD may extend the 30-day period by providing written notice to the counselor.

(4) If the counselor does not submit a timely written response, the removal will be effective 31 days after the date of HUD's initial removal notice (or after the period provided in the notice, if longer than 30 days). If a written response is submitted, and the removal decision is affirmed or modified, the removal will be effective on the date of HUD's notice affirming or modifying the initial removal decision.

(e) *Maximum time period of removal.* The maximum time period for removal from the Roster is 12 months from the effective date of removal for all removed counselors. A counselor who has been removed must apply for reinstatement on the Roster.

(f) *Placement on the Roster after removal.* A counselor who has been removed from the Roster must apply for reinstatement on the Roster (in accordance with § 206.304) after the period of the counselor's removal from the Roster has expired. HUD may require the counselor to retake and pass the HECM exam for reinstatement when the reason for removal from the Roster was particularly egregious. Typically, the counselor will not be required to take and pass the HECM exam; however, HUD must be ensured by the counselor that the HECM counseling requirements are understood and will be followed. An application from a counselor for reinstatement on the Roster will be rejected if the period of the counselor's removal from the Roster has not expired.

(g) *Voluntary removal.* A HECM counselor will be removed from the Roster upon HUD's receipt of a written request from the counselor.

(h) *Other action.* Nothing in this section prohibits HUD from taking such other action against a counselor or from seeking any other remedy against a counselor available to HUD by statute or other authority.

§ 206.308 Continuing education requirements of counselors listed on the HECM Counselor Roster.

A counselor listed on the Roster must receive, on a continuing basis, training, education, and technical assistance related to HECMs. The counselor must maintain evidence of the successful completion of such continuing education, and such evidence must be made available to HUD upon request. HUD will consider a HECM counselor's successful completion of a HECM course no less than once every 2 years as satisfying the requirements of this section.

Dated: August 20, 2009.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E9–21076 Filed 9–1–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0789]

RIN 1625–AA11

Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone and regulated navigation area on the Chicago Sanitary and Ship Canal near Romeoville, IL. This temporary final rule places navigational and operational restrictions on all vessels transiting the navigable waters located adjacent to and over the U.S. Army Corps of Engineers' (USACE) electrical dispersal fish barrier system.

DATES: This temporary final rule is effective from 5 p.m. on September 2, 2009, until 5 p.m. on September 9, 2009. This temporary final rule is enforceable with actual notice by Coast Guard personnel beginning August 25, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0789 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0789 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216–902–6045. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the U.S. Army Corps of Engineers (USACE) made the decision, without time for a proper notice period, to permanently increase the voltage of the fish barrier to two-volts per inch in response to data which indicates that Asian carp are closer to the Great Lakes waterway system than originally thought. The electric current in the water created by the electrical dispersal barriers coupled with the uncertainty of the effects of the increased voltage poses a safety risk to commercial vessels and recreational boaters who transit the area. Therefore, it would be against the public interest to delay the issuing of this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because of the safety risk to commercial vessels and recreational boaters who transit the area. The following discussion and the Background and Purpose section below provide additional support of the Coast Guard's determination that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication.

In 2002, the USACE energized a demonstration electrical dispersal barrier located in the Chicago Sanitary and Ship Canal. The demonstration barrier, commonly referred to as ''Barrier I,'' generates a low-voltage electric field (one-volt per inch) across the canal, which connects the Illinois River to Lake Michigan. Barrier I was built to block the passage of aquatic nuisance species, such as Asian carp, and prevent them from moving between the Mississippi River basin and Great Lakes via the canal. In 2006, the USACE completed construction of a new barrier, ''Barrier IIA.'' Because of its design, Barrier IIA can generate a more powerful electric field (up to four-volts per inch), over a larger area within the Chicago Sanitary and Ship Canal, than Barrier I. Testing was conducted by the USACE which indicated that two-volts per inch is the optimal voltage to deter aquatic nuisance species. The USACE's original plan was to perform testing on the effects of the increased voltage on vessels passing through the fish barrier prior to permanently increasing the voltage. However, after receiving data that the Asian carp were closer to the Great Lakes than expected, the decision was made to immediately energize the barrier to two-volts per inch without prior testing.

A comprehensive, independent analysis of Barrier IIA, conducted in 2008 by the USACE at the one-volt per inch level, found a serious risk of injury or death to persons immersed in the water located adjacent to and over the barrier. Additionally, sparking between barges transiting the barrier (a risk to flammable cargoes) occurred at the one-volt per inch level. The Coast Guard and USACE developed regulations and safety guidelines, with stakeholder input, which addressed the risks and hazards associated with operating the barriers at the one-volt per inch level. These regulations were published in 33 CFR 165.923, 70 FR 76692 (Dec 28, 2005) and in a series of temporary final rules: 71 FR 4488 (Jan 27, 2006); 71 FR 19648 (Apr 17, 2006); 73 FR 33337 (Jun 12, 2008); 73 FR 37810 (Jul 2, 2008); 73 FR 45875 (Aug 7, 2008); and 73 FR 63633 (Oct 27, 2008). A temporary interim rule was issued on February 9, 2009 (74 FR 6352). A NPRM was issued on May 26, 2009 (74 FR 24722).

The USACE recently notified the Coast Guard that it plans to immediately increase the voltage of Barrier IIA to two-volts per inch on a full-time basis starting August 17, 2009. Both Barrier IIA and Barrier I will operate at the same time; hence, Barrier I will provide a redundant backup to Barrier IIA.

In the past, the Coast Guard has advised the USACE that it has no objection to the activation of Barrier IIA and Barrier I at a maximum strength of one-volt per inch. Testing on commercial vessels transiting the canal over the fish barrier was conducted at one-volt per inch indicating that although the barriers create risks to people and vessels, those risks could be mitigated by following certain procedures. These procedures were implemented in a temporary interim rule establishing a regulated navigation area and safety zone that was published in the **Federal Register** on February 9, 2009 (74 FR 6352) as well as a notice of proposed rulemaking published in the **Federal Register** on May 26, 2009 (74 FR 24722).

However, both of these rulemakings contemplated further testing of the effects of higher voltages on commercial and recreational vessels as well as people. The USACE began initial safety testing in cooperation with the U.S. Coast Guard on August 17, 2009, to test various configurations of commercial tugs and barges passing through the Barriers while it is at increased voltage and operating parameters. However, more time is needed to complete testing and analyze the results in order to

properly identify the potential risks to people and vessels. Therefore, the Coast Guard has determined that a safety zone is necessary until safety tests are completed.

The Captain of the Port Lake Michigan retains the authority to permit vessels to enter the safety zone. As safety testing results become available, the Captain of the Port Lake Michigan will make every effort to permit vessels to pass for which there is a decreased risk of injury or property damage. If vessels wish to enter the safety zone they must receive permission from the Captain of the Port Lake Michigan to do so and must follow all orders from the Captain of the Port or her designated on-scene representative while in the zone.

If, for any reasons, the safety zone is at any time suspended, the terms of the regulated navigation area will apply to all vessels.

Background and Purpose

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, authorized the USACE to conduct a demonstration project to identify an environmentally sound method for preventing and reducing the dispersal of non-indigenous aquatic nuisance species through the Chicago Sanitary and Ship Canal. The USACE selected an electric barrier because it is a non-lethal deterrent with a proven history, which does not overtly interfere with navigation in the canal.

A demonstration dispersal barrier (Barrier I) was constructed and has been in operation since April 2002. It is located approximately 30 miles from Lake Michigan and creates an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. A second barrier, Barrier IIA, was constructed 800 to 1300 feet downstream of the Barrier I. The potential field strength for Barrier IIA will be up to four times that of the Barrier I. Barrier IIA was successfully operated for the first time for approximately seven weeks in September and October 2008, while Barrier I was taken down for maintenance. Construction on a third barrier (Barrier IIB) is planned; Barrier IIB would augment the capabilities of Barriers I and IIA.

In the spring of 2004, a commercial towboat operator reported an electrical arc between a wire rope and timberhead while making up a tow in the vicinity of the Barrier I. During subsequent USACE safety testing in January 2005, sparking was observed at points where metal-to-metal contact occurred between two barges in the barrier field.

The electric current in the water also poses a safety risk to commercial and recreational boaters transiting the area. The Navy Experimental Diving Unit (NEDU) was tasked with researching how the electric current from the barriers would affect a human body if immersed in the water. The NEDU final report concluded that the possible effects to a human body if immersed in the water include paralysis of body muscles, inability to breathe, and ventricular fibrillation.

A Safety Work Group facilitated by the Coast Guard and in partnership with the USACE and industry initially met in February 2008 and focused on three goals: (1) Education and public outreach, (2) keeping people out of the water, and (3) egress/rescue efforts. The Safety Work Group has regularly been attended by eleven stakeholders. Key partners include the American Waterways Operators, Illinois River Carriers Association, Army Corps of Engineers Chicago District, Coast Guard Marine Safety Unit Chicago, Coast Guard Sector Lake Michigan/Captain of the Port Lake Michigan, and the Ninth Coast Guard District.

Based on the safety hazards associated with electric current flowing through navigable waterways and the uncertainty of the effects of higher voltage on people and vessels that pass over and adjacent to the barriers, the Coast Guard is closing the waterway until proper testing can be completed by the USACE. The Coast Guard appreciates the commercial significance of this waterway and will work closely with the USACE to re-open the waterway as soon as possible; however, it is imperative that this safety zone be immediately enacted to avoid loss of life.

As soon as safety testing and analysis are completed, the Coast Guard plans on publishing a new temporary interim rule (TIR) with requests for comments. Although the Coast Guard anticipates being able to permit some vessels to transit through the fish barrier after testing is complete, it is currently anticipated any subsequent TIR will continue to place restrictions on vessels including prohibiting some vessels from transiting through the fish barrier entirely. The Coast Guard will then likely follow with a supplemental notice of proposed rulemaking (SNPRM) in order to provide a complete notice and comment period for interested parties. We encourage the public to participate in the rulemaking process by submitting and reviewing comments and related materials at *http://www.regulations.gov* to the dockets associated with the anticipated TIR and any subsequent NPRM/SNPRM.

Discussion of Rule

This temporary final rule will suspend 33 CFR 165.T09–1247. This rule also continues the suspension of 33 CFR 165.923 which was earlier suspended from January 18, 2009, until September 30, 2009 (74 FR 6352, Feb. 9, 2005). This rule places a safety zone on all waters located adjacent to and over the electrical dispersal barriers on the Chicago Sanitary and Ship Canal. The safety zone will be enforced at all times the USACE operates the electrical dispersal barrier higher than one-volt per inch until safety testing is conducted that indicates vessels may safely pass. The Coast Guard has deemed this safety zone necessary from August 25, 2009 until September 9, 2009 because safety testing is still being conducted on vessels to determine whether and under what conditions vessels can safely pass adjacent to and over the electrical dispersal barriers. Although every effort will be made to permit vessels to pass as information becomes available; current estimates indicate that testing and analysis will not be completed by the USACE until at least September 9, 2009. Therefore, this safety zone is necessary until that time in order to prevent loss of life and damage to property.

This safety zone, which encompasses all the waters of the Chicago Sanitary and Ship Canal located between mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge), will be enforced by the Captain of the Port Lake Michigan, for such times before, during, and after barrier testing as he or she deems necessary to protect mariners and vessels from damage or injury. The Captain of the Port Lake Michigan will cause notice of enforcement or suspension of enforcement of this safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone is suspended. In addition, Captain of the Port Lake Michigan maintains a telephone line that is manned 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the safety zone by contacting the

Captain of the Port Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at (414) 747–7182.

In the event that the enforcement of the safety zone is temporarily suspended, this rule implements a regulated navigation area to control the movements of all vessels passing over and adjacent to the barriers. This regulated navigation area closely mirrors those previously implemented in this area. The regulated navigation area encompasses all waters of the Chicago Sanitary and Ship Canal located between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge). The requirements placed on commercial vessels include: (1) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the regulated navigation area to announce intentions and work out passing arrangements on either side; (2) commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow; and (3) all up-bound and down-bound barge tows that contain one or more red flag barges must be assisted by a bow boat until the entire tow is clear of the regulated navigation area. Red flag barges are barges certificated to carry, in bulk, any hazardous material as defined in 46 CFR 150.115. Currently, 46 CFR 150.115 defines hazardous material as:

(a) A flammable liquid as defined in 46 CFR 30.10–22 or a combustible liquid as defined in 46 CFR 30.10–15;

(b) A material listed in Table 151.05, Table 1 of part 153, or Table 4 of part 154 of Title 46, CFR; or

(c) A liquid, liquefied gas, or compressed gas listed in 49 CFR 172.101.

The USACE has informed the Coast Guard that they will continue to contract bow boat assistance for barge tows containing one or more red flag barges. Operators of tows containing one or more red flag barges should notify the bow boat contractor at least two hours prior to the need for assistance. The tow operator should then remain in contact with the contractor after the initial call for bow boat assistance and advise the contractor of any delays. Information on how to arrange for bow boat assistance may be obtained by contacting the Army Corps of Engineers at 312–846–5333, during normal working hours. The Coast Guard will also publish this information in its Local Notice to Mariners.

This temporary final rule places additional restrictions and operating requirements on all vessels within a smaller portion of the regulated navigation area, specifically, the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge). Within this smaller area, this temporary final rule prohibits all vessels from loitering, mooring or laying up on the right or left descending banks, or making or breaking tows on the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge). In addition, vessels may only enter the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge) for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the canal in the area located between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge). The temporary final rule also requires all personnel on open decks to wear a Coast Guard approved Type I personal flotation device while on the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

These restrictions are necessary for safe navigation of the regulated navigation area and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during safety tests conducted by the USACE. Deviation from this temporary final rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representatives. The Commander, Ninth Coast Guard District designates Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago, as his designated representatives for the purposes of the regulated navigation area.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be minimal. This determination is based the following: (1) The Chicago Sanitary and Ship Canal will be re-opened as soon as is practicable; (2) the Coast Guard expects to be able to re-open the Chicago Sanitary and Ship Canal at least to some commercial traffic as soon as the first phase of safety testing and analysis is complete; (3) if the Chicago Sanitary and Ship Canal is re-opened to commercial traffic, the USACE intends to pay the cost of the bow boat required by barge tows containing one or more red flag barges during the time this rule is effective; (4) vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone while the safety zone is enforced; and (5) in exigent circumstances, it may be possible to temporarily drop the voltage of the fish barrier back to one-volt per inch.

Because this safety zone must be implemented immediately without a full notice and comment period, the full economic impact of this rule is difficult to determine at this time. The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of permanent or temporary closures of the Chicago Sanitary and Ship Canal.

Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider whether regulatory actions would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C.

553(b)(B). Therefore, an RFA analysis is not required for this rule. The Coast Guard, nonetheless, expects that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of the category of actions which do not individually or cumulatively have significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2–1, paragraph (34)(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the establishing, disestablishing, or changing of regulated navigation areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.T09–1247 [Suspended]

■ 2. Section 165.T09–1247 is suspended.

■ 3. A new temporary section 165.T09–0789 is added as follows:

§ 165.T09–0789 Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Safety Zone.* (1) The following area is a permanent safety zone: All waters of the Chicago Sanitary and Ship Canal located between mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(2) *Enforcement period.* The safety zone will be enforced from 5 p.m. on August 25, 2009, until 5 p.m. on September 9, 2009.

(3) *Notice of suspension of enforcement.* The Captain of the Port Lake Michigan will enforce the safety zone established by this section at all times. However, the Captain of the Port Lake Michigan may temporarily suspend enforcement of the safety zone. If enforcement of the zone is temporarily suspended, the Captain of the Port Lake Michigan will cause a notice of the suspension of enforcement of this safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan will also issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when the temporary suspension of enforcement is over and the zone is once again in operation.

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

(ii) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or her on-scene representative.

(iii) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on her behalf. The on-scene representative of the Captain of the Port will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF–FM radio or loudhailer. The Captain of the Port or her on-scene representative may be contacted via VHF–FM radio Channel 16.

(iv) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or her on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or her on-scene representative.

(b) *Regulated Navigation Area.* The following is a Regulated Navigation Area: All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL located between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge).

(1) *Definitions.* The following definitions apply to this section:

Bow boat means a towing vessel capable of providing positive control of the bow of a tow containing one or more barges, while transiting the regulated navigation area. The bow boat must be capable of preventing a tow containing one or more barges from coming into contact with the shore and other moored vessels.

Designated representatives means the Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago.

Hazardous material means any material as defined in 46 CFR 150.115.

Red flag barge means any barge certificated to carry any hazardous material in bulk.

(2) *Notice of enforcement or suspension of enforcement.* The Captain of the Port Lake Michigan will enforce the Regulated Navigation Area established by this section only upon notice. Captain of the Port Lake Michigan will cause notice of the enforcement of this regulated navigation area to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of these safety zones is suspended.

(3) *Regulations.* (i) The general regulations contained in 33 CFR 165.13 apply.

(ii) All up-bound and down-bound barge tows that contain one or more red flag barges transiting through the regulated navigation area must be assisted by a bow boat until the entire tow is clear of the regulated navigation area.

(iii) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the regulated navigation area to announce intentions and work out passing arrangements on either side.

(iv) Commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(v) All vessels are prohibited from loitering between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(vi) Vessels may enter the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge) for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the canal in the area located between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(vii) All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(viii) Vessels may not moor or lay up on the right or left descending banks of the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(ix) Towboats may not make or break tows if any portion of the towboat or tow is located in the waters between the Romeo Road Bridge (approximate mile

marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(4) *Compliance.* All persons and vessels must comply with this section and any additional instructions or orders of the Ninth Coast Guard District Commander, or his designated representatives.

(5) *Waiver.* For any vessel, the Ninth Coast Guard District Commander, or his designated representatives, may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of vessel and mariner safety.

Dated: August 24, 2009.

Peter V. Neffenger,

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

[FR Doc. E9–21200 Filed 8–28–09; 4:15 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0194]

RIN 1625–AA00

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

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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

DATES: This rule is effective from October 6, 2009 through October 19, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0194 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0194 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Kristen Beer, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Kristen.A.Beer@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 22, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; IJSBA World Finals; Lower Colorado River, Lake Havasu, AZ in the **Federal Register** (74 FR 29447). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

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

Discussion of Comments and Changes

There were no comments submitted and no changes were made to the regulation.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the lower Colorado River at Lake Havasu from October 6, 2009 through October 19, 2009.

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

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

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

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

(a) *Location.* The following area is a safety zone: All waters of Lake Havasu, from surface to bottom, encompassed by lines connecting the following points:

Beginning at 34°28.49′ N, 114°21.33′ W; Thence to 34°28.55′ N, 114°21.56′ W; Thence to 34°28.43′ N, 114°21.81′ W; Thence to 34°28.32′ N, 114°21.71′ W; Thence along the shoreline returning to 34°28.49′ N, 114°21.33′ W.

These coordinates are based upon NAD 83.

(b) *Effective period.* This section is effective and will be enforced from October 6, 2009 through October 19, 2009. If the International Jet Sports Boating Association World Finals concludes prior to the scheduled termination of the effective period, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

(d) *Regulations.* (1) Under the general regulations in § 165.23, entry into,

transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port San Diego or his designated representative.

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

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

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

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

Dated: July 30, 2009.

DL LeBlanc,

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

[FR Doc. E9–21023 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

First-Class Mail Incentive Program

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), to add section 709.3 which introduces new standards for a special volume incentive program for mailers of commercial (automation and/or Presort) First-Class Mail® cards, letters and/or flats with mail volume exceeding their individual USPS®-determined threshold levels. The program period will be from October 1, 2009 through December 31, 2009.

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

FOR FURTHER INFORMATION CONTACT: Nii-Kwashie Aryeetey at 202–268–7442 or Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: The Postal Service is implementing a volume incentive program for qualified mailers of commercial (automation and/or Presort) First-Class Mail cards, letters and/or flats, for volume mailed during the program period, above their USPS-determined threshold level.

To participate, mailers must be the permit holder (i.e., owner) of a permit imprint advance deposit account(s) or the owner of qualifying mail volume entered through the permit imprint advance deposit account of a mail service provider. Qualifying mail owners must be able to demonstrate volume of at least five-hundred thousand (500,000) commercial First-Class Mail cards, letters and/or flats pieces within the period of October 1, 2007 to December 31, 2007 and five-hundred thousand (500,000) commercial First-Class Mail cards, letters and/or flats pieces within the period of October 1, 2008 to December 31, 2008, for a permit imprint advance deposit account(s), precanceled stamp permit(s), postage meter permit(s), or by a combination of these methods. Applicants may also qualify for the program with volume mailed through an account(s) owned by a mail service provider, when adequate documentation is provided that specifies the applicant is the owner of the mail. Those mail owners eligible to participate in the program will be notified of their eligibility, in writing, on or before October 15, 2009. Mail owners wishing to participate in the program, who believe they meet the eligibility standards under DMM 709.3.2 and were not notified by letter, may request a review of their eligibility by contacting the USPS at *firstclassmailincentive@usps.gov.*

As part of the application process, participating mail owners will be required to provide historical data demonstrating their commercial First-Class Mail cards, letters and/or flats volumes mailed within the periods of October 1, 2007 through December 31, 2007, October 1, 2008 through December 31, 2008, September 2008, and January 2009.

Participating mail owners demonstrating commercial First-Class Mail cards, letters or flats volume above their established threshold level will receive a credit following the close of the program period. Thresholds will be calculated independently for each applicant, by comparing the volume of commercial First-Class Mail cards, letters and/or flats mailed within the period from October 1, 2007 through December 31, 2007 to the volume mailed within the period of October 1, 2008 through December 31, 2008. The change in recorded volume between these two periods will represent the applicant's volume trend. Trends that show growth for the period of October 1, 2008 to December 31, 2008, versus that shown in the same period of the prior year, will appear as a ratio above 1.0 (expressed here in a decimal format). Trends that show a volume decline for the period of October 1, 2008 to December 31, 2008 will appear as a ratio below 1.0. The applicable ratio will then be applied to the volume of commercial First-Class Mail cards, letters and flats mailed within the period of October 1, 2008 to December 31, 2008. This result represents the USPS-determined threshold level for an individual applicant.

Mail owners (applicants) are eligible to participate in the program with qualifying volume prepared by a mail service provider when entered through a permit owned by the applicant. Mail volume through a mail service provider's permit, may also qualify for the program, but only if adequate documentation identifies the mail as being prepared on behalf of the applicant and demonstrates the applicant's prior mailing activity. Mail service providers are not eligible to participate in the First-Class Mail Incentive program.

Approved program participants, demonstrating an increase in their total commercial First-Class Mail cards, letters and/or flats volume above their approved threshold level will qualify for a credit to a designated permit imprint advance account, Centralized Account Payment System (CAPS) account or paid through another approved method. The total postage attributable to commercial First-Class Mail cards, letters and flats within the program period will be identified for each participant and divided by the total number of recorded pieces, to generate the average price per piece. Participants receive a credit in the amount of 20 percent of the average price per piece for the total number of mailpieces of the incremental volume above their approved threshold level as recorded during the program period.

The First-Class Mail Incentive program encourages mailers to generate new mail volume. As a deterrent to mailers shifting previously planned volume into the program to obtain incentive credits, the mailing activity of participating mail owners will be monitored in the calendar months prior to and following the end of the program as follows:

- The participant's previously determined volume trend will be applied to their volume of commercial First-Class Mail cards, letters and flats mailed within the month of September 2008 and January 2009, to determine the participant's September 2009 and January 2010 expected volume.
- Each participant's *actual* September 2009 and January 2010 volume will then be compared to their respective September 2009 and January 2010 expected volume.

• Participants failing to meet (or exceed) either of their expected volume thresholds will have any demonstrated shortfall in volume deducted from the number of mailpieces eligible for an incentive credit within the program.

• Participants demonstrating a shortfall in volume to either their September 2009 or January 2010 expected volumes will have that shortfall deducted from the number of mailpieces eligible for an incentive credit within the program regardless of any surplus demonstrated in the expected volume threshold of the other month.

Additionally, as part of the program administration, the Postal Service will require each program participant to certify the data used to calculate the volume trends, threshold levels and their September 2009 and January 2010 expected volumes. This certification requirement will be similar to what is currently used on PS Form 3600, *Postage Statement—First-Class Mail and Priority Mail.* The certification requirement for this initiative is aimed at ensuring that the data used by the Postal Service to calculate the applicable volume trend, threshold level and September 2009 and January 2010 expected volume for each qualifying mailer is accurate.

In accordance with the Postal Accountability and Enhancement Act, on August 11, 2009, the Postal Service filed a Notice with the Postal Regulatory Commission (PRC) regarding the First-Class Mail Incentive program. Regulatory review will take 45 days from that date.

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

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

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

PART 111—[AMENDED]

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

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

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

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

* * * * *

700 Special Standards

* * * * *

709 Experimental and Temporary Classifications

* * * * *

[Add a new section 709.3.0 to introduce new standards for a volume incentive program for commercial First-Class Mail cards, letters and flats as follows:]

3.0 First-Class Mail Incentive Program

3.1 Program Description

The First-Class Mail Incentive program provides volume pricing for qualified mail owners of commercial (automation and/or Presort) First-Class Mail cards, letters and/or flats who are able to document mail volume exceeding their individual USPS-determined threshold level during the October 1, 2009 through December 31, 2009 program period. Participating mail owners documenting volumes above their established threshold level will receive a 20% credit, for each piece exceeding their individual USPS-determined threshold level, to a designated permit imprint advance deposit account, Centralized Account Payment System (CAPS) account, or provided through another approved method at the conclusion of the program period. Program participants must review and certify the accuracy of the data used by the USPS to calculate their individual volume trend, threshold level and their September 2009 and January 2010 expected volumes.

3.2 Eligibility Standards

Mail owners are considered eligible for the program as follows:

a. Applicants must be able to document, in aggregate, volume of at least five-hundred thousand (500,000) pieces of commercial First-Class Mail cards, letters and/or flats for each of the October 1, 2007 to December 31, 2007 and October 1, 2008 to December 31, 2008 time periods as follows:

1. Volume through one or more permit imprint advance deposit accounts, precanceled stamp permits, or postage meter permits owned by the applicant, or

2. Volume prepared by a mail service provider when entered through a permit owned by the applicant, or

3. Volume within a mail service provider's permit, which can be identified as being prepared on behalf of the applicant.

b. Mail service providers are not eligible to participate in this program.

3.3 Program Threshold Level

Threshold level figures will be calculated independently for each applicant as follows:

a. Total documented volume of commercial First-Class Mail cards, letters and/or flats recorded within the period from October 1, 2007 to December 31, 2007 will be compared to that recorded within the period of October 1, 2008 to December 31, 2008.

b. The change in recorded mailing volume between these two periods will represent the applicant's volume trend. Trends that show growth for the period of October 1, 2008 to December 31, 2008, versus that shown in the same period of the prior year, will appear as a ratio above 1.0 (expressed here in a decimal format). A volume decline from October 1, 2008 to December 31, 2008 will appear as a ratio below 1.0.

c. The applicable ratio will then be applied to the volume of commercial First-Class Mail cards, letters and flats, for all of the applicant's mailings, or other qualifying volume recorded through the permit of a mail service provider (MSP), mailed during the period from October 1, 2008 through December 31, 2008.

d. The product of the calculation in 3.2c will represent the USPS-determined threshold level for the selected applicant.

3.4 Application

Mail owners meeting the eligibility criteria will be notified of their eligibility for the program and advised of the application process and requirements. Mail owners interested in participating may apply at *www.usps.com/firstclassmailincentive.* Eligible applicants must apply for the program no later than November 1, 2009. Mailers meeting the eligibility standards under 709.3.2, and not notified by letter, may request a review of their eligibility by contacting the USPS via email at *firstclassmailincentive@usps.gov.* Mail owners requesting review of their program eligibility must submit their request to the USPS no later than November 1, 2009. Following registration, mailers will be required to provide historical data demonstrating their commercial First-Class Mail cards, letters and/or flats volumes mailed within each of the periods of October 1, 2007 to December 31, 2007, October 1, 2008 to December 31, 2008, September 2008 and January 2009. The USPS will review the data provided and applicants will be notified of their approval for

participation in the program, their approved threshold level, and their revised threshold level (when applicable). Mailers wishing to dispute their threshold level will be provided with instructions on the process.

3.5 Program Participation

Mail owners may participate in the program with qualifying volume as follows:

a. Commercial First-Class Mail cards, letters and/or flats volume mailed by the participant through the participant's own permit imprint advance account, precanceled stamp permit(s), or postage meter permit(s);

b. Commercial First-Class Mail cards, letters and/or flats volume prepared by a mail service provider, when entered through a permit owned by the participant;

c. Commercial First-Class Mail cards, letters and/or flats pieces mailed through a mail service provider's permit, only when the pieces can be identified as being prepared for the participant and when the applicant's prior mailing activity through the mail service provider's permit can be validated.

3.6 Incentive Program Credits

Approved participants demonstrating an increase in commercial First-Class Mail cards, letters and flats volume above their approved threshold level qualify for a credit to their designated permit imprint advance deposit account, Centralized Account Payment System (CAPS) account, or provided through another approved method as follows:

a. The total postage paid for commercial First-Class Mail cards, letters and flats recorded during the program will be identified for each participant.

b. The total postage paid during the program period will be divided by the total number of recorded pieces to generate the average price per piece for the program period.

c. Participants will receive a credit in the amount of 20 percent of the average price per piece applied to the total number of mailpieces, for the incremental volume above their approved threshold level, recorded during the program period.

3.7 Mailing Activity Review

Mailing activity by participants will be reviewed in the calendar months preceding and following the end of the program. The qualifying volume recorded for participants may be adjusted in accordance with the following:

a. The participant's previously determined volume trend will be applied to the volume of commercial First-Class Mail cards, letters and flats mailed by the participant within the months of September 2008 and January 2009, to determine the program participant's September 2009 and January 2010 expected volumes.

b. The participant's actual September 2009 and January 2010 volumes will then be compared to their September 2009 and January 2010 expected volumes.

c. Participants failing to meet their September 2009 and/or January 2010 expected volume will have any shortfall in volume deducted from the number of mailpieces eligible for an incentive credit within the program.

d. Participants demonstrating a shortfall in volume to either their September 2009 or January 2010 expected volumes will have that shortfall deducted from the number of mailpieces eligible for an incentive credit within the program regardless of any surplus demonstrated in the expected volume threshold of the other month.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–21072 Filed 9–1–09; 8:45 am]

BILLING CODE 7710–12–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–37 and CP2009–56; Order No. 278]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding the Priority Mail Contract 17 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective September 2, 2009 and is applicable beginning August 14, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 39123 (August 5, 2009).

I. Introduction
II. Background
III. Comments
IV. Commission Analysis
V. Ordering Paragraphs

I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 17 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On July 24, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 17 to the Competitive Product List.[1] The Postal Service asserts that the Priority Mail Contract 17 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–37.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–56.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be the day that the Commission issues all regulatory approvals;[2] (2) requested changes in the Mail Classification Schedule product list;[3] (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;[4] and (4) certification of compliance with 39 U.S.C. 3633(a).[5] The Postal Service also references Governors' Decision 09–6, filed in Docket No. MC2009–25, as authorization of the new product. Notice at 1.

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment C, at 1. W. Ashley

[1] Request of the United States Postal Service to Add Priority Mail Contract 17 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, July 24, 2009 (Request).

[2] Attachment A to the Request.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.,* Attachment D.

The Postal Service filed much of the supporting materials, including the supporting data and the unredacted contract, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, certain terms and conditions, and financial projections, should remain confidential. *Id.* at 2–3.

In Order No. 261, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[6]

III. Comments

Comments were filed by the Public Representative.[7] No comments were submitted by other interested parties. The Public Representative states that the Postal Service's filing comports with title 39 and the relevant Commission Rules of Practice and Procedure. *Id.* at 1, 3–4. He further states that the agreement appears to be beneficial to the general public, although he does question the utility of the contract's 30-day termination provision. *Id.* at 1, 4, 5–6.

With respect to confidentiality, the Public Representative believes that ''[t]o comply with Order No. 247 in Docket[s] MC2009–30 and CP2009–40, the Postal Service should include with its filing a redacted copy of the Governors' Decision and certification.'' *Id.* at 3 (footnote omitted).

IV. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 17 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 17 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment C, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at ¶ (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 17 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 17 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Priority Mail Contract 17 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Priority Mail Contract 17 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Priority Mail Contract 17 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. The Commission will then remove the product from the Competitive Product List.

Furthermore, the Public Representative's assessment of Order No. 247 is well-taken. Public Representative Comments at 3–4. Subsequently, the Commission issued Order No. 266, which clarified the policy regarding self-contained docket filings. *See* Docket No. CP2009–47, Order Concerning Filing a Functionally Equivalent Global Plus 1 Contract Negotiated Service Agreement, July 31, 2009, at 6–7 (Order No. 266). In recent filings, the Postal Service has adhered to this policy.

In conclusion, the Commission approves Priority Mail Contract 17 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

V. Ordering Paragraphs

It is ordered:

1. Priority Mail Contract 17 (MC2009–37 and CP2009–56) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if termination occurs prior to that date, as discussed in this order.

3. The Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Request to Add Priority

[6] PRC Order No. 261, Notice and Order Concerning Priority Mail Contract 17 Negotiated Service Agreement, July 29, 2009 (Order No. 261).

[7] Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 17 to Competitive Product List, August 7, 2009 (Public Representative Comments). The Public Representative also filed a Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Request to Add Priority Mail Contract 17 to Competitive Product List (Motion). That Motion is granted.

Mail Contract 17 to Competitive Product List filed on August 7, 2009, is granted.

4. The Secretary shall arrange for the publication of this order in the **Federal Register.**

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Issued: August 14, 2009.

Judith M. Grady,

Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List
First-Class Mail
  Single-Piece Letters/Postcards
  Bulk Letters/Postcards
  Flats
  Parcels
  Outbound Single-Piece First-Class Mail International
  Inbound Single-Piece First-Class Mail International
Standard Mail (Regular and Nonprofit)
  High Density and Saturation Letters
  High Density and Saturation Flats/Parcels
  Carrier Route
  Letters
  Flats
  Not Flat-Machinables (NFMs)/Parcels
Periodicals
  Within County Periodicals
  Outside County Periodicals
Package Services
  Single-Piece Parcel Post
  Inbound Surface Parcel Post (at UPU rates)
  Bound Printed Matter Flats
  Bound Printed Matter Parcels
  Media Mail/Library Mail
Special Services
  Ancillary Services
  International Ancillary Services
  Address List Services
  Caller Service
  Change-of-Address Credit Card Authentication
  Confirm
  International Reply Coupon Service
  International Business Reply Mail Service
  Money Orders
  Post Office Box Service
Negotiated Service Agreements
  HSBC North America Holdings Inc. Negotiated Service Agreement
  Bookspan Negotiated Service Agreement
  Bank of America Corporation Negotiated Service Agreement
  The Bradford Group Negotiated Service Agreement
  Inbound International
  Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services
Market Dominant Product Descriptions
First-Class Mail
[Reserved for Class Description]
  Single-Piece Letters/Postcards
  [Reserved for Product Description]
  Bulk Letters/Postcards
  [Reserved for Product Description]
  Flats
  [Reserved for Product Description]
  Parcels
  [Reserved for Product Description]
  Outbound Single-Piece First-Class Mail International
  [Reserved for Product Description]
  Inbound Single-Piece First-Class Mail International
  [Reserved for Product Description]
Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
  High Density and Saturation Letters
  [Reserved for Product Description]
  High Density and Saturation Flats/Parcels
  [Reserved for Product Description]
  Carrier Route
  [Reserved for Product Description]
  Letters
  [Reserved for Product Description]
  Flats
  [Reserved for Product Description]
  Not Flat-Machinables (NFMs)/Parcels
  [Reserved for Product Description]
Periodicals
[Reserved for Class Description]
  Within County Periodicals
  [Reserved for Product Description]
  Outside County Periodicals
  [Reserved for Product Description]
Package Services
[Reserved for Class Description]
  Single-Piece Parcel Post
  [Reserved for Product Description]
  Inbound Surface Parcel Post (at UPU rates)
  [Reserved for Product Description]
  Bound Printed Matter Flats
  [Reserved for Product Description]
  Bound Printed Matter Parcels
  [Reserved for Product Description]
  Media Mail/Library Mail
  [Reserved for Product Description]
Special Services
[Reserved for Class Description]
  Ancillary Services
  [Reserved for Product Description]
  Address Correction Service
  [Reserved for Product Description]
  Applications and Mailing Permits
  [Reserved for Product Description]
  Business Reply Mail
  [Reserved for Product Description]
  Bulk Parcel Return Service
  [Reserved for Product Description]
  Certified Mail
  [Reserved for Product Description]
  Certificate of Mailing
  [Reserved for Product Description]
  Collect on Delivery
  [Reserved for Product Description]
  Delivery Confirmation
  [Reserved for Product Description]
  Insurance
  [Reserved for Product Description]
  Merchandise Return Service
  [Reserved for Product Description]
  Parcel Airlift (PAL)
  [Reserved for Product Description]
  Registered Mail
  [Reserved for Product Description]
  Return Receipt
  [Reserved for Product Description]
  Return Receipt for Merchandise
  [Reserved for Product Description]
  Restricted Delivery
  [Reserved for Product Description]
  Shipper-Paid Forwarding
  [Reserved for Product Description]
  Signature Confirmation
  [Reserved for Product Description]
  Special Handling
  [Reserved for Product Description]
  Stamped Envelopes
  [Reserved for Product Description]
  Stamped Cards
  [Reserved for Product Description]
  Premium Stamped Stationery
  [Reserved for Product Description]
  Premium Stamped Cards
  [Reserved for Product Description]
  International Ancillary Services
  [Reserved for Product Description]
  International Certificate of Mailing
  [Reserved for Product Description]
  International Registered Mail
  [Reserved for Product Description]
  International Return Receipt
  [Reserved for Product Description]
  International Restricted Delivery
  [Reserved for Product Description]
  Address List Services
  [Reserved for Product Description]
  Caller Service
  [Reserved for Product Description]
  Change-of-Address Credit Card Authentication
  [Reserved for Product Description]
  Confirm
  [Reserved for Product Description]
  International Reply Coupon Service
  [Reserved for Product Description]
  International Business Reply Mail Service
  [Reserved for Product Description]
  Money Orders
  [Reserved for Product Description]
  Post Office Box Service
  [Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
  HSBC North America Holdings Inc. Negotiated Service Agreement
  [Reserved for Product Description]
  Bookspan Negotiated Service Agreement
  [Reserved for Product Description]
  Bank of America Corporation Negotiated Service Agreement
  The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List
Express Mail
  Express Mail
  Outbound International Expedited Services
  Inbound International Expedited Services
  Inbound International Expedited Services 1 (CP2008–7)

Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Royal Mail Group Inbound Air Parcel Post Agreement
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M–Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Priority Mail Contract 15 (MC2009–35 and CP2009–54)
Priority Mail Contract 17 (MC2009–37 and CP2009–56)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M–Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]

Part C—Glossary of Terms and Conditions [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E9–21208 Filed 9–1–09; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0012; FRL–8433–8]

Methoxyfenozide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of methoxyfenozide in or on citrus oil and fruit, citrus, group 10 with regional registrations; and corn, pop, grain; corn, pop, stover; pea, dry seed; and pomegranate. The Interregional Research Project No. 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 2, 2009. Objections and requests for hearings must be received on or before November 2, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0012. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.),

2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0012 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before November 2, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2009–0012, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15971) (FRL–8407–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7447) by IR-4, IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.544 be amended by establishing tolerances for residues of the insecticide methoxyfenozide; 3,5-dimethylbenzoic acid *N*-tert-butyl-*N*'-(3-hydroxy-2-methylbenzoyl) hydrazide, RH-151,055 glucose conjugate of RH-117,236; 3,5-dimethylbenzoic acid *N*-tert-butyl-*N*-[3(β-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide and RH-152,072 the malonylglycosyl conjugate of RH-117,236 in or on fruit, citrus, group 10 at 2.0 parts per million (ppm), and citrus oil at 70 ppm for tolerances with regional registrations; and pea and bean, dried shelled, except soybean, subgroup 6C at 0.35 ppm; pomegranate at 0.6 ppm; corn, pop, grain at 0.05 ppm; corn, pop, stover at 125 ppm; and corn, pop, forage at 30 ppm. That notice referenced a summary of the petition prepared by Dow AgroSciences, LLC, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised certain petitioned-for tolerances for methoxyfenozide residues as follows:

Increase the tolerance for fruit, citrus, group 10 from 2.0 to 10 ppm, and the tolerance for citrus oil from 70 to 100 ppm.

Delete proposed tolerance for the commodity pea and bean, dried shelled, except soybean, subgroup 6C at 0.35 ppm, and replace with the commodity pea, dry seed with a tolerance at 2.5 ppm.

Delete proposed tolerance for commodity corn, pop, forage at 30 ppm. The reasons for these changes are explained in Unit IV.C.4.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on

aggregate exposure for the petitioned-for tolerances for residues of the insecticide methoxyfenozide *per se*; benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide in or on fruit, citrus, group 10 at 10 ppm and citrus oil at 100 ppm, with regional registrations; and pea, dry seed at 2.5 ppm; pomegranate at 0.6 ppm; corn, pop, grain at 0.05 ppm; and corn, pop, stover at 125 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Methoxyfenozide is not acutely toxic and not a dermal sensitizer. Minimal or no toxic effects were observed in studies in which methoxyfenozide was administered by the dermal or inhalation routes of exposure.

Toxicology studies conducted with methoxyfenozide demonstrate that it has few or no biologically significant toxic effects at relatively low-dose levels in many animal studies and only mild or no toxic effects at relatively high-dose levels.

In subchronic and chronic oral studies in rats, the most toxicologically significant effects were mild anemia and mild effects on the liver, thyroid gland, and adrenal gland. In subchronic and chronic oral studies in dogs, the predominant toxic effect was anemia, which was often accompanied by signs of a compensatory response.

The database indicates that only the dietary route of exposure is of concern, and only for chronic durations. The chronic population adjusted dose (cPAD) is 0.1 milligrams/kilograms/day (mg/kg/day) based on changes in blood counts, liver toxicity, histopathological changes in thyroid, and possible adrenal toxicity observed at the lowest-observed-adverse-effect-level (LOAEL) of 411 mg/kg/day in a chronic toxicity study in rats.

Methoxyfenozide is not neurotoxic and is not a developmental or reproductive toxicant. There was no evidence for increased susceptibility of rat or rabbit fetuses to *in utero* exposure or rat pups to postnatal exposure.

There is no evidence of carcinogenic potential in rats and mice studies, and no genotoxicity effects in an acceptable battery of mutagenicity studies.

Specific information on the studies received and the nature of the adverse effects caused by methoxyfenozide as well as the no-observed-adverse-effect-level (NOAEL) and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in document *Methoxyfenozide. Human Health Risk Assessment for Proposed Section 3 Uses on Dried Pea and Bean Subgroup 6C (Except Soybean), Pomegranate, Popcorn, and Citrus Crop Group 10 (Regional Use), and Conditional Registrations for Uses and/or Tolerances on Leaf Vegetables, Rotational Crops, Stone Fruits, and Poultry Commodities*, dated July 22, 2009, page 24 in docket ID number EPA–HQ–OPP–2009–0012.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a benchmark dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and cPAD. The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for methoxyfenozide used for human risk assessment can be found at *http://www.regulations.gov* in document *Methoxyfenozide. Human Health Risk Assessment for Proposed Section 3 Uses on Dried Pea and Bean Subgroup 6C (Except Soybean), Pomegranate, Popcorn, and Citrus Crop Group 10 (Regional Use), and Conditional Registrations for Uses and/or Tolerances on Leaf Vegetables, Rotational Crops, Stone Fruits, and Poultry Commodities*, dated July 22, 2009, page 28 in docket ID number EPA–HQ–OPP–2009–0012.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to methoxyfenozide, EPA considered exposure under the petitioned-for tolerances as well as all existing methoxyfenozide tolerances in (40 CFR 180.544). EPA assessed dietary exposures from methoxyfenozide in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for methoxyfenozide; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, chronic dietary exposure analysis for methoxyfenozide was conducted using tolerance level residues, and 100 percent crop treated (PCT) for all existing and proposed uses. Dietary Exposure Evaluation Model (Version 7.81) default processing factors were used for most processed commodities that do not have individual tolerances; the only exception was an EPA determined processing factor for orange juice.

iii. *Cancer.* Methoxyfenozide is classified as ''not likely to be a human carcinogen.'' There was no evidence of carcinogenicity in the combined chronic/carcinogenicity studies in the rat and no genotoxicity shown in mutagenicity studies. Therefore, a cancer dietary exposure assessment was not performed.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for methoxyfenozide. The Agency assumed 100 PCT and tolerance-level residues for all existing and proposed uses.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for methoxyfenozide in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of methoxyfenozide. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of methoxyfenozide for chronic exposures for non-cancer assessments are estimated to be 33.1 parts per billion (ppb) for surface water and 7.43 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For chronic dietary risk assessment, the water concentration of value 33.1 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Methoxyfenozide is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found methoxyfenozide to share a common mechanism of toxicity with any other substances, and methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that methoxyfenozide does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There is not a concern for prenatal and/or postnatal toxicity resulting from exposure to methoxyfenozide. Based on the results in the developmental toxicity studies in rats and rabbits and in the 2–generation reproduction study in rats, no increased sensitivity of fetuses or pups (as compared to adults) was demonstrated for methoxyfenozide. There are no concerns or residual uncertainties for prenatal/postnatal toxicity following exposure to methoxyfenozide.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for methoxyfenozide is complete, with the exception of the required immunotoxicity study. The toxicology database for methoxyfenozide demonstrates that the most toxicologically significant effects were mild anemia and mild effects on the liver, thyroid gland, and adrenal gland; the immune system is not a primary target organ. Increased spleen weights and hyperplasia in bone morrow of rib and sternum were observed in subchronic and chronic oral studies in dogs; however, these effects were considered a compensatory response of anemia. The overall weight of evidence suggests that methoxyfenozide does not directly target the immune system, and observed effects were related to the anemic response to the exposure. Immunotoxicity study is required as a part of new data requirements in the 40 CFR part 158 for conventional pesticide registration; however, the Agency does not believe that conducting a functional immunotoxicity study will result in a lower POD than currently used for overall risk assessment; therefore, a database uncertainty factor (UFDB) is not needed to account for the lack of the study.

ii. Based on weight-of-the-evidence considerations as follows, a developmental neurotoxicity (DNT) study in rats is not required to support the registration of methoxyfenozide:

Other than the decreased hindlimb grip strength observed at 3 hours in male rats following a single oral dose of methoxyfenozide, no signs of neurotoxicity were observed in this study or in any other study on methoxyfenozide.

The developmental toxicity studies in rats and rabbits and the 2–generation reproduction study in rats indicated no need for a developmental neurotoxicity study to resolve any concerns arising in these studies.

No other observations in any of the toxicology studies on methoxyfenozide suggested the need for a developmental neurotoxicity study.

iii. In developmental toxicity studies in rats and rabbits, no increased susceptibility in fetuses as compared to maternal animals was observed following *in utero* exposures.

iv. In a 2–generation reproduction study in rats, no increased susceptibility in pups as compared to adults was observed following *in utero* and postnatal exposures.

v. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues for all existing and proposed uses. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to methoxyfenozide in drinking water. These assessments will not underestimate the exposure and risks posed by methoxyfenozide.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer

risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Methoxyfenozide is not expected to pose an acute risk to any population subgroup.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to methoxyfenozide from food and water will utilize 69% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. There are no registered residential uses for methoxyfenozide.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Methoxyfenozide is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to methoxyfenozide through food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Methoxyfenozide is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to methoxyfenozide through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. Methoxyfenozide is classified as ''not likely to be carcinogenic to humans'' based on the lack of evidence of carcinogenicity in rats and mice, and lack of genotoxicity in an acceptable battery of mutagenicity studies. Methoxyfenozide is not expected to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to methoxyfenozide residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methodologies are available, e.g., high performance liquid chromatography with ultraviolet or mass spectrometry detection (HPLC/UV or MS), for enforcing methoxyfenozide tolerances. Depending on the plant commodity, the limit of quantitation (LOQ) for methoxyfenozide in primary crop commodities is 0.01–0.05 ppm.

Adequate enforcement methodology (HPLC/UV or MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no Codex maximum residue limits established for methoxyfenozide on commodities involved in this action.

C. Revisions to Petitioned-For Tolerances

EPA made certain revisions to the tolerance levels, added or deleted tolerances, or otherwise modified the petition as proposed in the notice of filing for the following reasons:

1. EPA increased the proposed tolerance for fruit, citrus, group 10 from 2.0 to 10 ppm. For citrus fruits, the residue values from individual of citrus fruits were used to calculate the Maximum Residue Level (MRL) for methoxyfenozide tolerances. The highest recommended MRL from the orange data is 10 ppm and, therefore, the Agency's recommended tolerance for citrus, fruits, crop group 10 is 10 ppm.

2. The Agency increased the proposed tolerance for citrus oil from 70 to 100 ppm. Based on the 56X processing factor for oil and the highest average field trial (HAFT) residues of 1.67 ppm for citrus fruits, the maximum expected residues in oil would be 93.5 ppm. Therefore, EPA concluded that a tolerance of 100 ppm is appropriate for citrus oil.

3. EPA revised the proposed tolerance for the commodity pea and bean, dried shelled, except soybean, subgroup 6C at 0.35 ppm, to a tolerance at 2.5 ppm for the commodity pea, dry seed. For pea, dry seed a separate tolerance was calculated using the data from the new trials, adjusting the residues from two trials (0.5X) to the 1X rate using proportionality (0.30 ppm), using only the residue data from the four field trials conducted at 1X (0.35 ppm), and using the previously reviewed data for the back-eyed and southern pea trials (2.5 ppm). The highest tolerance recommendation of 2.5 ppm was chosen for the tolerance for pea, dry seed. Due to the >10X difference between the pea and bean tolerances, a pea and bean, dried shelled, except soybean (subgroup 6C) tolerance is not established for subgroup 6C as it is inappropriate. Therefore, EPA concluded that the current bean, dry seed tolerance at 0.24 ppm should be retained and a tolerance be established at 2.5 ppm for pea, dry seed.

4. EPA is not establishing the proposed tolerance for the commodity corn, pop, forage at 30 ppm. Available residue data for field corn support the proposed tolerances of 0.05 and 125 ppm in/on popcorn grain and stover, respectively. No tolerance is required for popcorn forage as it is not a regulated livestock feedstuff.

5. In establishing the new tolerances with regional registration for citrus in paragraph (c) of 40 CFR 180.544, EPA has used its preferred method of setting forth the tolerance expression which involves separate sentences addressing:

i. The coverage of the tolerance.

ii. The specific residues to be measured in determining compliance with the tolerance levels.

EPA considers this new approach to writing tolerance expressions to be both consistent with the statute and a clarification of what EPA intended in its prior tolerance expression format. Accordingly, in most instances where EPA amends an existing tolerance regulation to add additional commodities, EPA believes there is good cause to change to the overall tolerance expression for all commodities without prior notice. The existing tolerance expression for methoxyfenozide, however, is somewhat unusual in its reference to ''methoxyfenozide *per se*.'' Thus, even though EPA does not believe that the existing tolerance expression was intended to be interpreted in a manner different from the new clarified approach, EPA will not modify the existing tolerance expression in paragraph (a)(1) of 40 CFR 180.544 without prior notice.

V. Conclusion

Therefore, tolerances are established for residues of the insecticide methoxyfenozide *per se*; benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide in or on fruit, citrus, group 10 at 10 ppm and citrus oil at 100 ppm with regional registrations; and pea, dry seed at 2.5 ppm; pomegranate at 0.6 ppm; corn, pop, grain at 0.05 ppm; and corn, pop, stover at 125 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 25, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.544 is amended by alphabetically adding the following commodities to the table in paragraph (a)(1) and by revising paragraph (c) to read as follows:

§ 180.544 Methoxyfenozide; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * *	* *
Corn, pop, grain	0.05
Corn, pop, stover	125
* * *	* *
Pea, dry seed	2.5
* * *	* *
Pomegranate	0.6
* * *	* *

* * * * *

(c) *Tolerances with regional registrations.* Tolerances are established for residues of the insecticide methoxyfenozide, including its metabolites and degradates. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only methoxyfenozide, benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide.

Commodity	Parts per million
Citrus, Oil	100
Fruit, citrus, group 10	10

* * * * *

[FR Doc. E9–21190 Filed 9–1–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2009–0175; FRL–8951–5]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Montclair/West Orange and Glen Ridge Radium Superfund Sites from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA)—Region 2 announces the deletion of the Montclair/West Orange and Glen Ridge Radium Superfund Sites located in Montclair, West Orange, Glen Ridge, Bloomfield and East Orange, New Jersey from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution

Contingency Plan (NCP). EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: *Effective Date:* This action is effective *October 2, 2009.*

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–SFUND–2009–0175 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.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, phone numbers and viewing hours are:

U.S. Environmental Protection Agency—Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone: 212–637–4308, Hours: Monday to Friday 9 a.m. to 5 p.m.

Montclair Public Library Reference Department, 50 South Fullerton Avenue, Montclair, New Jersey 07042, Phone 973–744–0500, Hours: Monday to Thursday 10 a.m. to 9 p.m.; Friday & Saturday 10 a.m. to 5 p.m.; and Sunday 1 p.m. to 5 p.m.

The Township of West Orange Health Department, 66 Main Street, Room 203, West Orange, New Jersey 07052, Phone 973–325–4120, Hours: Monday to Friday 8:30 a.m. to 4:30 p.m.

Glen Ridge Public Library Reference Department, 240 Ridgewood Avenue, Glen Ridge, New Jersey 07028, Phone 973–748–5482, Hours: Monday 9 a.m. to 8 p.m.; Tuesday 9 a.m. to 5 p.m.; Wednesday 9 a.m. to 8 p.m.; and Thursday, Friday, Saturday 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Betsy Donovan, Remedial Project Manager, by mail: Emergency and Remedial Response Division, U.S. Environmental Protection Agency—Region 2, 290 Broadway, 19th Floor, New York, NY 10007–1866; (or) telephone (212) 637–4369; (or) fax (212) 637–4439; (or) e-mail *donovan.betsy@epa.gov.*

SUPPLEMENTARY INFORMATION: The sites to be deleted from the NPL are the Montclair/West Orange and Glen Ridge Radium Superfund Sites located in Montclair, West Orange, Glen Ridge, Bloomfield and East Orange, New Jersey. A Notice of Intent to Delete these sites was published in the **Federal Register** on April 29, 2009. The closing date for comments on the Notice of Intent to Delete was May 29, 2009. No public comments were received and therefore EPA has no information which leads it to believe that the deletion action is inappropriate.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

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

Dated: August 4, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

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

PART 300—[AMENDED]

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

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

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the sites under New Jersey for ''Glen Ridge Radium Site, Glen Ridge'', and ''Montclair/West Orange Radium Site, Montclair/W Orange.''

[FR Doc. E9–21193 Filed 9–1–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[Docket No. FRA–2009–0032; Notice No. 1]

RIN 2130–AC05

State Highway-Rail Grade Crossing Action Plans

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Direct final rule.

SUMMARY: This direct final rule complies with a statutory mandate that the Secretary of Transportation (Secretary) issue a rule to require the ten States with the most highway-rail grade crossing collisions, on average, over the past three years, to develop State highway-rail grade crossing action plans. This rule is not intended for general application; instead, it only applies to the ten identified States with the most highway-rail grade crossing collisions. This rule addresses the contents of the highway-rail grade crossing action plans and certain time periods for plan implementation and coverage. Interested parties may submit written comments or may request an oral hearing on this rulemaking during the thirty (30) day period following publication of this rule.

DATES: *Effective Date:* Unless FRA receives a written adverse comment or a request for an oral hearing on this direct final rule within the specified comment period, the effective date will be November 2, 2009.

Written Comments: Comments or a request for an oral hearing must be received by October 2, 2009.

ADDRESSES: *Comments:* Comments related to Docket Number FRA–2009–0032, may be submitted by any of the following methods:

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification

Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information. Please see the Privacy Act heading later in this document for more Privacy Act information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time, or to room W12–140 on the Ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1200 New Jersey Ave., SE., RRS–23, Mail Stop 25, Washington, DC 20590 (Telephone 202–493–6299), or Zeb Schorr, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Ave., SE., Mail Stop 10, Washington, DC 20590 (Telephone 202–493–6072).

SUPPLEMENTARY INFORMATION:

Background

This direct final rule is intended to reduce collisions at highway-rail grade crossings in the ten identified States, and to comply with section 202 of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, Division A, which was signed into law on October 16, 2008. Section 202 requires the Secretary (delegated to the Federal Railroad Administrator by 49 CFR 1.49) to identify the ten States that have had the most highway-rail grade crossing collisions, on average, over the past three years, and to require those States to develop State highway-rail grade crossing action plans, within a reasonable period of time, as determined by the Secretary. Section 202 further provides that these plans must identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations, and must focus on crossings that have experienced multiple accidents or are at high risk for such accidents. FRA recommends that the action plans include a proposed implementation schedule, although FRA recognizes that any such schedule would be subject to many factors, including the availability of funds and personnel. In addition, any implementation schedule would only be for the purpose of providing quality planning for the timelines identified.

Section 202 also provides the following: the Secretary will provide assistance to the States in developing and carrying out such plans, as appropriate; the plans may be coordinated with other State or Federal planning requirements; the plans will cover a period of time determined to be appropriate by the Secretary; and the Secretary may condition the awarding of any grants under 49 U.S.C. 20158, 20167, or 22501, to a State identified under this section, on the development of such State's plan.

Lastly, section 202 provides a review and approval process under which, not later than 60 days after the Secretary receives such a State action plan, the Secretary must review and either approve or disapprove it. In the event that the proposed plan is disapproved, section 202 indicates that the Secretary shall notify the affected State as to the specific areas in which the proposed plan is deficient, and the State shall correct all deficiencies within 30 days following receipt of written notice from the Secretary.

State Identification

As discussed, Congress expressly directed the Secretary to identify the ten States that have had the most highway-rail grade crossing collisions, on average, over the past three years. FRA maintains a database of highway-rail grade crossing accidents/incidents occurring at public and private grade crossings, as such events must be reported to FRA pursuant to 49 CFR 225.19. From this database, FRA will identify the ten States with the most reported highway-rail grade crossing accidents/incidents at public and private grade crossings during 2006, 2007, and 2008. FRA will notify the identified States prior to the effective date of this rule. A copy of the notification will be placed in the public docket of this proceeding.

Time Period To Develop State Action Plan and Duration of Plan

Section 202 instructs the Secretary to determine the reasonable period of time within which the ten identified States must develop a State highway-rail grade crossing action plan and the period of time to be covered by such a plan. Based on previous experience working with States on highway-rail grade crossing action plans, FRA has determined that States can reasonably develop such plans within one year from the date this regulation goes into effect, and that such plans should cover a period of five years. A five-year period is appropriate because many of the remedial actions that may be included in these plans (e.g., closures and grade separations) may take up to five years to implement. In addition, any identified State that has already developed an action plan in conjunction with a recommendation from DOT's Office of Inspector General must ensure compliance with this direct final rule and resubmit the plan as required by this rule.

Assistance and Coordination

FRA will be available, including FRA regional grade crossing managers and FRA experts from the grade crossing and trespasser prevention division, to provide assistance to States in developing and carrying out, as appropriate, the State highway-rail grade crossing action plans. FRA's Safetydata Web site (*http://www.safetydata.fra.dot.gov*) also contains detailed data that may be of use in the development of the plans. In addition, the State highway-rail grade crossing action plans may be coordinated with other State or Federal planning requirements. For example, States may want to coordinate such plans with their Strategic Highway Safety Plans that are required by SAFETEA–LU, as appropriate.

Conditioning the Awarding of Grants

Section 202 also empowers the Secretary to condition the awarding of any grants under 49 U.S.C. 20158, 20167, or 22501, to an identified State under this section on the development of such State's plan. Although FRA does not anticipate employing this authority, FRA reserves its right to pursue such a course of action in the event that an identified State fails to comply with this direct final rule.

Section-by-Section Analysis

Section 234.1. This paragraph discusses the scope of this part. An amendment is made to this paragraph to include reference to § 234.11, State Highway-Rail Grade Crossing Action Plans, as being within this part's scope.

Section 234.3. This paragraph discusses what entities are subject to this part. An amendment is made to this paragraph excepting § 234.11, State Highway-Rail Grade Crossing Action Plans, from discussion in this section.

Section 234.4. This paragraph discusses the preemptive effect of this part. An amendment is made to this paragraph permitting State tort actions, arising from events or activities occurring on or after January 18, 2002, that: Allege a violation of the Federal standard of care established by this part; allege a failure to comply with a party's own plan, rule, or standard created pursuant to this part; or allege a violation of a State law, regulation, or order that is necessary to eliminate or reduce an essentially local safety or security hazard, is not incompatible

with a law, regulation, or order of the United States Government, and does not unreasonably burden interstate commerce.

Section 234.6(a) and (b). These paragraphs discuss the civil and criminal penalties a person may be subject to when violating requirements of this part. An amendment is made to these paragraphs providing that a violation of § 234.11, State Highway-Rail Grade Crossing Action Plans, will not give rise to either a civil or criminal penalty.

Section 234.11(a). This paragraph discusses that the purpose of this direct final rule is to reduce collisions at highway-rail grade crossings in the ten identified States that have had the most highway-rail grade crossing collisions, on average, over the past three years. This paragraph makes clear that the regulation does not restrict any other State, or other entity, from adopting a highway-rail grade crossing action plan, nor does it restrict any of the identified States from adopting a plan with additional or more stringent requirements not inconsistent with this regulation.

Section 234.11(b). This paragraph indicates that this section applies to the ten States that have had the most highway-rail grade crossing collisions, on average, during the calendar years 2006, 2007, and 2008, and that FRA will notify these ten States prior to the effective date of this direct final rule.

Section 234.11(c). This paragraph requires the ten identified States to develop a State highway-rail grade crossing action plan and to submit such plans to FRA for review and approval not later than one year after the date this regulation goes into effect. This paragraph also details the requirements of the State highway-rail grade crossing action plans, including that the plans: Identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations; focus on crossings that have experienced multiple accidents or are at high risk for such accidents; and cover a five-year period.

Section 234.11(d). This paragraph identifies the FRA contact information to which the identified States must direct the highway-rail grade crossing action plans for review and approval. This paragraph also provides that FRA will review and approve or disapprove a State highway-rail grade crossing action plan within 60 days of receiving the plan. This paragraph further states that, if the proposed State highway-rail grade crossing action plan is disapproved, FRA will notify the affected State as to the specific areas in which the proposed plan is deficient, and the State must correct all deficiencies within 30 days following receipt of written notice from FRA. Lastly, this paragraph provides that FRA may condition the awarding of any grants under 49 U.S.C. 20158, 20167, or 22501 to an identified State on the development of that State's highway-rail grade crossing action plan.

Notice-and-Comment Procedures

FRA has determined that this regulation is non-controversial as it complies with a statutory mandate that the Secretary issue a rule to require the ten States with the most highway-rail grade crossing collisions, on average, over the past three years, to develop State highway-rail grade crossing action plans. While FRA does not anticipate any adverse comment, interested parties may submit written comments or request an oral hearing during the thirty (30) day period immediately following publication of this direct final rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This discussion represents the regulatory impact analysis (RIA). There is not a separate RIA for inclusion in the public docket. This direct final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. The ten States identified will incur the full burden associated with implementation of this direct final rule. The estimated quantified compliance cost for these ten States is approximately $271,000 over the next year. The benefits resulting from the prevention of collisions at highway-rail grade crossings are expected to exceed the burden and thus fully justify issuance of this rule. This analysis includes a quantitative burden measurement and a qualitative benefit discussion for this direct final rule.

The primary burden imposed will be for State labor resources spent to comply with development of the mandated action plans. FRA estimates that, on the average, each State will assign the plan development responsibilities to a team composed of a program manager, a project engineer, a budget analyst, a business specialist, and a legal expert. Listed in Table A are the aggregate salary estimates and man-year allocations for the entire mandated population.

TABLE A—AGGREGATED PLAN SUBMISSION

Position	Salary	Hourly rate	Labor hours	Estimate
Program Manager, Transportation	$88,000.00	$42.31	40	$2,961.54
Project Engineer	72,000.00	34.62	80	4,846.15
Budget Analyst	55,000.00	26.44	40	1,850.96
Business Specialist, Transportation	45,000.00	21.63	400	15,144.23
Legal Expert	69,000.00	33.17	40	2,322.12
	.....	.....	.....	27,125.00

The estimated cost is found as the product of the hourly rate, the labor hours, and an estimated overhead rate. Overhead is considered at 75% of the hourly rate. **Example Calculation:** [($42.31 per hour) * (40 hours) * (1 + .75 (overhead rate))] = $2,961.54.

The submission process calls for FRA to review and approve each submitted plan according to the Federal mandate. FRA anticipates that the review time for each of the initial submissions to be 6 hours per plan. Listed in Table B is the aggregated Federal burden for the initial and resubmitted plans.

TABLE B—FEDERAL COMPLIANCE SUMMARY

Tasking	States	Labor hours	Rate	Estimate
Plan Submission Review	10	6	$52.50	$5,512.50
				5,512.50

To summarize quantitatively, the State burden imposed from this rule was derived from the estimated sum of the original burden submission from the ten identified States and the burden resubmission from the quantum that did not comply during the initial resubmission. FRA considers $271,000 to represent the aggregated State burden for the one year period of this requirement. Listed in Table C is the aggregated burden summary.

TABLE C—AGGREGATED BURDEN SUMMARY

	Estimate	Quantity	Total estimates
State Submission Burden	$27,125.00	10	$271,250.00
			271,250.00

The development of State highway-rail grade crossing action plans should result in a reduction in highway-rail grade crossing safety collisions. Development of such plans will enhance these States' ability to view their population of grade crossings, interpret historical accident information, evaluate the overall state of highway-rail grade crossing safety, and identify particular areas in need of attention. Any patterns of collisions or causal factors will become more readily apparent as a result of the detailed study, assessment, and status reporting involved in the development of the State action plan. In these plans, each State will identify specific solutions for improving safety at individual crossings, including crossing closures or grade separations, with special focus on those crossings that are found to have experienced multiple accidents or that show a heightened risk for accidents. Special emphasis corridors of high risk corridors may also be identified as a result of the analysis component of the State action plan. As each State's highway-rail grade crossing action plan may be coordinated with other State or Federal planning requirements, additional benefits may be obtained through closer integration of grade crossing safety issues into the overall State transportation safety planning efforts.

During the three-year time period, 2006 through 2008, the ten States with the most grade crossing collisions, as currently reported, accounted for 51%, or almost 4,200 accidents, of all grade crossing collisions nationwide. Highway vehicle damage accounted for more than $28.5 million over this three-year time period, and a combined total of 546 lives were lost. Economic research indicates that $6.0 million per statistical life saved is a reasonable estimate of people's willingness to pay for transportation safety improvements. FRA therefore estimates an accumulated $3.28 billion to represent the statistical value of the lives lost as a result of grade crossing collisions in these ten States. Finally, there were 1,666 injuries over the three-year time period in these ten States. Assuming very conservatively, for purposes of this analysis, that these were all minor in nature (e.g., injuries that may not require professional medical treatment and where recovery is usually rapid and complete) and thus assigning a cost of $12,000 per injury (i.e., 0.2% of the value of a statistical life), injury costs for this period totaled close to $20 million. Thus, the cost to society of the average incident in the three-year time period was $792,000. Prevention of one such incident alone would more than exceed the cost of implementing this rule. FRA believes that it is reasonable to expect that such an incident may be prevented by implementing this rule. In addition to the safety benefits, other potential benefits would include: Increased train and highway traffic mobility by not having collisions, fewer demands on emergency services by not having to respond to crossing collisions, and some improvement in air quality by reducing emissions from vehicles that are unable to move due to crossing collisions.

The findings of this analysis are sensitive to its assumptions. The burden estimates are largely driven by the composition of the team and the level of effort expended by each individual. Such factors may vary from team to team. FRA realizes that the level of expertise per state, per team, per member, will vary and, therefore, has applied a 20 percent sensitivity factor above and below the baseline as follows:

TABLE D—AGGREGATED SENSITIVITY ANALYSIS SUMMARY

	Estimate	Low	High
Aggregated Submission Burden	$271,250.00	$217,000.00	$325,500.00

Thus, when defining the projected cost burden to the individual States within the framework of team complexion and with regard to the estimated sensitivity of the individual expertise of the employee selected, FRA finds that it is reasonable to estimate that the burden could range from $22,000 to $33,000 per State. FRA finds that the total cost burden ranges from $217,000 to $326,000.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review

of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy that formally establishes ''small entities'' as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.* Additionally, section 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Such governments would not be directly impacted by this direct final rule.

FRA certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities, as this rule only affects ten identified States. To the extent that this rule has any impact on small entities, the impact will not be significant.

Paperwork Reduction Act

The information collection requirements in this direct final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The section that contains the new information collection requirements is noted below, and the estimated burden times to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
234.11—State Highway-Rail Grade Crossing Action Plans—Development and Submission of Plans.	10 States	10 plans	600 hours	6,000 hours.
—Disapproval of State Highway-Rail Grade Crossing Action Plan and Submission of Revised Plan.	10 States	5 revised plans.	80 hours	400 hours.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this direct final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this direct final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Environmental Impact

FRA has evaluated this direct final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this direct final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this direct final rule is not a major Federal action significantly affecting the quality of the human environment.

Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 4, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This direct final rule amends FRA's regulations regarding grade crossing safety. Subject to a limited exception for essentially local safety or security hazards, the requirements of FRA's regulations regarding grade crossing safety are intended to establish a uniform Federal safety standard that must be met, and State requirements covering the same subject would be displaced, whether those standards are in the form of State statutes, regulations, local ordinances, or other forms of State law, including common law. Section 20106 of Title 49 of the United States Code provides that all regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety or security hazard that is not incompatible with a Federal law, regulation, or order, and that does not unreasonably burden interstate commerce. This is consistent with past practice at FRA, and within the Department of Transportation.

FRA has analyzed this direct final rule in accordance with the principles and criteria contained in Executive Order 13132. This direct final rule complies with a statutory mandate. FRA has not consulted with State and local officials in regards to this rule. However, prior to enactment of the RSIA, FRA did consult with State officials in conjunction with a recommendation from DOT's Office of Inspector General that certain States develop highway-rail grade crossing action plans, similar to the plans required by the RSIA and this rule. Thus, FRA believes it is in compliance with Executive Order 13132.

This direct final rule will not have a substantial effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, this direct final rule will not have any federalism implications that impose substantial direct compliance costs on State and local governments.

FRA's regulations regarding grade crossing safety do not preempt actions under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by this part. Provisions of a railroad maintenance, inspection and testing program which exceed the requirements of this part are not included in the Federal standard of care. It is strongly in the interest of railroad safety for railroads to exceed the requirements of Federal law and FRA encourages railroads to do so. A railroad would be discouraged from setting a higher standard for itself if it would be held liable in tort for exceeding the requirements of Federal law, but failing to attain the higher standard set for itself. Section 20106 of Title 49 of the United States Code supports this distinction.

It is a settled principle of statutory construction that, if the statute is clear and unambiguous, it must be applied according to its terms. *Carcieri* v. *Salazar,* 555 U.S.—(2009). Read by itself, Section 20106(a) of Title 49 of the United States Code preempts state standards of care, but does not expressly state whether anything replaces the preempted standards of care for purposes of tort suits. The focus of that provision is clearly on who regulates railroad safety: the Federal government or the states. It is about improving railroad safety, for which Congress deems nationally uniform standards to be necessary in the great majority of cases. That purpose has collateral consequences for tort law which new Section 20106 subsections (b) and (c) address. New subsection (b)(1) creates three exceptions to the possible consequences flowing from subsection (a). One of those exceptions ((b)(1)(B)) precisely addresses an issue presented in *Lundeen* v. *Canadian Pacific Ry. Co.,* 507 F. Supp. 2d 1006 (D.Minn., 2007) that Congress wished to rectify: it allows plaintiffs to sue a railroad in tort for violation of its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries. None of those exceptions covers a plan, rule, or standard that a regulated entity creates for itself in order to produce a higher level of safety than Federal law requires, and such plans, rules, or standards were not at issue in *Lundeen.* The key concept of section 20106(b) is permitting actions under State law seeking damages for personal injury, death, or property damage to proceed using a Federal standard of care. A plan, rule, or standard that a regulated entity creates pursuant to a Federal regulation logically fits the paradigm of a Federal standard of care—Federal law requires it and determines its adequacy. A plan, rule, or standard, or portions of one, that a regulated entity creates on its own in order to exceed the requirements of Federal law does not fit the paradigm of a Federal standard of care—Federal law does not require it and, past the point at which the requirements of Federal law are satisfied, says nothing about its adequacy. That is why FRA believes section 20106(b)(1)(B) covers the former, but not the latter. The basic purpose of the statute—improving railroad safety—is best served by encouraging regulated entities to do more than the law requires and would be disserved by increasing the potential tort liability of regulated entities that choose to exceed federal standards, which would discourage them from ever exceeding federal standards again.

In this manner, Congress adroitly preserved its policy of national uniformity of railroad safety regulation expressed in Section 20106(a)(1) and assured plaintiffs in tort cases involving railroads, such as *Lundeen,* of their ability to pursue their cases by clarifying that federal railroad safety regulations preempt the standard of care, not the underlying causes of action in tort. Under this interpretation, all parts of the statute are given meanings that work together effectively and serve the safety purposes of the statute.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $141,300,000 or more in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This direct final rule will not result in the expenditure, in the aggregate, of $141,300,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this direct final rule in accordance with Executive Order 13211. FRA has determined that this direct final rule will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

Privacy Act Information

Interested parties should be aware that anyone is able to search the electronic form of all comments received into any agency docket 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), or you may visit *http://www.regulations.gov*.

List of Subjects in 49 CFR Part 234

Highway safety; Penalties; Railroad safety; and Reporting and recordkeeping requirements.

The Rule

■ In consideration of the foregoing, FRA amends part 234 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 234—GRADE CROSSING SIGNAL SYSTEM SAFETY AND STATE ACTION PLANS

■ 1. The authority citation for part 234 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; Public Law No. 110–432, Div. A, section 202; and 49 CFR 1.49.

■ 2. The heading for part 234 is revised to read as set forth above.

■ 3. Section 234.1 is revised to read as follows:

§ 234.1 Scope.

This part imposes minimum maintenance, inspection, and testing standards for highway-rail grade crossing warning systems. This part also prescribes standards for the reporting of failures of such systems and prescribes minimum actions railroads must take when such warning systems malfunction. This part also requires particular identified States to develop State highway-rail grade crossing action plans. This part does not restrict a railroad or a State from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

■ 4. Section 234.3 is revised to read as follows:

§ 234.3 Application.

With the exception of § 234.11, this part applies to all railroads except:

(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation; and

(c) A railroad that operates passenger trains only on track inside an installation that is insular; i.e., its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of the public—except a business guest, a licensee of the railroad or an affiliated entity, or a trespasser—would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

(1) A public highway-rail crossing that is in use;

(2) An at-grade rail crossing that is in use;

(3) A bridge over a public road or waters used for commercial navigation; or

(4) A common corridor with a railroad, i.e., its operations are within 30 feet of those of any railroad.

■ 5. Section 234.4 is revised to read as follows:

§ 234.4 Preemptive effect.

(a) Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and that does not impose an unreasonable burden on interstate commerce.

(b) This part establishes a Federal standard of care for the maintenance, inspection and testing of grade crossing warning systems. This part does not preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by this part. Provisions of a railroad maintenance, inspection and testing program which exceed the requirements of this part are not included in the Federal standard of care.

■ 6. Section 234.6 is revised to read as follows:

§ 234.6 Penalties.

(a) *Civil Penalty.* Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part, except for any violation of § 234.11, or causes the violation of any such requirement is subject to a civil penalty of at least $650, but not more than $25,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this rule. The railroad is not responsible for compliance with respect to any condition inconsistent with the technical standards set forth in this part where such variance arises as a result of actions beyond the control of the railroad and the railroad could not have prevented the variance through the exercise of due diligence. The foregoing sentence does not excuse any instance of noncompliance resulting from the actions of the railroad's employees, agents, or contractors.

(b) *Criminal Penalty.* Whoever knowingly and willfully makes, causes to be made, or participates in the making of a false entry in reports required to be filed by this part, or files a false report or other document required to be filed by this part, except for any document filed pursuant to § 234.11, is subject to a $5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and section 209(e) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 438(e)).

■ 7. The heading for Subpart B is revised to read as follows:

Subpart B—Reports and Plans

■ 8. Subpart B of part 234 is amended by adding § 234.11 to read as follows:

§ 234.11 State Highway-Rail Grade Crossing Action Plans.

(a) *Purpose.* The purpose of this section is to reduce collisions at highway-rail grade crossings in the ten States that have had the most highway-rail grade crossing collisions, on average, during the calendar years 2006, 2007, and 2008. This section does not restrict any other State, or other entity, from adopting a highway-rail grade crossing action plan. This section also does not restrict any of the States required to develop action plans under this section from adopting a highway-rail grade crossing action plan with additional or more stringent requirements not inconsistent with this section.

(b) *Application.* This section applies to the ten States that have had the most highway-rail grade crossing collisions, on average, during the calendar years 2006, 2007, and 2008. FRA will notify these ten States prior to November 2, 2009.

(c) *Action Plans.* (1) The ten identified States shall each develop a State highway-rail grade crossing action plan and submit such a plan to FRA for review and approval not later than November 2, 2010.

(2) A State highway-rail grade crossing action plan shall:

(i) Identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations;

(ii) Focus on crossings that have experienced multiple accidents or are at high risk for such accidents; and

(iii) Cover a five-year time period.

(d) *Review and Approval.* (1) State highway-rail grade crossing action plans required under paragraph (c) of this section shall be submitted for FRA review and approval using at least one of the following methods: mail to the Associate Administrator for Railroad Safety/Chief Safety Officer, U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590; or e-mail to *rrs.correspondence@fra.dot.gov*.

(2) FRA will review and approve or disapprove a State highway-rail grade crossing action plan submitted pursuant to paragraph (d) of this section within 60 days of receipt.

(3) If the proposed State highway-rail grade crossing action plan is disapproved, FRA will notify the affected State as to the specific areas in which the proposed plan is deficient. A State shall correct all deficiencies within 30 days following receipt of written notice from FRA.

(4) FRA may condition the awarding of any grants under 49 U.S.C. 20158, 20167, or 22501 to an identified State on the development of such State's highway-rail grade crossing action plan.

Issued in Washington, DC, on August 27, 2009.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. E9–21089 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS-R9-MB-2009-0124]
[91200-1231-9BPP-L2]

RIN 1018-AW31

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2009–10 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 1, 2009.

ADDRESSES: You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA or at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358-1967).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 11, 2009, **Federal Register** (74 FR 40138), we proposed special migratory bird hunting regulations for the 2009–10 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the April 10, 2009, **Federal Register** (74 FR 16339), we requested that tribes desiring special hunting regulations in the 2009–10 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged doves. Late

seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the street address indicated under **ADDRESSES** or from our website *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html*.

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and helicopters and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Habitat conditions during the 2009 Waterfowl Breeding Population and Habitat Survey were characterized by above-average moisture across the southern portions of the traditional survey area, good habitat in the eastern survey area, and late spring conditions across northern survey areas. The total pond estimate (prairie Canada and United States combined) was 6.4 ± 0.2 million. This was 45 percent above last year's estimate of 4.4 ± 0.2 million ponds and 31 percent above the long-term average of 4.9 ± 0.03 million ponds. The 2009 estimate of ponds in prairie Canada was 3.6 ± 0.1 million. This was a 17 percent increase from last year's estimate (3.1 ± 0.1 million) and was similar to the long-term average (3.4 ± 0.03 million). The 2009 pond estimate for the northcentral United States of 2.9 ± 0.1 million was 108 percent above last year's estimate (1.4 ± 0.07 million) and 87 percent above the long-term average (1.5 ± 0.02 million).

Breeding population status

In the Waterfowl Breeding Population and Habitat Survey traditional survey area (strata 1–18, 20–50, and 75–77), the total duck population estimate was 42.0 ± 0.7 [SE] million birds. This estimate represents a 13 percent increase over last year's estimate of 37.3 ± 0.6 million birds and was 25 percent above the long-term average (1955–2008). Estimated mallard (*Anas platyrhynchos*) abundance was 8.5 ± 0.2 million birds, which was a 10 percent increase over last year's estimate of 7.7 ± 0.3 million birds and 13 percent above the long-term average. Estimated abundance of gadwall (*A. strepera*; 3.1 ± 0.2 million) was similar to the 2008 estimate and 73 percent above the long-term average. Estimated American wigeon abundance (*A. americana*; 2.5 ± 0.1 million) was similar to 2008 and the long-term average. Estimated abundances of green-winged teal (*A. crecca*; 3.4 ± 0.2 million) and blue-winged teal (*A. discors*; 7.4 ± 0.4 million) were similar to last year's estimates and well above their long-term averages (+79 percent and +60 percent, respectively). Northern shovelers (*A. clypeata*; 4.4 ± 0.2 million) were 25 percent above the 2008 estimate and remain well above their long-term average (+92 percent). The estimate for northern pintails (*A. acuta*) was 3.2 ± 0.2 million, which was 23 percent above the 2008 estimate of 2.6 ± 0.1 million, and 20 percent below the long-term average. Estimated abundance of redheads (*Aythya americana*; 1.0 ± 0.1 million) was similar to last year and 62 percent above the long-term average. The canvasback estimate (*A. valisineria*; 0.7 ± 0.06 million) was 35 percent above the 2008 estimate (0.5 ± 0.05 million) and similar to the long-term average. The scaup estimate (*A. affinis* and *A. marila* combined; 4.2 ± 0.2 million) was similar to that of 2008 and 18 percent below the long-term average of 5.1 ± 0.05 million.

The eastern survey area was restratified in 2005 and is now composed of strata 51-72. Estimates of mallards, scaup, scoters (black [*Melanitta nigra*], white-winged [*M. fusca*], and surf [*M. perspicillata*]), green-winged teal, American wigeon, bufflehead (*Bucephala albeola*), American black duck (*Anas rubripes*), ring-necked duck (*Aythya collaris*), mergansers (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus*]), and goldeneye (common [*B. clangula*] and Barrow's [*B. islandica*]) all were similar to their 2008 estimates and long-term averages.

Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area (revised in 2008 to exclude Alaska mallards), Michigan, Minnesota, and Wisconsin, and was estimated to be 10.3 ± 0.9 million in 2009. This was similar to the 2008 estimate of 9.2 ± 0.8 million.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross' geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*), and tundra swans (*Cygnus columbianus*). In May of 2009, temperatures were 1–5 degrees Celsius colder than average throughout the central region of subarctic and Arctic Canada. In some locales harsh spring conditions persisted into June. In areas near Hudson Bay and the Queen Maud Gulf, goose and swan nesting activities were delayed by 1 to 3 weeks. In contrast, nesting conditions were favorable near Wrangel Island, Alaska's North Slope and eastern interior regions, parts of the Canadian high Arctic, and Newfoundland. Improved wetland abundance in the Canadian and U.S. prairies, and other temperate regions, will likely improve the production of Canada geese that nest at southern latitudes. Primary abundance indices decreased for 15 goose populations and increased for 10 goose populations in 2009 compared to 2008. Primary abundance indices for both populations of tundra swans increased in 2009 from 2008 levels. The following populations displayed significant positive trends during the most recent 10–year period ($P < 0.05$): Mississippi Flyway Giant, Aleutian, Atlantic, and Eastern Prairie Canada geese; Greater, Western Arctic/Wrangel Island, and Western Central Flyway light geese; and Pacific white-fronted geese. No populations showed a significant negative 10–year trend. The forecast for the production of geese and swans in North America for 2009 is regionally variable, but production for many populations will be reduced this year due to harsh spring conditions in much of central Canada.

Waterfowl Harvest and Hunter Activity

National surveys of migratory bird hunters were conducted during the 2007 and 2008 hunting seasons. About 1.2 million waterfowl hunters harvested 14,578,900 (±4%) ducks and 3,666,100 (±6%) geese in 2007, and harvested 13,635,700 (±4%) ducks and 3,792,600 (±5%) geese in 2008. Mallard, green-winged teal, gadwall, wood duck (*Aix sponsa*), and American wigeon were the 5 most-harvested duck species in the United States, and Canada goose was

the predominant goose species in the goose harvest. Coot hunters (about 33,700 in 2007 and 31,100 in 2008) harvested 198,300 (±29%) coots in 2007 and 275,900 (+43%) in 2008.

Comments and Issues Concerning Tribal Proposals

For the 2009–10 migratory bird hunting season, we proposed regulations for 28 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 23 tribes have proposals with early seasons. The comment period for the proposed rule, published on August 11, 2009, closed on August 21, 2009. Because of the necessary brief comment period, we will respond to any comments on the proposed rule and/or these regulations postmarked by August 21, but not received prior to final action by us, in the September late-season final rule. At this time, we have not received any comments.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the street address indicated under the caption **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). A scoping report summarizing the scoping comments and scoping meetings is available by either writing to the street address indicated under **ADDRESSES** or by viewing on our website at *http://www.fws.gov/migratorybirds/*.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531-1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat...'' Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in the Section 7 Consultation on the Proposed 2009–10 Migratory Game Bird Hunting Regulations (dated August 24, 2009). The consultation concluded that the 2009-10 regulations are not likely to jeopardize the continued existence of either the whooping crane or Steller's eider. To prevent take of whooping cranes, the Contingency Plan for Federal-State Cooperative Protection of whooping cranes provides a protective program in thirteen States. In addition, the State of Kansas will implement specific restrictions to avoid accidental shootings. To prevent take of Steller's eiders, the 2009–10 regulations include the continued implementation of measures initiated and outlined under the 2009 Alaska migratory bird subsistence regulations. These measures include Service initiated conservation measures that increase migratory bird hunter outreach prior to the opening of the hunting season, increased Service enforcement of migratory bird regulations, and conducting in-season harvest verification of Steller's eider mortality and injury. Additionally, any modifications resulting from this consultation may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and Division of Migratory Bird Management, at the street address indicated under **ADDRESSES**.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

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

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

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

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

An Economic Analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimates consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issues moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. For the upcoming 2009–10 season, we again considered these three alternatives and again chose alternative 3 for ducks. We made minor modifications to the season frameworks for some other species, but these do not significantly change the economic impacts of the rule, which were not quantified for other species. For these reasons, we have not conducted a new Economic Analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov*.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the

Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5–year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon written request from the street address indicated under **ADDRESSES** or from our website at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov*.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, it has an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 1/31/2010). A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 10 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2009–10 migratory bird hunting season. The resulting proposals were contained in an August 11 proposed rule (74 FR 40138). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, Tribes would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), these regulations will take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703-712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a-j; Pub. L. 106-108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

(Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.)

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters).

Doves

Season Dates: Open September 1, through September 15, 2009; then open November 15, through December 29, 2009.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Hunters).

Tribal Members Only

Ducks (including mergansers)

Season Dates: Open September 1, 2009, through March 9, 2010.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only).

Ducks:

1854 and 1837 Ceded Territories:

Season Dates: Begin September 19 and end November 29, 2009.

Daily Bag Limit: 18 ducks, including no more than 12 mallards (only 3 of which may be hens), 3 black ducks, 6 scaup, 6 wood ducks, 6 redheads, 3 pintails, and 3 canvasbacks.

Reservation:

Season Dates: Begin September 5 and end November 29, 2009.

Daily Bag Limit: 12 ducks, including no more than 8 mallards (only 2 of which may be hens), 2 black ducks, 4 scaup, 4 redheads, 2 pintails, 4 wood ducks, and 2 canvasbacks.

Mergansers:

1854 and 1837 Ceded Territories:

Season Dates: Begin September 19 and end November 29, 2009.

Daily Bag Limit: 15 mergansers, including no more than 6 hooded mergansers.

Reservation:

Season Dates: Begin September 5 and end November 29, 2009.

Daily Bag Limit: 10 mergansers, including no more than 4 hooded mergansers.

Canada Geese: All Areas:

Season Dates: Begin September 1 and end November 29, 2009.

Daily Bag Limit: 20 geese.

Coots and Common Moorhens (Common Gallinules):

1854 and 1837 Ceded Territories:

Season Dates: Begin September 19 and end November 29, 2009.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Reservation:

Season Dates: Begin September 5 and end November 29, 2009.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails:

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 29, 2009.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Reservation:

Season Dates: Begin September 1 and end December 2, 2009.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: All Areas:

Season Dates: Begin September 1 and end November 29, 2009.

Daily Bag Limit: Eight common snipe.

Woodcock: All Areas:

Season Dates: Begin September 1 and end November 29, 2009.

Daily Bag Limit: Three woodcock.

Mourning dove: All Areas:

Season Dates: Begin September 1 and end October 30, 2009.

Daily Bag Limit: 30 mourning dove.

General Conditions:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. These regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of

band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only).

All seasons in Michigan, 1836 Treaty Zone:

Ducks

Season Dates: Open September 20, 2009, through January 18, 2010.

Daily Bag Limit: 15 ducks, which may include no more than 3 pintail, 3 canvasback, 3 black ducks, 1 hooded merganser, 5 wood ducks, 3 redheads, and 7 mallards (only 3 of which may be hens).

Canada and Snow Geese

Season Dates: Open September 1, through November 30, 2009; and open January 1, 2010, through February 8, 2010.

Daily Bag Limit: 10 geese.

Other Geese (white-fronted geese and brant)

Season Dates: Open September 20, through November 30, 2009.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2009.

Daily Bag Limit: 10 rails, 10 snipe, and 5 woodcock.

Mourning Doves

Season Dates: Open September 1, through November 14, 2009.

Daily Bag Limit: 10 mourning doves.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).

Ducks:

Wisconsin and Minnesota 1837 and 1842 Treaty Areas:

Season Dates: Begin September 15 and end December 31, 2009.

Daily Bag Limit: 30 ducks, including no more than 5 black ducks, 5 pintails, and 5 canvasbacks.

Michigan 1836 Treaty Area:

Season Dates: Begin September 15 and end December 31, 2009.

Daily Bag Limit: 20 ducks, including no more than 5 black ducks, 5 pintails, and 5 canvasbacks.

Mergansers: All Ceded Areas:

Season Dates: Begin September 15 and end December 31, 2009.

Daily Bag Limit: 10 mergansers.

Geese: All Ceded Areas:

Season Dates: Begin September 1 and end December 31, 2009. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 1 will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds:

Coots and Common Moorhens (Common Gallinules):

Season Dates: Begin September 15 and end December 31, 2009.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

Sora and Virginia Rails:

Season Dates: Begin September 15 and end December 31, 2009.

Daily Bag Limits: 20 Sora and Virginia rails, singly or in the aggregate.

Possession Limit: 25.

Common Snipe:

Season Dates: Begin September 15 and end December 31, 2009.

Daily Bag Limit: 16 common snipe.

Woodcock:

Season Dates: Begin September 8 and end December 1, 2009.

Daily Bag Limit: 10 woodcock.

Mourning Dove: 1837 and 1842 Ceded Territories.

Season Dates: Begin September 1 and end November 9, 2009.

Daily Bag Limit: 15.

General Conditions

1. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations contained in 50 CFR part 20.

3. Particular regulations of note include:

i. Nontoxic shot is required for all off-reservation waterfowl hunting by tribal members.

ii. Tribal members in each zone shall comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

iii. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

iv. The baiting restrictions included in section 10.05(2)(h) of the model ceded territory conservation code will be amended to include language which parallels that in place for non-tribal members as published at 64 FR 29799, June 3, 1999.

v. The shell limit restrictions included in section 10.05(2)(b) of the model ceded territory conservation code will be removed.

vi. Hunting hours shall be from a half hour before sunrise to 15 minutes after sunset.

4. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(f) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters).

Nontribal Hunters on Reservation

Geese

Season Dates: Open September 1, through September 13, 2009, for the early-season, and open October 2, 2009,

through January 31, 2010, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 Canada geese for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant (when the State's season is open) and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 1, 2009, through January 31, 2010.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 1 canvasback, 3 scaup, and 2 redheads. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2009, through January 31, 2010.

Daily Bag Limit: 6 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(g) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only).

Ducks

Season Dates: Open September 19, through December 31, 2009.

Daily Bag Limits: 10 ducks.

Geese

Season Dates: Open September 1, through December 31, 2009.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

(h) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only).

Ducks

Season Dates: Open September 15, 2009, through January 20, 2010.

Daily Bag and Possession Limits: 12 ducks, including no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens). The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 1, 2009, through February 8, 2010.

Daily Bag and Possession Limits: Five Canada geese and possession limit is twice the daily bag limit.

White-fronted Geese, Snow Geese, Ross Geese, and Brant

Season Dates: Open September 20, through November 30, 2009.

Daily Bag and Possession Limits: Five birds and the possession limit is twice the daily bag limit.

Mourning Doves, Rails, Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2009.

Daily Bag and Possession Limits: 10 doves, 10 rails, 10 snipe, and 5 woodcock. The possession limit is twice the daily bag limit.

General:

1. All tribal members are required to obtain a valid tribal resource card and 2009-10 hunting license.

2. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

3. Particular regulations of note include:

i. Nontoxic shot will be required for all waterfowl hunting by tribal members.

ii. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

iii. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

4. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(i) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only).

Ducks

Season Dates: Open September 15, 2009, through December 31, 2009.

Daily Bag Limits: 20 ducks, including no more than 5 black ducks, 5 redheads, 5 wood ducks, 5 pintail, 5 hooded merganser, and 5 canvasback.

Coots and Gallinules

Season Dates: Open September 1, 2009, through December 31, 2009.

Daily Bag Limits: 20.

Canada Geese

Season Dates: Open September 1, 2009, through February 8, 2010.

Daily Bag Limit: 20.

White-fronted Geese, Snow Geese, and Brant

Season Dates: Open September 1, 2009, through February 8, 2010.

Daily Bag Limit: 20 geese in aggregate.

Sora and Virginia Rails

Season Dates: Open September 1, through December 31, 2009.

Daily Bag Limit: 20.

Snipe

Season Dates: Open September 15, through December 31, 2009.

Daily Bag Limit: 16.

Mourning Doves

Season Dates: Open September 1, through November 9, 2009.

Daily Bag Limit: 15.

Woodcock

Season Dates: Open September 5, through December 1, 2009.

Daily Bag Limit: 10.

General: Possession limits are twice the daily bag limits.

(j) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters).

Tribal Members

Ducks, Mergansers and Coots

Season Dates: Open September 20, 2009, through March 10, 2010.

Daily Bag and Possession Limits: Five ducks, including no more than five mallards (only one of which may be a hen), two scaup, one mottled duck, two redheads, two wood ducks, one canvasback, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded merganser. The possession limit is twice the daily bag limit.

(k) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only).

Ducks

Season Dates: Open September 19, through December 31, 2009.

Daily Bag and Possession Limits: Seven ducks, including no more than

two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 19, through December 31, 2009.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2009, through February 15, 2010.

Daily Bag and Possession Limits: Two and four, respectively.

Coots

Season Dates: Open September 19, through December 31, 2009.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 19, through December 31, 2009.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 19, through December 31, 2009.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeon

Season Dates: Open September 19, through December 31, 2009.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General: Tribal members must possess a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunters must observe all basic Federal migratory bird hunting regulations in 50 CFR part 20.

(l) Makah Indian Tribe, Neah Bay, Washington (Tribal Members).

Band-tailed Pigeons

Season Dates: Open September 20, through October 31, 2009.

Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 27, 2009, through January 25, 2010.

Daily Bag Limit: Seven ducks including no more than one redhead, one pintail, and one canvasback. The seasons on wood duck and harlequin are closed.

Geese

Season Dates: Open September 27, 2009, through January 25, 2010.

Daily Bag Limit: Four including no more than one brant. The seasons on Aleutian and dusky Canada geese are closed.

General

All other Federal regulations contained in 50 CFR part 20 apply. The following restrictions also apply: (1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area; (2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl; (3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation; (4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited; (5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited; (6) The use of dogs is permitted to hunt waterfowl; (7) Shooting hours for all species of waterfowl are one-half hour before sunrise to one-half hour after sunset; and (8) Open hunting areas are: GMUs 601 (Hoko), a portion of the 602 (Dickey) encompassing the area north of a line between Norwegian Memorial and east to Highway 101, and 603 (Pysht).

(m) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only).

Ducks (including mergansers)

Season Dates: Open September 19, through November 20, 2009, and open November 30, through December 6, 2009.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), six wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, through November 20, 2009; and open November 30, through December 30, 2009.

Daily Bag and Possession Limits: 5 and 10 Canada geese, respectively, from September 1, through September 19, 2009; and 3 and 6 Canada geese, respectively, the remainder of the season. Hunters will be issued five tribal tags during the early season and three tribal tags during the late season for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A seasonal quota of 300 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 5, through November 8, 2009.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

Dove

Season Dates: Open September 1, through November 8, 2009.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(n) Point No Point Treaty Council, Kingston, Washington (Tribal Members Only).

Ducks

Season Dates: Open September 1, 2009, through March 10, 2010.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2009, through March 10, 2010.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The seasons on Aleutian and Cackling Canada geese are closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2009, through March 10, 2010.

Daily Bag and Possession Limits: Two and four, respectively.

Coots

Season Dates: Open September 1, 2009, through March 10, 2010.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 1, 2009, through January 31, 2010.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 1, 2009, through March 10, 2010.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeon

Season Dates: Open September 1, 2009, through March 10, 2010.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General: Tribal members must possess a tribal hunting permit from the Point No Point Tribal Council pursuant to tribal law. Hunting hours are from one-half hour before sunrise to sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(o) Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only).

Ducks and Mergansers

Season Dates: Open September 15, through December 31, 2009.

Daily Bag and Possession Limits: 20 ducks, including no more than 5 hen mallards, 5 black ducks, 5 canvasback, 5 wood ducks, and 10 mergansers. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, through December 31, 2009.

Daily Bag and Possession Limits: 20 geese in the aggregate. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 1, through December 31, 2009.

Daily Bag and Possession Limits: 20 and 40 coots, respectively.

Mourning Doves

Season Dates: Open September 1, through November 14, 2009.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 15, through December 31, 2009.

Daily Bag and Possession Limits: 16 and 32 snipe, respectively.

Woodcock

Season Dates: Open September 2, through December 1, 2009.

Daily Bag and Possession Limits: 10 and 20 woodcock, respectively.

Sora and Virginia Rails

Season Dates: Open September 1, through December 31, 2009.

Daily Bag and Possession Limits: 20 and 20 Sora and Virginia rails in the aggregate, respectively.

General: Tribal members must possess a tribal hunting permit from the Sault Ste. Marie Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until 15 minutes after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(p) Skokomish Tribe, Shelton, Washington (Tribal Members Only).

Ducks and Mergansers

Season Dates: Open September 16, 2009, through February 28, 2010.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin per season, and two redheads. Possession limit is twice the daily bag limit (except for harlequin).

Geese

Season Dates: Open September 16, 2009, through February 28, 2010.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2009, through February 15, 2010.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 16, 2009, through February 28, 2010.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 16, 2009, through February 28, 2010.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 16, 2009, through February 28, 2010.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeon

Season Dates: Open September 16, 2009, through February 28, 2010.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

(q) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only).

Ducks

Season Dates: Open September 1, 2009, through January 15, 2010.

Daily Bag and Possession Limits: Five ducks, which may include only one canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2009, through January 15, 2010.

Daily Bag and Possession Limits: Four geese, and may include no more than two snow geese. The season on Aleutian and cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 1, through December 31, 2009.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 1, 2009, through January 15, 2010.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 2009, and through January 15, 2010.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeons

Season Dates: Open September 1, through December 31, 2009.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the Tribe's Natural Resources Department and must have the permit, along with the member's

treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset, and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(r) Spokane Tribe of Indians, Spokane Indian Reservation, Wellpinit, Washington (Tribal Members Only).

Ducks

Season Dates: Open September 1, 2009, through January 31, 2010.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, one canvasback, three scaup, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2009, through January 31, 2010.

Daily Bag and Possession Limits: Four dark geese and six light geese. Possession limit is twice the daily bag limit.

(s) Tulalip Tribes, Tulalip, Washington (Tribal Members Only).

Ducks

Season Dates: Open September 15, 2009, through February 28, 2010.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, one canvasback, three scaup, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2009, through February 28, 2010.

Daily Bag and Possession Limits: Seven geese. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, 2009, through February 28, 2010.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 15, 2009, through February 28, 2010.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Snipe

Season Dates: Open September 15, 2009, and through January 15, 2010.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: All tribal hunters must have a valid Tribal ID card on his or her person while hunting. Shooting hours are one-half hour before sunrise to sunset, and steel shot is required for all migratory bird hunting. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(t) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).

Mourning Dove

Season Dates: Open September 1, through December 31, 2009.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(u) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only).

Canada Geese

Season Dates: Open September 14, and through September 28, 2009, and open October 29, 2009, through February 25, 2010.

Daily Bag Limits: 5 Canada geese during the first period, 3 during the second.

Snow Geese

Season Dates: Open September 8, 2009, and through September 22, 2009, and October 29, 2009, through February 25, 2010.

Daily Bag Limits: 15 snow geese.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

(v) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only).

Ducks and Mergansers

Season Dates: Open September 20, through December 19, 2009.

Daily Bag Limit for Ducks: 10 ducks, including no more than 2 mallards and 1 canvasback.

Daily Bag Limit for Mergansers: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1, through September 26, 2009, and open September 27, through December 19, 2009.

Daily Bag Limit: Eight geese through September 26 and five thereafter.

Coots

Season Dates: Open September 1, through November 30, 2009.

Daily Bag Limit: 20 coots.

Sora and Virginia Rails

Season Dates: Open September 1, through November 30, 2009.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe and Woodcock

Season Dates: Open September 1, through November 30, 2009.

Daily Bag Limit: 10 snipe and 10 woodcock.

Mourning Dove

Season Dates: Open September 1, through November 30, 2009.

Daily Bag Limit: 25 doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

(w) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters).

Band-tailed Pigeons (Wildlife Management Unit 10 and areas south of Y-70 and Y-10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1, through September 15, 2009.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and areas south of Y-70 and Y-10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1, through September 15, 2009.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: August 27, 2009.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–21168 Filed 8–28–09; 4:15 pm]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 070717355–91122–02]

RIN 0648–AV74

Endangered and Threatened Species; Critical Habitat for the Endangered Distinct Population Segment of Smalltooth Sawfish

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

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), issue a final rule to designate critical habitat for the U.S. distinct population segment (DPS) of smalltooth sawfish (*Pristis pectinata*), which was listed as endangered on April 1, 2003, under the Endangered Species Act (ESA). The critical habitat consists of two units: the Charlotte Harbor Estuary Unit, which comprises approximately 221,459 acres of coastal habitat; and the Ten Thousand Islands/Everglades Unit (TTI/E), which comprises approximately 619,013 acres of coastal habitat. The two units are located along the southwestern coast of Florida between Charlotte Harbor and Florida Bay.

DATES: This rule becomes effective October 2, 2009.

ADDRESSES: The final rule, Final Regulatory Flexibility Analysis, and Final 4(b)(2) Report used in preparation of this final rule, as well as comments and information received, are available on the NMFS Web site at *http://www.sero.noaa.gov/,* or *http://www.regulations.gov,* or by contacting the National Marine Fisheries Service's Southeast Regional Office, 263 13th Avenue, South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Shelley Norton, NMFS, Southeast Regional Office, at 727–824–5312; or Lisa Manning, NMFS, Office of Protected Resources, at 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

Under the ESA, we are responsible for determining whether certain species are threatened or endangered and for designating critical habitat for such species (16 U.S.C. 1533). On April 1, 2003, we listed the U.S. DPS of smalltooth sawfish (''the species'') as endangered (68 FR 15674). At the time of listing, we also announced that critical habitat was not then determinable because we were completing ongoing studies necessary for the identification of specific habitats and environmental features important for the conservation of the species. Subsequently, we have sponsored additional research on the species, its habitat use, and its conservation needs. Additionally, NMFS has developed a recovery plan (NMFS, 2009) for the species pursuant to section 4(f) of the ESA. We have reviewed the best available scientific data and identified specific areas in the species' occupied range on which are located those physical and biological features essential to the conservation of the species that may require special management considerations or protection. We published a proposed critical habitat designation for the smalltooth sawfish on November 20, 2008 (73 FR 70290), and requested comments by January 20, 2009. On December 9, 2008, we published a notice in the **Federal Register** (73 FR 74681) announcing the dates, times, and locations of two public hearings to receive public comments on the proposed critical habitat rule. In addition to the **Federal Register** notice announcing the public hearings, we advertised the public hearings in the local newspapers (News-Press of Ft. Myers on December 8, 2008, and in the Naples-News on December 14, 2008). During the public comment period we received several requests to extend the public comment period. On January 29, 2009, we reopened the public comment period until February 13, 2009 (74 FR 5141).

The key conservation objective we have identified for the species is the need to facilitate recruitment into the adult sawfish population by protecting juvenile nursery areas. We determined the location of nursery areas by applying a model developed for identifying elasmobranch nursery areas to smalltooth sawfish encounter data. Additionally, we determined that the habitat features essential to the conservation of the species (also known as the essential features) are red mangroves and shallow euryhaline habitats characterized by water depths between the Mean High Water line and 3 ft (0.9 m) measured at Mean Lower Low Water (MLLW). These essential features are necessary to facilitate recruitment of juveniles into the adult population, because they provide for predator avoidance and habitat for prey in the areas currently being used as juvenile nursery areas. We determined these features may require special management considerations or protection due to human and natural impacts to the features, including development, marine construction, and storms. We proposed designating two specific areas that are nursery areas and contain the essential features necessary to the species conservation. The two areas are: the Charlotte Harbor Estuary Unit, which comprises approximately 221,459 acres (346 mi^2) of coastal habitat; and the Ten Thousand Islands/Everglades Unit (TTI/E), which comprises approximately 619,013 acres (967 mi^2) of coastal habitat. The two units are located along the southwestern coast of Florida between Charlotte Harbor and Florida Bay.

Smalltooth Sawfish Natural History

The following discussion of the distribution, life history, and habitat use of the U.S. DPS of smalltooth sawfish is based on the best available commercial and scientific information, including information provided in the Status Review (65 FR 12959; March 10, 2000) and the Smalltooth Sawfish Recovery Plan (January 2009).

Distribution and Range

Smalltooth sawfish are tropical marine and estuarine elasmobranch (*e.g.,* sharks, skates, and rays) fish that are reported to have a circumtropical distribution. The historic range of the smalltooth sawfish in the United States extends from Texas to New York (NMFS, 2009). The U.S. region that has historically harbored the largest number of smalltooth sawfish is south and southwest Florida from Charlotte Harbor to the Dry Tortugas. Most historic capture records along the Atlantic coast north of Florida are from spring and summer months and warmer water temperatures. Most specimens captured along the Atlantic coast north of Florida were also large (greater than 10 ft or 3 m) adults and thought to represent seasonal migrants, wanderers, or colonizers from a core or resident population(s) to the south rather than being resident members of a continuous, even-density population (Bigelow and Schroeder, 1953). Historic records from Texas to the Florida Panhandle suggest a similar spring and summer pattern of occurrence. While less common, winter

records from the northern Gulf of Mexico suggest a resident population, including juveniles, may have once existed in this region.

The Status Review Team (NMFS, 2000) compiled information from all known literature accounts, museum collection specimens, and other records of the species. The species suffered significant population decline and range constriction in the early to mid 1900s. Encounters with the species outside of Florida have been rare since that time.

Since the 1990s, the distribution of smalltooth sawfish in the United States has been restricted to peninsular Florida (Seitz and Poulakis, 2002; Poulakis and Seitz, 2004; Simpfendorfer and Wiley, 2005a; Mote Marine Laboratory's Sawfish Encounter Database; and the FLMNH National Sawfish Encounter Database [FLMNHNSED]). Encounter data indicate smalltooth sawfish encounters can be found with some regularity only in south Florida from Charlotte Harbor to Florida Bay. A limited number of reported encounters (one in Georgia, one in Alabama, one in Louisiana, and one in Texas) have occurred outside of Florida since 1998.

Peninsular Florida is the main U.S. region that historically and currently hosts the species year-round because the region provides the appropriate climate (subtropical to tropical) and contains the habitat types (lagoons, bays, mangroves, and nearshore reefs) suitable for the species. Encounter data and research efforts indicate a resident, reproducing population of smalltooth sawfish exists only in southwest Florida (Simpfendorfer and Wiley, 2005a).

Life History

Smalltooth sawfish are approximately 31 in (80 cm) in total length at birth and may grow to a length of 18 ft (540 cm) or greater. A recent study by Simpfendorfer *et al.* (2008) suggests rapid juvenile growth occurs during the first 2 years after birth. First year growth is 26–33 in (65–85 cm) and second year growth is 19–27 in (48–68 cm). Growth rates beyond 2 years are uncertain; however, the average growth rate of captive smalltooth sawfish has been reported between 5.8 in (13.9 cm) and 7.7 in (19.6 cm) per year. Apart from captive animals, little is known of the species' age parameters (*i.e.,* age-specific growth rates, age at maturity, and maximum age). Simpfendorfer (2000) estimated age at maturity between 10 and 20 years, and a maximum age of 30 to 60 years. Unpublished data from Mote Marine Laboratory (MML) and NMFS indicate male smalltooth sawfish do not reach maturity until they reach 133 in (340 cm).

No directed research on smalltooth sawfish feeding habits exists. Reports of sawfish feeding habits suggest they subsist chiefly on small schooling fish, such as mullets and clupeids. They are also reported to feed on crustaceans and other bottom-dwelling organisms. Observations of sawfish feeding behavior indicate that they attack fish by slashing sideways through schools, and often impale the fish on their rostral (saw) teeth (Breder, 1952). The fish are subsequently scraped off the teeth by rubbing them on the bottom and then ingested whole. The oral teeth of sawfish are ray-like, having flattened cusps that are better suited to crushing or gripping.

Very little is known about the specific reproductive biology of the smalltooth sawfish. As with all elasmobranchs, fertilization occurs internally. The embryos of smalltooth sawfish, while still bearing the large yolk sac, resemble adults relative to the position of their fins and absence of the lower caudal lobe. During embryonic development, the rostral blade is soft and flexible. The rostral teeth are also encapsulated or enclosed in a sheath until birth. Shortly after birth, the teeth become exposed and attain their full size, proportionate to the size of the saw. Total length of the animal at birth is approximately 31 in (80 cm), with the smallest free-living specimens reported during field studies in Florida being 27–32 in (69–81 cm) (Simpfendorfer *et al.,* 2008). Documentation on the litter size of smalltooth sawfish is very limited. Gravid females have been documented carrying between 15–20 embryos; however, the source of these data is unclear and may represent an over-estimate of litter size. Studies of largetooth sawfish in Lake Nicaragua (Thorson, 1976) report brood sizes of 1–13 individuals, with a mean of 7 individuals. The gestation period for largetooth sawfish is approximately 5 months, and females likely produce litters every second year. Although there are no such studies on smalltooth sawfish, their similarity to the largetooth sawfish implies that their reproductive biology may be similar. Genetic research currently underway may assist in determining reproductive characteristics (*i.e.,* litter size and breeding periodicity).

No confirmed breeding sites have been identified to date since directed research began in 1998. Research is underway to investigate areas where adult smalltooth sawfish have been reported to congregate along the Everglades coast to determine if breeding is occurring in the area.

Life history information on the smalltooth sawfish has been evaluated using a demographic approach and life history data from the literature on smalltooth sawfish, largetooth sawfish, and similar species. Simpfendorfer (2000) estimates intrinsic rates of natural population increase of 0.08 to 0.13 per year and population doubling times from 5.4 to 8.5 years. These low intrinsic rates of population increase are associated with the life history strategy known as ''k-selection.'' K-selected animals are usually successful at maintaining relatively small, persistent population sizes in relatively constant environments. Consequently, they are not able to respond effectively (rapidly) to additional and new sources of mortality resulting from changes in their environment. Musick (1999) and Musick *et al.* (2000) noted that intrinsic rates of increase less than ten percent were low, and such species are particularly vulnerable to excessive mortalities and rapid population declines, after which recovery may take decades. Thus, smalltooth sawfish populations are expected to recover slowly. Simpfendorfer (2000) concluded that recovery was likely to take decades or longer, depending on how effectively sawfish could be protected.

Habitat Usage

At the time of listing, very little information was known about the habitat usage patterns of the species. The Status Review (NMFS, 2000) and the final listing rule identified habitat loss and degradation as the secondary cause of the species' decline. The primary reason for the species' decline was bycatch in various commercial and recreational fisheries.

The Status Review described sawfish habitat usage as: ''Sawfish in general inhabit the shallow coastal waters of most warm seas throughout the world. They are found very close to shore in muddy and sandy bottoms, seldom descending to depths greater than 32 ft (10 m). They are often found in sheltered bays, on shallow banks, and in estuaries or river mouths.'' In the years since the status review, additional research on habitat use by smalltooth sawfish has been undertaken. This research confirmed the general characterization of habitat use for smalltooth sawfish and revealed a more complex pattern of habitat use than previously known, with different life history stages having different patterns of habitat use.

A variety of methods have been used to study habitat use patterns of smalltooth sawfish, including acoustic telemetry (Simpfendorfer, 2003),

acoustic monitoring (Simpfendorfer, unpublished data; Poulakis, unpublished data), public encounter databases (Seitz and Poulakis, 2002; Poulakis and Seitz, 2004; Simpfendorfer and Wiley, 2005a), and satellite archival tagging (Simpfendorfer and Wiley, 2005b). The majority of this research has targeted juvenile sawfish, but some information on adult habitat use has also been obtained.

MML and the Florida Fish and Wildlife Research Institute (FWRI) manage encounter databases containing data on sightings and captures of smalltooth sawfish from commercial and recreational fishermen, research efforts, and other sources (*e.g.,* divers and boaters). These databases provide insight into the habitat use patterns of smalltooth sawfish. To request reporting of sightings/captures from the public, MML and FWRI (1998–2008) have engaged in various outreach efforts. These efforts include placing flyers at boat ramps and tackle/dive shops, media releases, articles in fishing magazines, interviews with recreational fishing guides and commercial fishers, Web sites, and personal contacts with researchers. Standard questionnaires are used to collect encounter data (water depth, location, tidal states, gear information, size of animal, and various other physical and environmental features). Outreach efforts were initially focused primarily in Florida but have expanded into areas along the southeastern coasts of the United States between Texas and North Carolina.

Based on our historic and current knowledge of where smalltooth sawfish are encountered (coastal areas), we believe recreational fishers who primarily fish in coastal areas represent the best source of occurrence data for the species. Additionally, Simpfendorfer and Wiley (2005a) analyzed the number of registered fishers in Florida by county to see if fishing effort affects the distribution of the encounters. No strong correlation between the distribution of fishers and encounter locations was found. Based on Simpfendorfer and Wiley (2005a), we believe that the encounter data are not geographically biased.

Directed research programs conducted by FWRI, MML, FLMNH, and NMFS are also a source of encounter data. Directed-research efforts on the species are also primarily focused in coastal areas but are limited to southwest Florida between Charlotte Harbor and the Florida Keys. The sampling methodologies for the directed research efforts are not random or stratified: Research efforts are focused in areas where sawfish have been encountered, primarily southwest Florida. We anticipate future sampling efforts for these and other areas will use a random-stratified approach. Research is underway to determine habitat usage patterns, site fidelity, movement patterns, and various genetic relationships.

Encounter and research data provide some insight into adult smalltooth sawfish habitat usage patterns. Information on adult smalltooth sawfish comes from encounter data, observers aboard fishing vessels, and pop-up satellite archival tags (PAT). Data on adult male (at least 134 in (340 cm) in length) and adult female (142 in (360 cm) in length) smalltooth sawfish are very limited. The encounter data suggest that adult sawfish occur from shallow coastal waters to deeper shelf waters. Poulakis and Seitz (2004) observed that nearly half of the encounters with adult-sized sawfish in Florida Bay and the Florida Keys occurred in depths from 200 to 400 ft (70 to 122 m). Simpfendorfer and Wiley (2005a) also reported encounters in deeper water off the Florida Keys, noting that these were mostly reported during winter. Observations on commercial longline fishing vessels and fishery independent sampling in the Florida Straits show large sawfish in depths of up to 130 ft (40 m) (Carlson and Burgess, unpublished data).

Seitz and Poulakis (2002) reported that one adult-sized animal, identifiable by its broken rostrum, was captured in the same location over a period of a month near Big Carlos Pass. This suggests that adults may have some level of site fidelity for relatively short periods; however, the historic occurrence of seasonal migrations along the U.S. East Coast also suggests that adults may be more nomadic than juveniles with their distribution controlled, at least in part, by water temperature.

In summary, there is limited information on adult sawfish distribution and habitat use. Adult sawfish are encountered in various habitat types (mangrove, reef, seagrass, and coral), in varying salinity regimes and temperatures, and at various water depths. Adults are believed to feed on a variety of fish species and crustaceans. No known breeding sites have been identified. Encounter data have identified river mouths as areas where many people observe both juvenile and adult sawfish. Seitz and Poulakis (2002) noted that many encounters occurred at or near river mouths in southwest Florida. Simpfendorfer and Wiley (2005b) reported a similar pattern of distribution along the entire west coast of Florida. Along the Everglades coastal region, Simpfendorfer and Wiley (2005b) report a strong association of smalltooth sawfish with the Chatham, Lostmans, Rodgers, Broad, Harney, and Shark Rivers.

Most of the research and encounter data on habitat usage of smalltooth sawfish have been obtained on juveniles less than 79 in (200 cm) in length. Juveniles in this size class are most susceptible to predation and starvation (Simpfendorfer, 2006). Like other species of elasmobranchs, smalltooth sawfish appear to use nursery areas because of the reduced numbers of predators and abundant food resources such areas can provide (Simpfendorfer and Milward, 1993).

Much of the research on smalltooth sawfish juveniles indicates some differences in habitat use based on the length of the animals, between what are characterized as very small (less than 39 in (100 cm)) and small (39–79 in (100–200) cm) juveniles. Most encounters of both very small and small juveniles have been within 1,641 ft (500 m) of shore (Simpfendorfer, 2006).

Very small juvenile smalltooth sawfish show high levels of site fidelity, at least over periods of days and potentially for much longer (Simpfendorfer, 2003; 2006). Limited acoustic tracking studies (five animals) have shown that, at this size, sawfish will remain associated with the same shallow mud bank over periods of several days (Simpfendorfer, 2003). Very small juveniles spend a large portion of their time on the same shallow mud or sand banks in water less than 1 ft (30 cm) deep. Since water levels on individual mud banks vary with the tide, the movements of these small animals appear to be directed toward remaining in shallow water. The mud banks are very small, and preliminary home range size for the tracked animals is estimated to be 1,076–10,763 ft^2 (100–1,000 m^2) (Simpfendorfer, 2003). The longer-term fidelity to these sites is poorly understood, and ongoing research is expected to provide more insight into determining how much habitat very small juveniles use on a daily basis. Simpfendorfer (2001) concludes that shallow coastal waters represent key habitat for the species, and in particular that waters less than 3.3 ft (1 m) may be very important as nursery areas. The primary purpose of staying in such shallow water is likely to avoid predators, such as bull sharks. Additionally, these shallow waters provide warm water temperatures that may be utilized to maximize growth rates (Simpfendorfer, 2006).

Simpfendorfer (2001) concludes that most smalltooth sawfish (adults and juveniles) show a preference for water temperatures greater than 17.8 °C (64 °F).

In addition to shallow mud banks, very small juveniles also use red mangrove prop root habitats in southern Florida (Simpfendorfer and Wiley, 2005a). Animals in this size class spend the vast majority of their time in very shallow water less than 1 ft (30 cm) deep, and they tend to move into mangrove prop roots during periods of high tide. Red mangrove habitats also provide foraging opportunities for very small and small juveniles, because the prop root system provides nursery areas for various fish and crustacean species.

Small juveniles have many of the same habitat use characteristics seen in the very small sawfish. Their association with very shallow water (less than 1 ft (30 cm) deep) is slightly weaker, possibly because they are better suited to predator avoidance due to their larger size and greater experience (NMFS, 2006). They do still have a preference for shallow water, remaining in depths mostly less than 3.3 ft (1 m). Most encounters of small juveniles also occur near red mangroves. Site fidelity has also been studied for small juvenile sawfish. Several sawfish, approximately 59 in (150 cm) in length and fitted with acoustic tags, have been relocated in the same general areas over periods of several months, suggesting a high level of site fidelity (Simpfendorfer, 2003). The daily home range for these animals, based on data from a few animals, appears to be much larger than that of very small juveniles (0.386–1.93 mi^2 or 1–5 km^2). The recent implementation of acoustic monitoring systems to study the longer term site fidelity of sawfish has confirmed these observations and also indicates that changes in environmental conditions such as salinity may be important in driving changes in local distribution and, therefore, habitat use patterns (Simpfendorfer, unpublished data).

Simpfendorfer and Wiley (2005) documented that no encounters occurred within habitat in permanent freshwater areas. Many encounters occur near river mouths or near sources of freshwater inflow, and encounter data suggest that estuarine habitats may be an important factor affecting the species' distribution. Simpfendorfer (2001) suggests that smalltooth sawfish occur in river mouth areas because of the lower salinity, submerged vegetation, or abundant prey. We analyzed MML and FWRI encounter data from 1998–2008 for juveniles, and the data indicate the majority of the juvenile encounters occurred within euryhaline or estuarine waters. Euryhaline/estuarine waters are highly productive areas that contain a variety of food sources for the smalltooth sawfish. Mullet, clupeids, and various crustacean species that are known food sources for the smalltooth sawfish are commonly found in estuarine areas.

Juvenile smalltooth sawfish may require specific salinity regimes with specific freshwater inputs, but, at this time, data on specific salinity regime requirements for the species do not exist. Ongoing studies of habitat use patterns of very small and small juveniles in the Caloosahatchee River are expected to provide more insight into the habitat used by or necessary for an individual juvenile (less than or equal to 79 in (200 cm) in length) smalltooth sawfish. At this time, however, there are insufficient data available to determine whether specific salinity ranges are requirements of small juveniles.

Data on large (greater than 79 in (200 cm) in length) juvenile smalltooth sawfish are limited, and more information is needed to determine the habitat usage patterns and site fidelity characteristics of this size class of smalltooth sawfish.

Summary of Comments and Responses

We requested comments on the proposed rule to designate critical habitat for the endangered U.S. DPS of smalltooth sawfish on November 20, 2008 (73 FR 70290), and on January 29, 2009 (74 FR 5141), we reopened the comment period until February 13, 2009. We held two public hearings to facilitate public participation, the proposed rule was available on our regional Web-page, and comments were accepted via standard mail, facsimile, and through the Federal eRulemaking portal. In addition to the proposed rule, the draft impact report required under Section 4(b)(2) of the ESA was posted. We obtained independent peer review on both the scientific information in the proposed rule and on the Draft 4(b)(2) Report (NMFS, 2008).

We have considered all peer review and public comments, and those that are responsive to the designation are addressed in this final rule and discussed in the following summary. We have assigned public comments to major issue categories and, where appropriate, have combined similar comments.

Peer Review Comments

Comment 1: Two reviewers stated NMFS used the best available information on the species and also stated the areas proposed for designation were justified by the available data.

Comment 2: One reviewer noted the daily home range area for small juveniles was calculated incorrectly for small juveniles. The home range value of 1–5 km^2 equates to 0.386–1.93 mi^2.

Response: We corrected the home range value in our discussion in this rule.

Comment 3: One reviewer stated that NMFS should revise the critical habitat rule if new data identify additional nursery areas, discrete areas used by other size classes of animals, or mating aggregations.

Response: NMFS will consider revising the critical habitat designation if new data identify areas containing features essential for the conservation of the species, or areas in the species' unoccupied range that are essential for the conservation of the species.

Comment 4: A reviewer stated that NMFS should monitor freshwater flow regimes (salinity fluctuations, dissolved oxygen, flow rates), and nutrients, red mangroves, and submerged aquatic vegetation in the designated areas.

Response: NMFS is required to consult under section 7 of the ESA on Federal actions that may affect listed species, including the smalltooth sawfish, or their designated critical habitat. Therefore, NMFS would consult under section 7 of the ESA on the effects from alterations of freshwater flow regimes on the sawfish and its designated critical habitat. Ongoing research is also investigating habitat use and movements of juvenile sawfish in relation to salinity regimes.

Comment 5: A reviewer stated that we should consider designating other areas that contain the same essential features included in the two nursery areas in southwest Florida, and specifically suggested Tampa Bay and the Indian River Lagoon. This peer reviewer stated that we did not appropriately consider the amount of suitable habitat that remains outside of the proposed critical habitat areas, specifically within Tampa Bay and the Indian River Lagoon, given that the species may need additional nursery areas in the future for recovery.

Response: We do recognize that the sawfish may need additional nursery areas for its recovery, that red mangroves and shallow euryhaline habitats exist outside the designated areas, and that smalltooth sawfish were historically common in some of those areas (*e.g.,* Indian River Lagoon). However, sawfish also historically appear to have used areas that do not contain mangroves as nursery areas. The key conservation function of the critical

habitat designation is to facilitate recruitment into the adult population by protecting juvenile nursery areas. Based on the best available data and our understanding of what constitutes a nursery area for sawfish, the areas designated as critical habitat are the only areas that are currently nursery areas. We cannot predict with any certainty what new nursery areas may be established by the species. If new information identifies nursery areas outside of the designated critical habitat, NMFS will consider revising this rule.

Comment 6: A reviewer suggested a more complete Executive Summary in the 4(b)(2) Report that includes the conclusions of the Economic and Other Relevant Impacts sections of the report.

Response: We have revised the Executive Summary in the Final 4(b)(2) Report to include the conclusions of all three impact sections of the report.

Comment 7: A reviewer requested more detail on the increased probability of recovery of listed species as a result of designating critical habitat and requested a long-term study of the relationship between recovery rates of listed species and critical habitat designation.

Response: The commenter's suggestion is noted. NMFS does evaluate the recovery progress of listed species, including submitting reports to Congress every 2 years on the status of efforts to develop and implement recovery plans for listed species under our purview, and on the status of all species for which recovery plans have been developed under section 4(f)(3)) of the ESA. Between October 1, 2006, and September 30, 2008, of the 59 domestic endangered or threatened species listed under the ESA, 22 (37 percent) were stabilized or improving; 17 (29 percent) were known to be declining; and 20 (34 percent) were unknown or mixed in their status (*http://www.nmfs.noaa.gov/pr/pdfs/laws/esabiennial2008.pdf*). A recent study suggests listed species with designated critical habitat for 2 or more years may be more than twice as likely to have an improving population trend and less than half as likely to be declining compared to listed species without designated critical habitat (Taylor *et al.*, 2005). Of the 59 domestic listed species under NMFS' purview, 39 have designated critical habitat, and 16 of these species were judged to be stable or improving in the 2008 report discussed above. Most of these designations have not been in place for 2 years or longer, and it is likely too early in the recovery process to judge the contribution of critical habitat to the recovery of these species. It should also be noted that though critical habitat protects features essential to a species' conservation from destruction or adverse modification by Federal actions, critical habitat is not intended to be the sole activity that brings about species' recovery.

Comment 8: A reviewer asked if saving the smalltooth sawfish would save the local fishing industry and whether the rule protects mangroves or smalltooth sawfish.

Response: Our primary goal is to support the key conservation objective for the species by protecting the essential features in its nursery areas. The rule is not intended to directly protect smalltooth sawfish from harm, but rather is intended to promote its recovery by preventing destruction or adverse modification of the physical and biological habitat features essential to its conservation that may result from Federal actions. The Final 4(b)(2) Report considered, in the analysis of other relevant impacts, that the critical habitat designation is likely to provide additional protections to mangrove habitat and the fisheries that depend on those habitats. The fishing industry may, therefore, also benefit from this designation.

Public Comments

A. Comments on Providing the Public Adequate Notice on the Proposed Rule

Comment 1: We received several comments stating we did not provide adequate notice for public review and comment on the proposed rule.

Response: NMFS published the proposed critical habitat rule for the smalltooth sawfish on November 20, 2008 (73 FR 70290), and requested pubic comments by January 20, 2009. On December 9, 2008, we published a notice in the **Federal Register** (73 FR 74681) announcing the dates, times, and locations of two public hearings to receive public comments on the proposed critical habitat rule. In addition to the **Federal Register** notice announcing the public hearings, we advertised the hearings in relevant local newspapers (News-Press of Ft. Myers on December 8, 2008; Naples-News on December 14, 2008). During the public comment period, NMFS received several requests to extend the public comment period. On January 29, 2009 (74 FR 5141), NMFS extended the public comment period to February 13, 2009. We believe the public received adequate opportunity to review and comment on the proposed rule.

B. Comments on the Available Data for the Designation

Comment 2: Several commenters reacted to the statements in the proposed rule describing the incomplete information on the habitat usage patterns of the species, particularly adults, and suggested we have incomplete information on which to base the designation. Another commenter suggested we should do more research on the species before we designate critical habitat. Several commenters expressed concern about basing the rule on data from 2003 or earlier.

Response: The ESA requires we use the best available scientific information to support the proposed designation. It also provides that we may take up to 1 additional year after a species is listed, if critical habitat is not determinable at the time of listing. Beyond that year, during which NMFS further studied the species' habitat needs, we may not wait to designate critical habitat to conduct more research. We used all available information sources (literature, research data, government agencies, and public encounter data) to identify the specific areas and the essential features. No other sources of data on the species were identified during the public comment period. In contrast to the lack of information on specific habitat usage that currently precludes designation of critical habitat areas for adult smalltooth sawfish, we believe the available information provides a sound basis for designating nursery areas used by juveniles as critical habitat. Finally, the rule is based on juvenile encounter data from 1998 through the present; a NMFS staff member misstated the applicability of the ''time of listing'' provision in the statute at one of the public hearings—that applies to identifying the occupied range of the species.

Comment 3: A commenter suggested we re-evaluate the critical habitat designation in 5 years to determine the habitat needs for adults.

Response: We have not identified adult aggregation, mating, and/or pupping areas, and no information on historic aggregation, mating, and/or pupping sites exists, but these aspects of the species' life history are being investigated by researchers. If information on adult smalltooth sawfish becomes available which suggests areas that may be essential to the conservation of the species, we will consider revising the critical habitat designation.

Comment 4: A commenter requested information on how the encounter data were collected and how far the animals travel up the Cape Coral canals.

Additionally, the commenter wanted to know which canals smalltooth sawfish are using.

Response: Smalltooth sawfish encounter data from FWCC and MML's were used to develop the proposed rule. Encounter data are reported by the public and by researchers. Recreational and commercial fishers, boaters, divers, and the general public report smalltooth sightings and captures to the FWCC and MML. The encounter reports may include information such as the date, location, size of animal, water depth, benthic habitat in the area, the type of fishing gear used, and photographs, *etc.* Information gathered by researchers is similar to what the public reports but may include more details about the animal and may include specific movement information for tagged animals. Encounter data and FWCC directed research have documented smalltooth sawfish use of multiple canals within the Cape Coral canal system; each canal is not named thus we cannot list them specifically. Ongoing smalltooth sawfish research conducted by the FWCC has shown that tagged animals travel deep into the canals and may use the canals for months at a time, making daily excursions into the Caloosahatchee River. Existing encounter data support the usage of the Cape Coral canal system where it is accessible to smalltooth sawfish.

Comment 5: One commenter questioned the credibility of sightings and encounter data, reported by fishermen, as a basis for the rule.

Response: There are a number of indices of the reliability and suitability of encounter and sightings data available for this designation. First, the encounter reporting programs are longstanding and the researchers involved have established trust and personal relationships with a good portion of the fishing community involved in reporting encounters or recommending to others that they report encounters. MML and FWCC only include encounter reports in their databases when the reports have met some measures of credibility, for example, if the description of the fish is consistent with the morphological characteristics of the species. The encounter data have also been validated in a number of respects by scientific research carried out by the organizations that maintain the encounter databases.

Comment 6: Several commenters stated they had never seen and/or caught a smalltooth sawfish in some of the areas (San Carlos Bay and southwest Florida) proposed for designation.

Response: Encounter data, which includes reports from recreational and commercial fishers, researchers, and snorkelers, indicate the species is encountered within San Carlos Bay and that most encounters of juveniles occur in southwest Florida. Sawfish are highly endangered benthic fish, and it is not surprising that even long-time local residents have never seen one.

C. Comments on Existing Resource Protections, Regulatory Burdens, and Rulemaking Requirements Generally

Comment 7: A commenter asked if the President's Executive Order on Regulatory Review (74 FR 4435; January 26, 2009) would stop NMFS from publishing the critical habitat rule.

Response: No, President Obama's Memorandum to the Heads of Executive Departments and Agencies, dated January 20, 2009, regarding additional administration review of rules published prior to January 21, 2009, does not apply to this rule because the timing of the proposed and final smalltooth sawfish critical habitat rules is mandated under a court-approved settlement agreement.

Comment 8: Several commenters stated that existing laws and regulations, including State laws, are currently in place to protect habitats covered by the proposed designation, and that an additional layer of government regulation should be avoided.

Response: The commenter is correct in part. Existing laws and regulations are in place to protect marine and estuarine habitats, including mangroves. However, none of the laws or regulations applicable to the habitats included in the proposed designation provide complete protection to the habitats. In a wide variety of circumstances, existing laws and regulations allow for destruction of habitat, and in instances where mitigation may be required, off-site and out-of-kind mitigation are possible outcomes. Additionally, existing laws and regulations do not expressly require consideration of the conservation needs of the smalltooth sawfish in determining whether impacts to habitat are allowable or mitigations are acceptable. This final rule will provide unique additional protections to the critical habitat features essential to the sawfish's conservation, resulting in project modifications where existing laws would not require such modifications.

Comment 9: A commenter stated that we did not need to protect habitat for the smalltooth sawfish because the Florida net ban has eliminated deaths from bycatch.

Response: Florida voters approved a constitutional amendment banning the usage of most types of inshore nets in 1995. The net ban is extremely important in addressing a major threat to smalltooth sawfish, because their saws become entangled in the nets, and fishers often killed and/or removed the saw from captured animals. The net ban eliminated a great deal of smalltooth sawfish bycatch; however, the species is still caught as bycatch in several fisheries (shrimp trawling, bottom long-line fisheries, *etc.*). In addition to measures to prevent or limit take of listed species, the ESA requires NMFS to designate areas that meet the statute's definition of critical habitat, with discretion to consider excluding certain areas from a designation based on specific findings about the costs and benefits of a designation. As stated in the proposed rule, juvenile smalltooth sawfish use highly specific nearshore areas as nursery areas for the first several years of their lives, where vulnerable juveniles find protection from predators and ample food resources for early stage growth. In the areas we have identified as existing nursery areas, juvenile sawfish need several essential physical and biological features: red mangroves and shallow, euryhaline habitats characterized by water depths between the Mean High Water line and 3 ft (0.9 m) measured at Mean Lower Low Water. These features are essential to the conservation of the species because they support the key conservation function of facilitating recruitment of juveniles into the adult population. This conservation objective is not accomplished by the inshore net ban.

Comment 10: A commenter stated they are concerned about the length of time it takes to complete section 7 consultations under the ESA, that NMFS takes a long time to complete section 7 consultation, and that these times will increase with designation of critical habitat.

Response: Federal agencies are currently required to consult on actions that may affect the fish, including in the areas proposed for designation, in order to ensure their actions are not likely to jeopardize the continued existence of the species. Designated critical habitat does require a second, distinct analysis of potential effects of Federal actions: Federal agencies must ensure their actions are not likely to destroy or adversely modify critical habitat. Our analysis of impacts of the designation indicates that the designation will not require consultations for categories of Federal actions that are not already subject to consultation to avoid jeopardizing the species. Delays can occur during the section 7 review

process when NMFS is lacking the pertinent information needed to determine the effects on a species or its designated critical habitat. NMFS does not expect delays in the section 7 consultation process if we receive the necessary information to complete our analysis of the effects on the species and/or designated critical habitat. We will also work with interested Federal agencies to evaluate whether streamlined section 7 consultation procedures can be adapted for evaluating Federal actions that may affect the smalltooth sawfish, its designated critical habitat, or both.

Comment 11: A commenter stated that since existing critical habitat for the American crocodile provides protection for the smalltooth sawfish, the proposed rule has overlapping protections and asked us how we would deal with the overlapping protections.

Response: This is not correct. Smalltooth sawfish may use some of the same habitats utilized by the American crocodile along the Everglades coast, but the critical habitat designation and the listing protections for the American crocodile are established to promote the recovery and conservation of that species specifically. American crocodile designated critical habitat does not protect the physical and biological features essential for the conservation of the smalltooth sawfish. The U.S. Fish and Wildlife Service (FWS) has jurisdiction over the American crocodile, and NMFS has jurisdiction over the smalltooth sawfish. NMFS and FWS will consult under section 7 of the ESA for their respective species even though the critical habitat designation may over-lap geographically.

D. Comments on the Critical Habitat Boundaries and Areas Included or Omitted From the Designation

Comment 12: One commenter suggested we used arbitrary boundaries (*e.g.,* roads, county lines, *etc.*) in establishing the unit boundaries and suggested we should instead use habitat-based boundaries (*e.g.,* creeks and mangroves). The commenter also suggested we include entire creeks and canal systems that are accessible to smalltooth sawfish near the proposed Charlotte Harbor Estuary Unit. The commenter proposed four specific changes in this regard: (1) The boundary located near the Myakka River should be moved up-river where the mangroves end at approximately 27°4.500′ N; (2) the boundary near Harborview Road, U.S. 41, and SR 776 should include Shell Creek extending to the dam and upriver to 27°4.500″ N; (3) The southern extent of the Charlotte Harbor Estuary Unit boundary should be Wiggins Pass/Calcohatchee River instead of the Charlotte/Lee County line; and (4) ''back bay'' boundaries should include entire creek and canal systems in the Charlotte Harbor Estuary Unit.

Response: We elected not to make the requested changes to the unit boundaries. The boundaries were chosen by first applying the Heupel *et al.* (2007) model for defining nursery areas to the juvenile sawfish encounter data. After broad areas being used as nursery areas were identified, the essential physical and biological features within these nursery areas were identified. The boundaries of the critical habitat units were identified in accordance with our regulations at 50 CFR 424.02(c), using reference points and lines on topographic maps to describe the specific boundaries of the nursery areas. Roads, man-made structures, and county line or park boundaries were used instead of habitat boundaries (*e.g.,* extent of red mangroves or entire creek systems) because they are easily identifiable by the public and because they represent the boundaries of the nursery areas.

Comment 13: A commenter suggested we consider expanding the critical habitat designation to include unoccupied areas that could be essential to the species' conservation, and noted that the species used to be found in coastal areas as far distant from peninsular Florida as New York and Texas.

Response: ESA section 3(5)(A)(ii) defines critical habitat to include specific areas outside the geographical area occupied at the time of listing if the areas are determined by the Secretary to be essential for the conservation of the species. Regulations at 50 CFR 424.12(e) specify that we shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. Habitat-based recovery criteria in the recovery plan suggest areas outside the current occupied range may be important to the species' recovery. However, based on the best available information, we cannot identify unoccupied areas that are currently essential to the conservation of the species. If information on essential features or habitats for the species becomes available, we will consider revising this critical habitat designation.

Comment 14: A commenter suggested we include Estero Bay to Marco Island in the critical habitat designation because the area contains the essential features, and the areas are connected to the Charlotte Harbor Estuary Unit and the Ten Thousand Islands/Everglades Unit.

Response: Areas within Estero Bay and Marco Island do contain some of the essential features described within the proposed critical habitat designation; however, red mangroves are much sparser and salinity is much more fully marine than in the designated units. We determined that this area between the designated units does not meet the definition of a nursery area for sawfish, and that juvenile sawfish are not likely to use the area to travel between the two designated nursery areas. Juvenile smalltooth sawfish are rarely encountered within these areas, and juvenile encounters in the area do not have a higher density than the mean density outside the area. Encounter data do not indicate juveniles repeatedly use the area over years, and no site fidelity pattern exists in the area. If new data indicate these areas are indeed nursery areas, we will consider revising the critical habitat designation.

Comment 15: A commenter stated the scope of the designation is too broad and includes habitats that are not shallow or near mangrove roots. Two other commenters suggested the designation should be limited to targeted areas where NMFS has documented specific use of the areas.

Response: As stated in the proposed rule, the features can be found unevenly dispersed throughout the proposed critical habitat boundaries. Limits on existing mapping methodologies make it infeasible to define the specific areas more finely than described herein. Therefore, there are locations within the critical habitat boundaries where the essential features do not exist (*e.g.,* deep water areas). The regulatory impact of the critical habitat designation, however, flows entirely from the requirement to consult on Federal actions that may affect the critical habitat's essential features. If an action only impacts locations which do not contain either essential feature, the action would pose no effect to the critical habitat, and no section 7 consultation would be required. We also believe that limiting the designation to areas where use has been documented at a specific place and time would not be an appropriate application of the ESA. Single encounter points would not encompass the full home ranges used by juveniles. Moreover, the ESA requires designation of critical habitat containing features essential to a species' conservation, and thus contemplates inclusion of areas containing features necessary for population growth.

Further, the available information on sawfish almost certainly does not document the existence of every juvenile using the nursery areas. We therefore disagree that the scope is too broad: the units are appropriately defined as the areas containing (but not composed entirely of) the essential features, and there is no regulatory impact of including embedded locations without the essential features.

E. Comment on Essential Features

Comment 16: A commenter stated they had never seen seagrasses in the Cape Coral canals and could not understand why NMFS identified seagrasses as an essential component of the critical habitat.

Response: Seagrasses are not an essential feature of the critical habitat.

F. Comments on the Draft 4(b)(2) Report and the Analysis of Economic Impacts

Comment 17: One commenter noted an error in the Draft 4(b)(2) Report in the estimated values for mangrove-dependent fish species for 2005.

Response: NMFS acknowledges that these calculations were inaccurate, and they have been corrected in the Final 4(b)(2) Report. The value in the ''Pounds'' column label was listed in 1,000s of pounds but actually represented pounds. We removed the 1,000 from the column, and the column now reflects the correct poundage of landings. Additionally, the commenter noticed an error in the ''Value'' column which also indicated the values were in thousands of dollars. We corrected the errors in Tables 5, 7, 9, and 11 to reflect the correct values for both ''Pounds'' and ''Value.''

Comment 18: Several commenters expressed unspecific concerns about potential economic impacts on communities and quality of life expected from the designation. A few commenters stated that NMFS did not address the economic impacts on the marine construction, real estate, and residential construction industries in the proposed rule and asked why the economic impacts cannot be more precisely measured.

Response: The 4(b)(2) Report identifies and analyzes the expected economic impacts, including monetary costs on marine construction activities where feasible, associated with the proposed rule. Federal guidance on estimating the costs and benefits of proposed rules allows presenting economic impacts in qualitative metrics if monetization is not feasible or reliable (EO 12866). Administrative costs to Federal and third parties (*e.g.,* permit applicants) expected to result from ESA section 7 consultations required by the designation were estimated by projecting the number of future consultations associated with the proposed rule. Projected future costs resulting from potential project modifications that may be required to avoid destruction or adverse modification of the designated critical habitat cannot be determined with any certainty given the uncertainty in, among other things, predicting the precise location and scope of future projects. The total incremental administrative costs for Unit 1 are estimated to range from $1,039,500 to $1,386,000 (depending on complexity of the consultation) over the 10-year planning period. The total incremental administrative costs for Unit 2 are estimated to range from $108,000 to $144,000 (depending on complexity of the consultation) over the 10-year planning period. Most of these costs will be borne by Federal agencies involved in ESA section 7 consultation; maximum total projected administrative costs to third parties (*e.g.,* permit applicants) due to all 85 future consultations are estimated to be $136,200 to $170,000 over the next 10 years. The commenters did not provide us with specific information to determine any other potential future economic impacts from the proposed rule. We believe the 4(b)(2) Report provides the best information on predicting future section 7 consultation economic costs from the final rule. We have also responded to concerns about the rule's potential to impact specific existing activities in affected communities in the following section.

Comment 19: One commenter stated that the analysis of potential economic impacts to single-family dock construction/repair projects identified in the 4(b)(2) report is inadequate because we did not identify costs for some of the potential project modifications that might be recommended to dock projects during section 7 consultation. The commenter stated that it is inappropriate for NMFS to decide not to consider exclusions from Unit 1 due to economic impacts in the absence of such information. The commenter suggested we could estimate economic impacts associated with the ''average percentage decrease in number of docks constructed per year due to time delays associated with the consultation process and as well as the percentage decrease in cost for construction due to reduced size.''

Response: As we have explained in the rule and 4(b)(2) report, specific costs that may result from project modifications recommended by NMFS to avoid destruction or adverse modification of critical habitat cannot be determined in all instances because such costs are highly variable and depend on such unknown future variables as the specific scope and location of future projects. We think the commenter's suggested surrogate for future economic impacts associated with costs of dock project modifications would be too speculative. Further, a measure of the costs to third parties such as dock permit applicants from participation in the consultation process is provided in the 4(b)(2) report; this would include any costs due to delays. As stated in the rule and 4(b)(2) report, we believe the information available to project the numbers, types, and distribution of potential future Federal actions that may trigger ESA section 7 consultation, and identify the types of potential project modifications often associated with these types of projects, provides a reasonable basis for evaluating potential economic impacts of the designation, even though some of the impacts are only qualitatively identified. Our assessment projects that a limited scope of impacts will result from the designation (about 8 consultations per year in Unit 1). Consultation would be required for those projects even in the absence of the critical habitat designation, to protect the sawfish. Finally, the conservative approach to the assessment likely overestimates numbers of formal consultations and project modifications that may be required. On these bases, we do not believe evidence of economic impacts warrants our exercise of our discretion to consider excluding areas from the designation.

Comment 20: One commenter stated that the rule has the potential to impact private property rights in dock/seawall replacement permits or new permits, and in dredging of canals to the extent that may constitute a taking of private property.

Response: The takings implications of the rule were evaluated. The rule will not result in a physical invasion of private property, or a complete denial of all use or value of any private property interest. Based on the importance of the societal interest in designating critical habitat for endangered species, and the limited nature of impacts to private property that may result from the designation identified in the 4(b)(2) report, we determined that the designation will not result in a regulatory taking of private property.

Comment 21: One commenter stated that we did not justify nor provide documentation for our conclusion that secondary costs to local or regional

economies are unlikely to result from the designation.

Response: We disagree. We believe the 4(b)(2) impacts report supports our determination that impacts to the scale that affects local or regional economies are not likely to result from the designation. We do not expect measurable reductions in regional revenues or employment or growth to result from the types of project modifications that may be required to federally permitted actions to avoid destruction or adverse modification of critical habitat. We received no information to the contrary from this or other commenters, including Federal agencies most likely to be required to consult with NMFS as a result of the designation. We contacted relevant planning agencies in developing our impacts report, and received no reports of planned projects or developments over the next 10 years that would require ESA consultation and that would be of a scale to have impacts on local or regional economies if they required modifications due to the critical habitat designation.

G. Comments on Potential Impacts of the Designation on Ongoing Activities

Comment 22: The U.S. Army Corps of Engineers (ACOE) requested we exclude authorized Federal channels (Gordon Pass/Naples to Big Marco, Key West Harbor, Everglades Harbor, Largo Sound, Charlotte Harbor, Key West Bight & Garrison Bight, Ft. Myers Beach/Matanzas Pass, and the Intracoastal Waterway Caloosahatchee River to Anclote River) and existing residential canals from the critical habitat designation. Two municipalities also requested that residential canals and waterways in their boundaries be excluded where these systems are maintained at depths greater than 3 ft. (0.9 m) at MLLW, and do not provide the essential features. Several commenters requested exemptions for dredging of channels or canals in existence at the time of the designation.

Response: Exclusions from a critical habitat designation may be proper where the benefits of exclusion outweigh the benefits of inclusion of areas in a designation. Exclusions are not applicable to areas, like those proposed by the ACOE, which will not be impacted by the designation because they do not provide the essential features of critical habitat and will not require section 7 consultation for activities in those areas. As stated in the proposed rule, all existing man-made structures such as boat ramps, docks, pilings, maintained channels or marinas that do not provide the essential features that are essential to the species' conservation are not part of this designation. The three existing federally authorized channels located within the proposed designation are the Charlotte Harbor, Ft. Myers Beach (Matanzas Pass), and portions of the Intracoastal Waterway in the Caloosahatchee River. These existing Federal channels have been authorized to be dredged and maintained to depths greater than 3 ft (0.9 m) at MLLW. The channels may contain the euryhaline component of the shallow habitat essential feature, but they do not contain the water depth component, or the red mangrove essential feature, and thus would not be impacted by the designation. This also applies to residential canals, or portions of these canals, that have been authorized and dredged and maintained to depths greater than 3 ft (0.9 m) at MLLW. However, it is also important to note that the edges or banks of maintained channels or canals outside the footprint authorized to be dredged and maintained, may provide the essential features.

Comment 23: The ACOE requested a description of what is considered a maintained channel.

Response: We consider a maintained channel to be a channel that is dredged periodically, as necessary, to maintain its original authorized dimensions (depth, width, *etc.*).

Comment 24: Several commenters expressed concern that the designation of smalltooth sawfish critical habitat would prohibit marine construction or maintenance of existing private or public infrastructure (*i.e.,* maintenance dredging, docks, piers, jetties, boat ramps and seawalls *etc.*).

Response: If a proposed project authorized, funded, or carried out by a Federal agency includes construction of a new structure, and the structure may affect a listed species or its designated critical habitat, the standard ESA section 7 consultation requirement would apply. Proposed projects may require modifications, if they would destroy or adversely modify critical habitat. Projects would only be prohibited if there were no modifications or alternatives to the proposed project that would avoid destruction or adverse modification of critical habitat. If future projects in the areas covered by the designation are similar in nature as past activities, based on our analysis of impacts, we believe modifications should be available to allow projects to be implemented.

Comment 25: The ACOE requested an exemption from the rule for activities that are managed under the Comprehensive Everglades Restoration Program (CERP) program in the proposed areas because water discharges from Lake Okeechobee may be necessary when water levels pose a threat to property and human lives, and responding to this type of emergency could be impeded by having to consult under the ESA.

Response: The essential features in the proposed critical habitat areas may be affected by future and current activities authorized and/or funded through the CERP program. Federal agencies are required to consult under section 7 of the ESA to ensure their actions are not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of their critical habitat. CERP projects like those described by the commenter may affect the designated critical habitat by, for example, altering the euryhaline nature of the shallow habitat areas included in the designated units. Future CERP projects may also benefit the species by restoring habitats that may be utilized by smalltooth sawfish. We believe the section 7 consultation process provides the best process for evaluating effects from future and ongoing CERP activities, and there are a number of mechanisms that will allow consultation without impeding the ACOE's response to water level emergencies, such as emergency consultations or programmatic consultations. The ESA allows for particular areas to be excluded from a critical habitat designation on the basis of economic, national security, or other relevant impacts; it does not provide for exempting classes of activities from consultation requirements. Based on the information provided by the ACOE on this issue, NMFS cannot identify a basis for excluding critical habitat areas from the designation based on potential future CERP and Lake Okeechobee discharge activities.

Comment 26: A few commenters stated that residential canals and waterways should be excluded from critical habitat designation if these canal systems are not accessible to the species because of water control structures such as weirs and dams.

Response: As stated in the proposed rule, areas behind water control structures that are not accessible to smalltooth sawfish are not part of the designation. Areas located within existing canals or waterways that are not accessible to smalltooth sawfish because access is prohibited by a weir or dam in existence at the time of the designation are not part of the designation even though they may be located within the critical habitat boundaries; installation

of new weirs or dams in the future may require section 7 consultation under the ESA if a Federal permit is required for the structure and installation of the structure could affect the essential features of sawfish critical habitat.

Comment 27: Several commenters expressed concerns that the designation of critical habitat would result in restriction on boating and fishing activities and other public use of waterways within the critical habitat boundaries.

Response: Nothing in the rule states that boater access or fishing activities will be restricted within smalltooth sawfish critical habitat. As stated in the proposed rule, the primary impacts of a critical habitat designation result from the ESA section 7(a)(2) requirement that Federal agencies consult with NMFS to ensure their actions are not likely to result in destruction or adverse modification of critical habitat. Furthermore, a critical habitat designation does not result in the creation of closed areas, preserves, or refuges. There are no individual prohibitions on any activities within critical habitat. The transit through or anchoring of a vessel within designated critical habitat is not prohibited. Additionally, the designation of critical habitat does not create any closed fishing areas. Recreational boating and fishing would only be affected by the designation if the activity involved requires a Federal permit of some kind and the permitted activity has the potential to adversely affect one of the essential features on which the designation is based, red mangroves or shallow, euryhaline coastal habitats.

Comment 28: NMFS received multiple comments requesting that the commercial aquaculture production of shellfish be excluded from the designation of critical habitat. Additionally, commenters expressed concern that the harvesting or culturing of shellfish was not considered in NMFS' economic analysis.

Response: As discussed in response to Comment 22, particular areas may be excluded from a designation on the basis of economic, national security, or other relevant impacts. The ESA does not provide for exempting classes of activities from the requirements of section 7 applicable to designated critical habitat. Although we have no past record of section 7 consultation regarding Federal permitting of commercial shellfish aquaculture activities, the commenters acknowledge that Federal permits may be required for placement of aquaculture materials in navigable waters. Thus, we have added a discussion in the Final 4(b)(2) Report regarding shellfish aquaculture and one anticipated future formal section 7 consultation with the ACOE for these activities that may occur in designated critical habitat for the smalltooth sawfish. Additionally, the commercial shellfish aquaculture may occur in areas that do not provide the critical habitat features. Information provided by one commenter suggests that a majority of these actions take place in water depths greater than 3 ft (0.9m) at MLLW. Therefore, they do not contain the water depth component of the essential features and would not be affected by the designation. In areas where critical habitat features are present and may be impacted by a proposed activity, we believe that the section 7 consultation process is the appropriate mechanism for evaluating effects to proposed critical habitat resulting from these activities. Based on our impacts analysis for the single projected future consultation for hard clam aquaculture activities, we did not find a basis for exercising our discretion to consider excluding any areas from the designation due to impacts on these activities. We expect the potential consultation administrative costs to increase by $18,000 for this formal consultation. We cannot determine the specific modification costs that may be associated with this consultation since we do not know the future locations and specific habitat conditions or potential project sites. We expect project modifications may involve project relocations to deeper water and/or monitoring.

Comment 29: One commenter stated that mangrove removal should not be permitted within designated critical habitat.

Response: The rule does not prohibit mangrove removal per se. The proposed rule requires Federal agencies to consult under section 7 of the ESA for activities occurring within proposed critical habitat that may affect the essential features including, but not limited to, red mangrove impacts. If activities that involve removal of mangroves require a Federal permit or use Federal funding, the effect of that mangrove removal will be evaluated during section 7 consultation to determine whether the proposed removal can and should be modified to avoid adversely affecting or destroying or adversely modifying critical habitat. Not every adverse impact on the essential features of designated critical habitat will constitute destruction or adverse modification of critical habitat; whether an adverse impact rises to that level depends on factors including, but not limited to, the type of project, the area, the usage by sawfish, the nature and extent of the impacts, the nature of critical habitat in areas adjacent to the project, *etc.*

Comment 30: One commenter wanted to know how the designation of critical habitat would affect an existing ''blanket permit'' received from the ACOE to remove vegetation for seawall installation within Cape Coral interior canals.

Response: Our regulations at 50 CFR 402.16 require reinitiation on completed consultations if critical habitat is designated that may be affected by an ongoing action covered by a completed consultation. Thus, the ACOE may reinitiate section 7 consultation on the existing federally authorized activities if ongoing or future actions covered by the permit to which the commenter is referring may affect the sawfish's critical habitat features.

Summary of Changes From the Proposed Critical Habitat Designation

Based on the comments received and our review of the proposed rule, we have made the following changes from the proposed rule and Draft 4(b)(2) Report to the final rule and its Final 4(b)(2) Report.

1. We have corrected the error in the pounds and values associated with the ''Commercial Landings of Florida Mangrove-Dependent Species'' in Tables 5, 7, 9, and 11 in the 4(b)(2) report. *See Comment 17* for an explanation of the change.

2. We have increased the number of potential future section 7 consultations for general permits issued by the ACOE by one to account for a consultation on Florida's shellfish aquaculture program. Additionally, we have changed the administrative costs of future consultations and acknowledged that project modification costs may be associated with the consultation.

3. We have corrected the home range values for small juveniles identified by a peer reviewer.

4. We clarified critical habitat boundaries by inserting additional roads and text to the location of the boundaries.

Critical Habitat Identification and Designation

Critical habitat is defined by 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 1533 of this title, 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 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species.'' This definition provides us with a step-wise approach to identifying areas that may be designated as critical habitat for the endangered smalltooth sawfish.

Geographical Area Occupied by the Species

The best available scientific and commercial data identify the geographical area occupied by the smalltooth sawfish at the time of listing (April 1, 2003) as peninsular Florida. Based on our regulations, we interpret ''geographical area occupied'' in the definition of critical habitat as the range of the species at the time of listing (45 FR 13011; February 27, 1980). The range was delineated at the time of listing from data provided by existing literature and encounter data. Because only a few contemporary encounters (one in Georgia, one in Alabama, one in Texas, and one in Louisiana) have been documented outside of Florida since 1998, we consider peninsular Florida to be the species' occupied range at the time of listing. At this time, we do not consider the limited observations outside of Florida as indicating that the species has re-established either its occupation of Gulf coast waters or its seasonal migrations up the east coast of the U.S. outside of Florida.

Specific Areas Containing Physical or Biological Features Essential to Conservation

The definition of critical habitat further instructs us to identify the specific areas on which are found the physical or biological features essential to the species' conservation. Our regulations state that critical habitat will be defined by specific limits using reference points and lines on standard topographic maps of the area, and referencing each area by the State, county, or other local government unit in which it is located (50 CFR 424.12(c)).

According to the definition of critical habitat, the physical and biological features essential to conservation must be identified (hereafter also referred to as ''essential features''). Section 3 of the ESA (16 U.S.C. 1532(3)) defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean: ''to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.'' Our regulations at 50 CFR 424.12(b) provide guidance as to the types of habitat features that may be used to describe critical habitat.

The recovery plan developed for the smalltooth sawfish represents the best judgment about the objectives and actions necessary for the species' recovery. We reviewed the recovery plan's habitat-based recovery objective for guidance on the habitat-related conservation requirements of the species. This objective identifies the need to protect and/or restore smalltooth sawfish habitats and discusses adult and juvenile habitats separately. Habitats, especially those that have been demonstrated to be important for juveniles, must be protected and, if necessary, restored. Protected, suitable habitat throughout the species' range will be necessary to support recruitment of young individuals to the recovering population. Without sufficient habitat, the population is unlikely to increase to a level associated with low extinction risk and delisting.

The recovery plan also identifies specific recovery criteria that must be met to satisfy each objective. As stated in the plan, adult habitat-based recovery criteria for the species require the identification and protection of adult aggregation, mating, and/or pupping areas. Information on historic aggregation, mating, and/or pupping sites does not exist. Currently, no aggregation or mating areas have been identified for adults. Additionally, no information is available on specific pupping locations for gravid females. Tracking data on gravid females is lacking, but newborn juveniles still possessing their protective sheaths and newly pupped animals have been documented close to shore. Encounter and site fidelity data suggest juveniles are pupped in these areas, but this has not been validated. No known specific areas where adults perform any particular function, including feeding, are known. Adults are considered opportunistic feeders and forage on a variety of fish and crustacean species. Based on the available information on the habitat usage patterns of adults, we cannot identify physical or biological features essential to the species' conservation, or identify any areas on which such features may be found.

In contrast to the paucity of information available on adult smalltooth sawfish, more detailed information on habitat usage patterns of juveniles is available, and more specific habitat-based recovery criteria are identified in the recovery plan. The habitat-based recovery criterion for juveniles identifies mangrove shorelines, non-mangrove nursery habitats, and freshwater flow regimes as important features for juveniles. As stated earlier, the habitat-based recovery objective for the species focuses on protecting areas that have been identified as important for juveniles (*i.e.,* nurseries). This objective also stresses the need to protect suitable habitats for juveniles to support their recruitment into the adult population. Juveniles are especially vulnerable to predation and starvation (Simpfendorfer and Wiley, 2005). Protection of the species' nurseries is crucial because the rebuilding of the population cannot occur without protecting the source (juvenile) population and its associated habitats. The recovery plan states that the recovery of the smalltooth sawfish depends on the availability and quality of nursery habitats and that protection of high-quality nursery habitats located in southwest Florida is essential to the species.

We conclude that facilitating recruitment into the adult population by protecting the species' juvenile nursery areas is the key conservation objective for the species that will be supported by the designation of critical habitat.

As stated in the recovery plan, smalltooth sawfish, like many sharks and rays, use specific habitats commonly referred to as nurseries or nursery areas. The recovery plan does not identify specific locations for nursery areas but does state that protecting nursery areas within southwest Florida is important to the recovery of the species. Nursery areas in addition to those in southwest Florida are also identified as important for recovery but locations of these additional areas were not specified. Thus, to identify specific areas that may meet the definition of critical habitat, we focused on specifically defining what constitutes a ''nursery'' area for smalltooth sawfish. We then identified those physical or biological features that are essential to the conservation of the species because they provide nursery area functions to the species in these areas.

We evaluated information in the recovery plan, historical information on habitat use by sawfish, and available encounter data and scientific literature, as well as sought expert opinion, to determine where or what constitutes a ''nursery area'' for the species. Historical information on the species only provides limited, mostly anecdotal, information on the location of juvenile

animals and does not discuss specific habitat usage patterns for them. Historical information indicates that juveniles were found in the lower reaches of the St. Johns River, the Indian River Lagoon, southwest Florida, and in areas along the Gulf coast between Florida and Texas. Using historic location information alone would not provide a reasonable basis for identification of nursery areas, given the qualitative nature of the information. Further, because most of these areas have been so physically altered, conditions present historically may not be present today, and thus features that may have provided nursery area functions in the past may be absent.

We then reviewed juvenile encounter data from the MML and FWRI databases to see whether the data alone indicates the existence of nursery areas. In summary, juvenile sawfish have been encountered in the Florida Panhandle, the Tampa Bay area, in Charlotte Harbor and the Caloosahatchee River, throughout the Everglades region and Florida Bay, the Florida Keys, and in scattered locations along the east coast of Florida south of the St. Johns River. However, apart from the Charlotte Harbor, Caloosahatchee River, and Ten Thousand Islands/Everglades (TTI/E) areas, many of these encounters are represented by a single individual in a single year.

Heupel *et al.* (2007) are critical of defining nursery areas for sharks and related species such as sawfish based solely on the presence of single occurrences of individual juvenile fish. Instead, these authors argue that nursery areas are areas of increased productivity which can be evidenced by natal homing or philopatry (use of habitats year after year) and that juveniles in such areas should show a high level of site fidelity (remain in the area for extended periods of time). Heupel *et al.* (2007) propose that shark nursery areas can be defined based on three primary criteria: (1) Juveniles are more common in the area than other areas, *i.e.,* density in the area is greater than the mean density over all areas; (2) juveniles have a tendency to remain or return for extended periods (weeks or months), *i.e.,* site fidelity is greater than the mean site fidelity for all areas; and (3) the area or habitat is repeatedly used across years whereas other areas are not. Scattered and infrequent occurrences of juveniles may indicate a lack of features that provide the necessary functions of a nursery area, and an area with only scattered or infrequent occurrences is not viewed by the authors as constituting a nursery area. Heupel *et al.* (2007) do not assume that that all sharks have nursery areas. The authors discuss that size-at-birth, rate of growth, time to maturity, litter size and frequency of breeding may be important factors dictating whether a shark species utilizes a nursery or not. Shark species with high growth rates, early maturity, and annual reproduction may not benefit as much from utilizing a nursery area. In contrast, the authors predict that species that have small size at birth and slow juvenile growth rates may be more likely to utilize nursery areas because they may be more susceptible to juvenile predation. We believe this paper provides the best framework for defining a ''nursery area'' for the smalltooth sawfish because they are small at birth, slow to mature, and existing data on tracked juveniles indicates their limited movements and ranges are directed toward avoiding predation by sharks foraging in deeper waters.

Using the Heupel *et al.* (2007) framework, we evaluated available juvenile encounter data for patterns in juvenile density, site fidelity, and repeat usage over years. Encounter data indicate three types of distributions of individual juvenile sawfish. The first group consists of scattered or single encounters. Encounters occurring in areas north of Charlotte Harbor, including a few in the panhandle of Florida and along the east coast of Florida, are included in this group. Encounters in these areas were scattered individual encounters, and no indication of repeat or multiple use of an area was evident. The second group of encounters consists of encounters that had multiple individuals in an area, but these encounters were geographically scattered and not repeated over years. These encounters occurred in the Florida Keys. Encounters in this group were located on different sides of various Keys, and no consistent or continuous pattern of repeat usage over years could be identified. In fact, in 2008, juvenile encounters were largely lacking throughout much of the Keys. The third group of encounters exhibit repeat usage of the same location by both single and multiple individuals, notably higher density of encounters than the other groups, and usage occurring year after year. These encounters occurred in areas from Charlotte Harbor south through the Everglades and Florida Bay.

Based on this analysis, the juvenile encounters in the third grouping discussed above, from Charlotte Harbor through the Everglades, are the only encounters that suggest these areas meet the nursery area criteria set forth by Heupel *et al.* (2007). Juvenile sawfish are more commonly encountered in these areas than in other areas, *i.e.*, density in the area is greater than the mean density over all areas, and the area is repeatedly used across years, whereas other areas are not. Available information about site fidelity of juveniles is limited and does not allow quantitative comparisons among the apparent nursery areas and all other areas. However, as discussed above, available information indicates that small and very small juveniles show high fidelity to shallow nearshore areas where they have been acoustically tracked. Data from juveniles tracked in the TTI/E area indicate they exhibit site fidelity and residency patterns between 15 and 55 days (Wiley and Simpfendorfer, 2007). Tracking data also suggest that juveniles exhibit specific movement patterns to avoid predation. A juvenile tracked in the Everglades National Park (ENP) in the Shark River spent its time moving between a shallow mud bank during low tide and mangrove roots during high tide (Simpfendorfer, 2003). Tracking data in Mud Bay (ENP) and Faka Union Bay (TTI) indicate juveniles remain in very shallow waters (0.9 ft (0.3 m)) over several weeks. Tracking data in the Charlotte Harbor Estuary is limited to the Caloosahatchee River and its adjacent canals. Juvenile tracking data from a 60 in (153 cm) juvenile in this area indicates that the animal remained within water depths less than 3 ft (0.9 m) along a highly modified shoreline (Simpfendorfer, 2003). Tracking data indicate the animal spent the majority of its time within man-made canals and adjacent to docks and marinas within the river.

Juvenile encounters outside of the area between Charlotte Harbor and the Everglades and Florida Bay do not fit the Heupel *et al.* framework and are not considered nursery areas at this time. Anecdotal information indicates that juvenile size animals have been encountered throughout portions of their historic range, and our recovery plan indicates that the establishment of nursery areas outside of southwest Florida is necessary for the species to recover. However, we cannot determine at this time the temporal or spatial distribution of future sawfish nursery areas. To more specifically delineate the boundaries of the nursery area or areas, we used Geographical Information System (GIS) software to map the density of all juvenile (length less than or equal to 200 cm) encounters (MML and FWRI) located along peninsular Florida within 500 m of land, documented between the years of 1998–

2008, with all years combined. Two density maps were generated to determine the mean density for all encounters and the density for all encounters excluding the research encounters. We used 1 km² density grids (same grid size and locations used by Simpfendorfer (2006)) to determine density levels and distributions. Juvenile densities were very similar between the two maps. However, to remove any bias from the research efforts, we used the juvenile density map excluding research effort. The overall nursery area between Charlotte Harbor and Florida Bay breaks naturally into two areas between Ten Thousand Islands and the Caloosahatchee River, based on a long stretch of sandy beach habitat in the Naples area that is lacking encounters with densities greater than the mean density overall. Next we mapped juvenile encounters in these two areas by year (1998–2008), to verify where repeat usage occurred over years. This produced several groupings of 1 km² grids with higher mean juvenile densities compared to mean juvenile density throughout peninsular Florida: 1 grouping within Charlotte Harbor, 1 grouping encompassing the Caloosahatchee River, and 3 groupings from the Ten Thousand Islands area through Florida Bay. We do not believe either the Charlotte Harbor Estuary or the TTI/E nursery areas should be subdivided into multiple smaller nursery areas for several reasons. First, the Heupel *et al.* (2007) framework does not indicate whether or how discrete nursery areas within a large area of juvenile use might be identified. Second, our knowledge about juvenile sawfish movements and ranges is very limited. Third, both areas consist of interconnected environmental systems and no environmental barriers exist to prohibit juvenile sawfish movement throughout the system. Finally, limiting nursery area boundaries to discrete habitat grids represented only by past encounters with juveniles would not best serve the conservation objective of facilitating population growth through juvenile recruitment. The specific boundaries of the two nursery areas were then derived by locating the nearest publicly identifiable boundary (*e.g.,* boundaries of established parks or preserves) or structure external to the outermost boundary of the juvenile density grids where the mean density is greater than the density in the surrounding areas. We identified reference points and lines on standard topographic maps of the areas to describe the specific boundaries of the nursery areas. The Charlotte Harbor Estuary nursery area includes Charlotte Harbor, Gasparilla Sound, Pine Island Sound, Matlacha Pass, San Carlos Bay, Estero Bay, and the Caloosahatchee River in Charlotte and Lee Counties. The nursery area is bounded by the Peace River at the eastern extent of the mouth of Shell Creek and the northern extent of the Charlotte Harbor Preserve State Park. At the Myakka River the nursery area is bounded by the SR–776 Bridge, in Gasparilla Sound by the SR–771 Bridge. The COLREGS–72 lines between Gasparilla Island, Lacosta Island, North Captiva Island, Captiva Island, Sanibel Island, and the northern point of Estero Island are used as the coastal boundary for the nursery area. The southern extent of the area is the Estero Bay Aquatic Preserve, which is bounded on the south by the Lee/Collier County line. Inland waters are bounded at SR–867 (McGregor Boulevard) from Punta Rassa Road to SR–80 near Fort Myers, then by SR–80 (Palm Beach Boulevard) to Orange River Boulevard, then by Orange River Boulevard to Buckingham Road, then by Buckingham Road to SR–80, and then following SR–80 until it is due south of the Franklin Lock and Dam (S–79), which is the eastern boundary on the Caloosahatchee River and a structural barrier for sawfish access. Additional inland water boundaries north and west of the lock are bounded by North Franklin Lock Road to North River Road, then by North River Road to SR–31, then by SR–31 to SR–78 near Cape Coral, then by SR–78 to SR–765, then by SR–765 to US–41, then by US–41 to US–17 (Marion Avenue) in Punta Gorda, then by US–17 to Riverside Drive, and then by Riverside Drive to the eastern extent of the Peace River. From the northern extent of the Charlotte Harbor Preserve State Park, inland waters are bounded westward along that extent to Harbor View Road, then by Harbor View Road to US–41, then by US–41 to SR–776, then by SR–776 to the Myakka River Bridge. The Charlotte Harbor nursery area is graphically displayed at the end of this document.

The Ten Thousand Islands/Everglades (TTI/E) nursery area is located within Collier, Monroe, and Miami-Dade Counties, Florida. The Everglades nursery area includes coastal and inshore waters within Everglades National Park (ENP), including Florida Bay, in the vicinity of Everglades City, within the Cape Romano-Ten Thousand Islands Aquatic Preserve (AP), and within the portion of Rookery Bay AP south of SR–92. The boundaries match the portion of Rookery Bay AP south of SR–92, and the Cape Romano-Ten Thousand Islands AP. The nursery area boundaries closely match the ENP boundaries with the following two exceptions: (1) The nursery area boundary connects points 55 and 57 of the critical habitat map for the ENP/TTI Unit, which extend beyond the ENP boundary to include accessible nursery areas; and (2) The nursery area boundary is located inside the ENP boundary between points 77 and 2 illustrated on the critical habitat map, omitting the northeastern portion of the ENP. The area is omitted because it is not accessible to sawfish. The TTI/E nursery area is graphically displayed at the end of this document.

Having identified the nursery areas, we next identified the physical or biological features found in these areas that are essential to the species' conservation because they provide nursery area functions to the sawfish.

Simpfendorfer (2006) analyzed MML's smalltooth sawfish encounter data to determine the importance of habitat factors to juveniles less than 79 in (200 cm) in length. Depth data are consistently reported by fishers and are accurately reported because most fishers use depth finders, so depth data were extracted from the encounter database. Simpfendorfer examined the proximity of encounters to habitat features that could be evaluated from geographic information system (GIS) databases. These features were: mangroves (GIS mangrove coverages do not distinguish between mangrove species), seagrasses, freshwater sources, and the shoreline. Simpfendorfer (2006) used GIS shapefiles for the features to determine the shortest distance from the encounter to the feature. The encounter data were converted to encounter density by gridding the data, and the results of the analysis were then used in a habitat suitability model. The model indicates that water depths less than 3 ft, mangrove buffers or shorelines, and euryhaline habitat areas (areas with wider salinity ranges and receiving freshwater input) have the strongest correlation with juvenile smalltooth sawfish encounters. Additionally, most encounters were documented within a distance of 1641 ft (500 m) from shore. The Simpfendorfer (2006) model suggests that areas of high suitability for juvenile sawfish contain all three of these features. Large areas coded as ''highly suitable'' habitat for juveniles are located in the areas we determined meet the Heupel *et al.* (2007) framework criteria for a nursery area, as applied to the sawfish.

Based on the natural history of the species, its habitat needs and the key conservation objective of protecting

juvenile nursery areas, two physical and biological features are identified as essential to the conservation of the smalltooth sawfish because they provide nursery area functions. The two features are: red mangroves and shallow euryhaline habitats characterized by water depths between the Mean High Water line and 3 ft (0.9 m) measured at Mean Lower Low Water (MLLW). As discussed above, the prop root system and the location of red mangroves (close to shore), and shallow water depths provide refuge from predators. Red mangroves and shallow mud or sand bank euryhaline habitats are also highly productive and provide ample, diverse foraging resources. Among elasmobranchs, smalltooth sawfish are one of the few species known to inhabit euryhaline habitats, which may provide several benefits for the species. Euryhaline habitats are very productive environments that support an abundance and variety of prey resources that can only be accessed by species that inhabit their systems. Additionally, the risk of predation may be reduced in these euryhaline habitats because very few species of sharks (potential predators) are capable of inhabiting these habitats.

Based on the best available information, we conclude red mangroves and adjacent shallow euryhaline habitats and the nursery area functions they provide facilitate recruitment of juveniles into the adult population. Thus, these features are essential to the conservation of the smalltooth sawfish. While some studies cite 1.0 meter as the preferred depth limit, others (Simpfendorfer 2006), cite 3.0 ft. For this rule, the water depth feature will be defined as 3 ft (0.9 m) because the NOAA Navigational Charts depth contour lines and most GIS databases use English units of measure.

Based upon the best available information, we cannot conclude that any other sufficiently definable features of the environment in the two nursery areas, other than red mangroves and adjacent shallow euryhaline habitats, are essential to smalltooth sawfish conservation.

Based on the boundaries of the two nursery areas and GIS data information on the location of the features, the Charlotte Harbor Estuary and the TTI/E nursery areas contain the features essential to the conservation of smalltooth sawfish because they facilitate recruitment into the adult population. In this rule, we designate these two specific areas, referred to as critical habitat ''units,'' as critical habitat for the smalltooth sawfish.

There are areas outside of the two nursery areas, including areas on the east and west coasts of Florida that contain some of the same features identified as essential features in our two nursery areas. Habitat areas outside the specific nursery areas also meet Simpfendorfer's (2006) classification of highly suitable habitat for juveniles because they contain these features, notably areas in Tampa Bay and in the Indian River Lagoon. Because the features are essential to the conservation of the species based on the nursery functions they provide, we determined that these features are essential to the conservation of smalltooth sawfish only when present in nursery areas. None of these other areas meet the Heupel *et al.* (2007) definition of a nursery area. Encounters in these areas are rare and no pattern of repeat usage could be identified. Lack of repeat or high-density usage of these other areas by juveniles may be a function of the limited current size of a reproducing population that does not yet need additional nursery areas. Even so, we have no basis to conclude that other areas, even those containing shallow euryhaline habitats and mangroves, will be used as nursery areas in the future. Nursery areas cannot be located based solely on the co-location of shallow depths and euryhaline salinity regimes, and juveniles are not commonly or repeatedly found everywhere these features are present. Mangroves may also not be determinative of nursery area function for the sawfish; the Florida Keys contain mangrove resources, yet juvenile sawfish use of the Keys as evidenced by encounter data has been highly variable, including near absence in certain recent years. Additionally, historic anecdotal information on locations of small animals suggests they were found in the lower St. Johns River, which does not support mangroves. Based on the best available scientific information, we identified two specific areas for the species where red mangroves and adjacent shallow euryhaline habitats provide nursery functions and are therefore essential to the conservation of the species. We therefore designate the Charlotte Harbor Estuary and TTI/E Units.

The boundaries of the two specific areas are the same as the Charlotte Harbor Estuary and TTI/E nursery area boundaries. GIS bathymetry data, mangrove coverage data, and salinity data were used to verify the distribution of the essential features within the nursery areas. We have identified reference points and lines on standard topographic maps of the areas to describe the specific boundaries of the two units in the regulatory text.

The essential features can be found unevenly dispersed throughout the two areas. The limits of available information on the distribution of the features, and limits on mapping methodologies, make it infeasible to define the specific areas containing the essential features more finely than described herein. Existing man-made structures such as boat ramps, docks, pilings, maintained channels or marinas do not provide the essential features that are essential for the species' conservation. Areas not accessible (*i.e.,* areas behind water control structures existing at the time of this final designation that prevent sawfish passage) to sawfish are not part of this designation. As discussed here and in the supporting impacts analysis, given the specificity of the essential features, determining whether an action may affect one or both of the features can be accomplished without entering into an ESA section 7 consultation.

Unoccupied Areas

ESA section 3(5)(A)(ii) further defines critical habitat to include specific areas outside the geographical area occupied if the areas are determined by the Secretary to be essential for the conservation of the species. Regulations at 50 CFR 424.12(e) specify that we shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. Habitat based recovery criteria in the smalltooth sawfish recovery plan suggest areas outside the current occupied range may be important to the species' recovery. However, based on the best available information we cannot identify unoccupied areas that are currently essential to the conservation of the species. If information on essential features or essential areas in the species' unoccupied range becomes available, we will consider revising this critical habitat designation.

Special Management Considerations or Protection

Specific areas within the geographical area occupied by a species may be designated as critical habitat only if they contain physical or biological features essential to the conservation of the species that ''may require special management considerations or protection.'' A few courts have interpreted aspects of this statutory requirement, and the plain language

aids in its interpretation. For instance, the language clearly indicates the features, not the specific area containing the features, are the focus of the ''may require'' provision. Use of the disjunctive ''or'' also suggests the need to give distinct meaning to the terms ''special management considerations'' and ''protection.'' Generally speaking, ''protection'' suggests actions to address a negative impact or threat of a negative impact. ''Management'' seems plainly broader than protection, and could include active manipulation of a feature or aspects of the environment. Two Federal district courts, focusing on the term ''may,'' ruled that features can meet this provision based on either present requirements for special management considerations or protections, or on possible future requirements. See *Center for Biol. Diversity* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003); *Cape Hatteras Access Preservation Alliance* v. *Dep't of the Interior,* 344 F. Supp. 108 (D.D.C. 2004). The Arizona district court ruled that the provision cannot be interpreted to mean that features already covered by an existing management plan must be determined to require ''additional'' special management, because the term ''additional'' is not in the statute. Rather, the court ruled that the existence of management plans may be evidence that the features in fact require special management. *Center for Biol. Diversity* v. *Norton,* at 1096–1100. NMFS' regulations define ''special management considerations or protections'' to mean ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species'' (50 CFR 424.02(j)).

Based on the above, we evaluated whether the essential features in the two sawfish nursery areas may require special management considerations or protections by evaluating four criteria:

a. Whether there is presently a need to manage the feature;

b. Whether there is the possibility of a need to manage the feature;

c. Whether there is presently a negative impact on the feature; or

d. Whether there is the possibility of a negative impact on the feature.

In evaluating present or possible future management needs for the features, we recognized that the features in their present condition must be the basis for a finding that these are essential to the smalltooth sawfish's conservation. In addition, the needs for management evaluated in (a) and (b) were limited to managing the features for the conservation of the species. In evaluating whether the essential features meet either criterion (c) or (d), we evaluated direct and indirect negative impacts from any source (*e.g.,* human or natural). However, we only considered the criteria to be met if impacts affect or have the potential to affect the aspect of the feature that makes it essential to the conservation of the species. We also evaluated whether the features met the ''may require'' provision separately for the two ''specific areas'' proposed for designation.

Red mangroves and adjacent shallow euryhaline habitats are both susceptible to impacts from human activities because they are located in areas where urbanization occurs. The smalltooth sawfish status review (NMFS 2000) states that habitat destruction is one of the key factors affecting the present distribution of the species. The continued urbanization of the southeastern U.S. has resulted in substantial habitat losses for the species. Coastal areas including the two nursery areas are subject to various impacts from activities including, but not limited to, dredging and disposal activities, coastal maritime construction, land development and associated runoff, alteration of natural freshwater discharges to coastal habitats, and installation of various submerged pipelines. The impact from these activities combined with natural factors (*e.g.,* major storm events) can significantly affect the quality and quantity of the two features listed above and their ability to provide nursery area functions (*i.e.,* refuge from predators and abundant food resources), to juvenile smalltooth sawfish to facilitate recruitment into the population. Dredging projects modify water depths to accommodate navigation needs, mangroves are removed to construct docks and various maritime structures, and water control structures are installed to modify water flows in various areas, which can alter salinity regimes downstream. Based on our past section 7 consultation database records we know that coastal areas in southwest Florida will continue to experience impacts from coastal construction projects and that the essential features will continue to experience negative impacts in the future. Based on our past consultation history, fewer Federal actions may affect habitats in the TTI/E Unit than in the Charlotte Harbor Estuary Unit, because much of the TTI/E Unit is held in public ownership by the Department of the Interior. However, coastal storm impacts to mangroves, salinity, and water depth still occur within this area, and salinity regimes as well as mangroves in this area may be altered in the future by projects implemented under the Comprehensive Everglades Restoration Project. Thus, the two essential features currently needed and will continue to require special management and protection in both of the two specific areas.

Activities That May Be Affected by the Designation

Section 4(b)(8) of the ESA requires that we describe briefly and evaluate, in any proposed or final regulation to designate critical habitat, those activities that may destroy or adversely modify such habitat or that may be affected by such designation. A variety of activities may affect critical habitat that, when carried out, funded, or authorized by a Federal agency, will require an ESA section 7 consultation. Such activities include, but are not limited to, dredging and filling, other in-water construction (docks, marinas, boat ramps, *etc.*), installation of water control structures, and hard clam aquaculture activities. Notably, all the activities identified that may affect the critical habitat may also affect the species itself, if present within the action area of a proposed Federal action.

We believe this final critical habitat designation will provide Federal agencies, private entities, and the public with clear notification of the nature of critical habitat for smalltooth sawfish and the boundaries of the habitat. This designation will allow Federal agencies and others to evaluate the potential effects of their activities on critical habitat to determine if ESA section 7 consultations with NMFS are needed, given the specific definition of the two essential features. Consistent with recent agency guidance on conducting adverse modification analyses (NMFS, 2005), we will apply the statutory provisions of the ESA, including those in section 3 that define ''critical habitat'' and ''conservation,'' to determine whether a proposed future action might result in the destruction or adverse modification of critical habitat.

Application of ESA Section 4(a)(3)(B)(i)

Section 4(a)(3)(B) prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP), if we determine that such a plan provides a benefit to the sawfish species (16 U.S.C. 1533(a)(3)(B)). We solicited information from DOD and received responses indicating that no DOD facilities or managed areas are located

within the specific areas identified as critical habitat.

Application of ESA Section 4(b)(2)

The foregoing discussion described the specific areas within U.S. jurisdiction that fall within the ESA section 3(5) definition of critical habitat because they contain the physical and biological features essential to the sawfish's conservation that may require special management considerations or protection. Before including areas in a designation, section 4(b)(2) of the ESA requires us to consider the economic, national security, and any other relevant impacts of designation of any particular area. Additionally, we have the discretion to exclude any area from designation if we determine the benefits of exclusion (that is, avoiding some or all of the impacts that would result from designation) outweigh the benefits of designation based upon the best scientific and commercial data available. We may not exclude an area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any particular area under any circumstances.

The analysis of impacts below summarizes the comprehensive analysis contained in our Final 4(b)(2) Report (NMFS, 2009), considering the economic, national security, and other relevant impacts that we projected would result from including the two units in the critical habitat designation. This consideration informed our decision on whether to exercise our discretion to exclude particular areas from the designation. Both positive and negative impacts were identified and considered (these terms are used interchangeably with benefits and costs, respectively). Impacts were evaluated in quantitative terms where feasible, but qualitative appraisals were used where that was more appropriate to particular impacts.

The ESA does not define what ''particular areas'' means in the context of section 4(b)(2), or the relationship of particular areas to ''specific areas'' that meet the statute's definition of critical habitat. As there was no biological basis to subdivide the two specific critical habitat units into smaller units, we treated these units as the ''particular areas'' for our initial consideration of impacts of designation.

Impacts of Designation

The primary impacts of a critical habitat designation result from the ESA section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat. Determining these impacts is complicated by the fact that section 7(a)(2) also requires that Federal agencies ensure their actions are not likely to jeopardize the species' continued existence. An incremental impact of designation is the extent to which Federal agencies modify their proposed actions to ensure they are not likely to destroy or adversely modify the critical habitat beyond any modifications they would make because of listing and the jeopardy prohibition. When a modification would be required due to impacts to both the species and critical habitat, the impact of the designation may be co-extensive with the ESA listing of the species. Our Draft 4(b)(2) Report projected administrative and project modification costs that would be incremental impacts of the designation, based on our consultation history for the species and on the assumption that formal consultations would not be required to avoid adverse effects to the species itself. Past consultations on projects in the range of the species have all concluded the species was not likely to be adversely affected, due to the mobility and perceived lack of specific habitat use by the species. However, recent section 7 consultations have determined that it may not be appropriate to conclude that juvenile sawfish forced to vacate nursery habitat due to project activities will not be harmed by these effects, given juveniles' specific habitat requirements and high site fidelity. In some recent consultations, limitations on removal of red mangroves and shallow habitat areas were implemented to avoid take of juvenile sawfish using project areas. Because such projects are directly impacting features that have been identified as critical habitat and may be indirectly affecting the listed species, it is possible that critical habitat considerations will be the more important factor in shaping future consultations. Thus, in the Final 4(b)(2) Report, we have retained the conservative assumption that the identified costs and benefits will be incremental impacts of the critical habitat designation.

The Final 4(b)(2) Report begins with a description of the projected future Federal activities that would trigger section 7 consultation requirements because they may affect one or both of the essential features. Additionally, the report describes the project modifications we identified that may reduce impacts to the essential features. Positive impacts that may arise from avoiding destruction or adverse modification of the species' habitat, and education of the public to the importance of an area for species conservation, are also described. The report discusses the lack of expected impacts on national security and other relevant impacts. This report is available on NMFS' Southeast Region Web site at *http://sero.nmfs.noaa.gov/pr/SmalltoothSawfish.htm.*

Economic Impacts

As discussed above, economic impacts of the critical habitat designation result through implementation of section 7 of the ESA in consultations with Federal agencies to ensure their proposed actions are not likely to destroy or adversely modify critical habitat. These economic impacts may include both administrative and project modification costs; economic impacts that may be associated with the conservation benefits of the designation are characterized as other relevant impacts and described later.

Because the smalltooth sawfish has been listed for 5 years, a consultation history exists for the species that allowed formulating predictions about the types of future Federal activities that might require section 7 consultation in the next 10 years (the typical time period for section 4(b)(2) reports). We examined our consultation records compiled in our Public Consultation Tracking System (PCTS) database, to identify types of Federal activities that have the potential to adversely affect either both the smalltooth sawfish and its critical habitat, or just the critical habitat (actions that require consultation due to effects solely on the fish are not impacts of the designation of critical habitat). The PCTS database contains information dating from 1997, providing a consultation history for sawfish and co-located listed species spanning 10 years. Consultation data for smalltooth sawfish began when the species was listed in 2003, and available information indicates that the number of consultations increased over time as Federal agencies recognized those projects that might affect the species and thus require consultation. Based on our outreach efforts to Federal agencies about the need to consult on the species, we believe that our data from 2005 to the present represents the level of future actions that may trigger consultation in the two areas designated as critical habitat from which to estimate the number of future actions that may trigger consultation. Thus we extrapolated the number of consultations that occurred over a three-year period between 2005 and the

present that required consultation due to the presence of the sawfish into the number of future consultations. We also considered information provided by Federal action agencies on future consultations.

We identified four categories of activities that would require consultation due to potential impacts to one or both of the essential features: marine construction activities that require a Federal permit (*e.g.,* docks, piers, boat ramps, dredging, shoreline stabilization, *etc.*); general permits (including shellfish aquaculture activities) authorizing specified categories and locations of construction activities without the need for individual project-specific permits; water control structure repair and replacement; and road/bridge expansions, repairs and removals. No categories of future Federal actions are expected to require consultation due solely to impacts on one or both of the critical habitat features; all categories of projected future actions may trigger consultation because they have the potential to adversely affect the essential features and the species itself. Therefore, we do not predict this designation will result in an increase in the number of consultations that would be required due solely to the presence of the species in the two specific units. Moreover, fewer than half of the past projects that required consultation due to effects on sawfish had actual impacts on one or both of the features determined as critical habitat. A total of 77 consultations in the Charlotte Harbor Estuary Unit and a total of 8 consultations in the TTI/E Unit are predicted over the next ten years due to the designation. The ACOE is projected to be the Federal action agency for the majority of future projects requiring consultation due to adverse effects to critical habitat in both units; the U.S. Coast Guard and/or the Federal Highways Administration may be co-action agencies that may also be involved in three consultations in the Charlotte Harbor Estuary Unit over the next ten years. Although the TTI/E unit largely overlaps the Everglades National Park, due to limitations on habitat-altering activities in the park, we project only one consultation will be required with the Department of Interior (DOI) over the next 10 years as a result of this designation.

As explained above, to be conservative and avoid underestimating impacts of the designation, we assumed that although all future projects will trigger consultation due to both the species and the critical habitat, the consultations will be formal and require a biological opinion based on potential adverse impacts on one or both of the essential features of the critical habitat. Thus, we have estimated the maximum potential incremental administrative costs of each consultation that will result from the designation, as the difference in average costs of an informal and formal consultation. We have estimated the total costs for each unit as a range, reflecting the possible range in complexity and cost of consultations. The maximum potential incremental administrative costs for the Charlotte Harbor Estuary Unit are estimated to range from $1,039,500 to $1,386,000 (depending on complexity) over the 10-year planning period. The maximum potential incremental administrative costs for the TTI/E Unit are estimated to range from $108,000 to $144,000 (depending on complexity) over the 10-year planning period.

We next considered the range of modifications we may recommend to avoid adverse modification from projected future activities in the smalltooth sawfish critical habitat. We assumed in our analysis that the costs of project modifications to avoid destroying or adversely modifying critical habitat would not be costs that are co-extensive with the listing of the species. Although recently completed consultations indicate that project modifications may be required in the future to avoid take of juvenile sawfish using their nursery areas, as discussed above, it is conceivable that critical habitat considerations will be the more important factor shaping the outcome of future consultations and selection of project modifications. Similarly, we assumed that the costs of project modifications required to avoid destruction or adverse modification of critical habitat will not be costs that are co-extensive with another existing regulatory requirement. Though there are numerous existing Federal, State, or local laws and regulations that protect natural resources including the essential features to some degree, none of these laws focuses on avoiding the destruction or adverse modification of these features, which provide sawfish nursery area functions, thus facilitating sawfish recovery. As a result, we believe the designation will provide unique, additional protections to the critical habitat features that would result in project modifications where existing laws would not require such modifications.

We identified eight potential project modifications that we may recommend during section 7 consultation to avoid or reduce impacts to the essential features. To be conservative in estimating impacts, we assumed that project modifications would be recommended to address adverse effects from all projected future agency actions requiring consultation. Although we made the assumption that all potential project modifications would be recommended by NMFS, not all of the modifications identified for a specific category of activity would be necessary for an individual project, but we are not able to identify the exact modification or combinations of modifications that would be required for all future actions. Conversely, more than one project modification may be required for individual future projects where both essential features may be adversely affected by a project, and multiple project modifications are required to avoid such impacts.

Table 1 provides a summary of the estimated costs, where possible, of individual project modifications. The Final 4(b)(2) Report provides a detailed description of each project modification, actions for which it may be recommended, and whether it may be useful in avoiding adverse impacts to one or both of the essential features.

TABLE 1—SUMMARY OF TYPES OF POTENTIAL PROJECT MODIFICATIONS

Project modification	Cost	Unit	Range	Approx. totals
Project Relocation	Undeterminable	N/A	N/A	N/A.
Horizontal Directional Drilling (HDD).	$1.39–2.44 million	per mile	0.2–31.5 Miles	$278,000–$76,900,000.
Restriction of Utility/Road Corridor Widths.	Roadway Retained Sides, 2 Lane = $1,875. Roadway Retained Sides, 4 Lane = $2,150.	Linear Foot	N/A	$1,875–$5,050 per linear foot.

TABLE 1—SUMMARY OF TYPES OF POTENTIAL PROJECT MODIFICATIONS—Continued

Project modification	Cost	Unit	Range	Approx. totals
	Roadway Bridge, 2 Lane = $3,370. Roadway Bridge, 4 Lane = $5,050.			
Alternative Shoreline Stabilization Methods.	Undeterminable	N/A	N/A	N/A.
Limitations on Dock Widths and Sizes.	Undeterminable	Sq. Foot	N/A	N/A.
Limitations/Restrictions on Modifying Freshwater Flow.	Undeterminable	N/A	N/A	N/A.
Sediment and Turbidity Controls	Staked Silt Fence = $2 Floating Turbidity Barrier = $12	Linear Foot	N/A	$2–$12 per linear foot.
Conditions Monitoring	Undeterminable	N/A	N/A	N/A.

Note: Where information was available, the estimated ranges (extents) of the impacts are included.

National Security Impacts

Previous critical habitat designations have recognized that impacts to national security may result if a designation would trigger future ESA section 7 consultations because a proposed military activity ''may affect'' the physical or biological feature(s) essential to the listed species' conservation. Anticipated interference with mission-essential training or testing or unit readiness, either through delays caused by the consultation process or through requirements to modify the action to prevent adverse modification of critical habitat, has been identified as a negative impact of critical habitat designations (see, *e.g.,* Proposed Designation of Critical Habitat for the Pacific Coast Population of the Western Snowy Plover, 71 FR 34571, 34583 (June 15, 2006); and Proposed Designation of Critical Habitat for Southern Resident Killer Whales; 69 FR 75608, 75633 (December 17, 2004)).

These past designations have also recognized that national security impacts do not result from a critical habitat designation if future ESA section 7 consultations would be required for a jeopardy analysis even if no critical habitat was designated, in which case the critical habitat designation would not add new burdens beyond those related to the jeopardy consultation.

On April 11, 2008, we sent a letter to DOD requesting information on national security impacts of the proposed designation. We received responses from the Departments of the Army, Navy, and Air Force indicating that they have no facilities or managed areas located within the proposed critical habitat areas. Thus, consultations with respect to activities on DOD facilities or training are unlikely to be triggered as a result of the final critical habitat designation, and no national security impacts are anticipated as a result of this critical habitat rule.

Other Relevant Impacts

Past critical habitat designations have identified three broad categories of other relevant impacts: educational awareness benefits, conservation benefits, both to the species and to society as a result of the avoidance of destruction or adverse modification of critical habitat, and impacts on governmental or private entities that implement existing management plans in the areas covered by the designation. Our Final 4(b)(2) Report discusses these impacts of designating the specific areas as critical habitat for smalltooth sawfish.

As summarized in the Final 4(b)(2) Report, there are potential educational benefits resulting from the designation. Particularly in Florida, the designation may expand the awareness raised by the listing of the smalltooth sawfish. Mangrove shoreline areas are often used for recreational activities such as kayaking, and provide habitat for viewable wildlife. Additionally, Federal and State protected areas, such as Everglades National Park, Rookery Bay National Estuarine Preserve, Cape Romano-Ten Thousand Islands Aquatic Preserve, and Collier-Seminole State Park may benefit from the added awareness of the endangered smalltooth sawfish within their boundaries, and from the protection critical habitat designation affords.

Implementation of ESA Section 7 to avoid destruction or adverse modification of critical habitat is expected to increase the probability of recovery for listed species. In addition to contributing to sawfish recovery, benefits associated with project modifications required through section 7 consultation to minimize or avoid the destruction or adverse modification of the essential features, would include minimizing or avoiding loss of the ecosystem services that these features provide. By definition, the physical and biological features are ''essential to the conservation'' of the smalltooth sawfish; in other words, conservation of the species as defined in the ESA is not possible without the presence and protection of the features. As discussed above, we have determined that the two areas included in the critical habitat designation are juvenile nursery areas. The essential features of these areas, red mangroves with their prop root systems, and adjacent shallow euryhaline habitats, provide protection from predators and abundant and diverse prey resources, and thus provide key nursery area functions for the sawfish.

Because the smalltooth sawfish has limited commercial and recreational value, and because the species' recovery is expected to take decades, we can predict no direct or indirect monetary value that may result from the designation because of its contribution to the recovery of the smalltooth sawfish. However, as discussed in the following paragraphs, other benefits are expected to accrue to society in the course of protecting the essential features of the sawfish's critical habitat from destruction or adverse modification.

Mangrove ecosystems provide a range of important uses and services to society. As these benefits currently exist, we do not interpret them as resulting from the critical habitat designation per se. However, protection of the critical habitat from destruction or adverse modification may at a minimum prevent loss of the benefits provided by these resources, and would contribute to any benefits associated with increased future abundance of the smalltooth sawfish as it recovers. As we discuss in the Final 4(b)(2) Report, we believe that the critical habitat designation will provide unique, additional protections to mangroves in

the areas covered by the designation, relative to existing laws and regulations.

The additional protection of mangroves offered through the critical habitat designation ensures that mangroves in the areas covered by the final designation can continue to function as critical components of the ecosystem. The Final 4(b)(2) Report discusses benefits of mangroves including benefits to biodiversity, benefits to fisheries, benefits to air and water quality protection, shoreline protection, and benefits to recreation and tourism. Most of these benefits are described in non-monetary metrics. Where economic values are presented, we note that they are derived from a variety of sources and studies and are provided for context in support of our conclusion that non-negligible economic benefits are expected to result from the designation, because protection of the critical habitat from destruction or adverse modification is expected at minimum to prevent loss of existing benefits the habitat provides.

While the shallow water euryhaline habitat feature offers important ecosystem services to various juvenile fish, invertebrates, and benthic and epibenthic organisms as described in the Final 4(b)(2) Report, their conservation benefits are interrelated with the benefits offered by conservation of red mangroves. Consequently, the Final 4(b)(2) Report focuses on the benefits of mangroves, and the interrelated benefits of the shallow water euryhaline habitat are not discussed in detail.

Very little impact on entities responsible for natural resource management or conservation plans that benefit listed species, or on the functioning of those plans, is predicted to result from the critical habitat designation in the areas covered by the plans. Though the TTI/E unit largely overlaps with the Everglades National Park, our discussions with park managers identify only one park management project that will require consultation during the next 10 years.

Synthesis of Impacts Within the Specific Areas

For the reasons set forth below, based on our consideration of positive and negative economic, national security and other relevant impacts predicted to result from the designation, we do not exercise our discretion to exclude all or any part of either the Charlotte Harbor Estuary Unit or the Ten Thousand Islands/Everglades Unit from the designation. No impacts on national security are projected to result from the designation. Very little negative impact on existing resource management activities is projected to result from the designation. Negative economic impacts resulting from section 7 consultation requirements are projected to be limited. A total of 85 Federal actions over the next ten years are projected to require section 7 consultation to address predicted adverse effects to one or both of the physical or biological features of designated critical habitat. Seventy-seven of these actions are projected for the Charlotte Harbor Estuary Unit, or approximately eight per year on average. Only eight future consultations are projected to be required in the TTI/E Unit over the next ten years due to impacts on the critical habitat features, or approximately one per year on average. All of these projects would have required consultation due to the listing of the sawfish, even in the absence of the designation. We have projected that incremental section 7 costs will be associated with the designation, in the form of increased administrative costs of more complex, formal consultations, and in project modification costs. Estimated costs for these project modifications are provided in the Final 4(b)(2) Report, though we could not predict the total cost of modifications resulting from the designation given the lack of information on project design and locations. However, we may have overestimated impacts in our assumption that all modification costs will be necessary and will be incremental impacts of the designation rather than baseline impacts of existing State, local or other Federal laws or regulations that protect natural resources or co-extensive impacts of the listing of the sawfish. We do not project that any required project modifications will have secondary impacts on local or regional economies. The majority of project modifications are projected to be recommended to avoid adverse effects to the red mangroves in the critical habitat areas. We expect that the designation will provide unique, additional protections to mangroves because existing laws and regulations in these areas do not avoid the destruction or adverse modification of mangroves for the purpose of facilitating recovery of the sawfish. The final designation is expected to, at minimum, prevent the loss of societal benefits that mangroves and shallow euryhaline habitats currently provide in the two specific areas included in the proposal.

Critical Habitat Designation

We are designating approximately 840,472 acres in two units of critical habitat occupied by the U.S. DPS of smalltooth sawfish at the time of its listing. The two units determined for critical habitat designations are: the Charlotte Harbor Estuary Unit, which comprises approximately 221,459 acres of habitat; and the Ten Thousand Islands/Everglades Unit (TTI/E), which comprises approximately 619,013 acres of habitat. The two units are located along the southwestern coast of Florida between Charlotte Harbor and Florida Bay.

These specific areas contain the following physical and biological features that are essential to the conservation of this species and that may require special management considerations or protection: red mangroves and shallow euryhaline habitats characterized by water depths between the MHW line and 3 ft (0.9 m) measured at Mean Lower Low Water (MLLW). No unoccupied areas are included in the final designation of critical habitat.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005.

To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the scientific information included in the proposed critical habitat designation, including the Draft 4(b)(2) Report and incorporated the peer review comments prior to dissemination of the proposed rulemaking. The peer review comments and our responses are summarized above.

Classification

The State of Florida determined this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management programs of Florida. This determination is required under section 307 of the Coastal Zone Management Act.

This final rule has been determined to be significant under Executive Order (E.O.) 12866. We have integrated the regulatory principles of the E.O. into the development of this rule to the extent consistent with the mandatory duty to

designate critical habitat, as defined in the ESA.

We prepared a final regulatory flexibility analysis (FRFA) pursuant to section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), which describes the economic impact this rule may have on small entities.

This rule may affect small businesses, small nonprofit organizations, and small governmental jurisdictions that engage in activities that would affect the essential features identified in this designation, if they receive funding or authorization for such activity from a Federal agency. Such activities would trigger ESA section 7 consultation requirements, and potential modifications to proposed activities may be required to avoid destroying or adversely modifying the critical habitat. The consultation record from which we have projected likely actions occurring over the next ten years indicates that applicants for Federal permits or funds may include small entities. For example, marine contractors may require ACOE permits for dock construction; some of these contractors may be small entities. According to the Small Business Administration, businesses in the Heavy and Civil Engineering Construction subsector (NAICS Code 237990), which includes firms involved in marine construction projects such as breakwater, dock, pier, jetty, seawall and harbor construction, must have average annual receipts of no more than $31 million to qualify as a small business (dredging contractors that perform at least 40% of the volume dredged with their own equipment, or equipment owned by another small concern are considered small businesses if their average annual receipts are less than or equal to $18.5 million). Our consultation database does not track the identity of past permit recipients or whether the recipients were small entities, so we have no basis to determine the percentage of grantees or permittees that may be small businesses in the future.

Small businesses in the tourist and commercial fishing industries may benefit from the rule because avoiding the destruction or adverse modification of the critical habitat features, particularly mangroves, is expected to at minimum prevent loss of current direct and indirect use of, and values derived from, these habitats within the areas included in the designation.

A review of historical ESA section 7 consultations involving projects in the areas designated are described in Section 3.2.2 of the Final 4(b)(2) Report prepared for this rulemaking. We projected that, on average, about eight Federal projects with non-Federal grantees or permittees will be affected by implementation of the critical habitat designation, annually, across both areas included in the critical habitat designation. Some of these grantees or permittees could be small entities, or could hire small entities to assist in project implementation. Historically, these projects have involved dock/pier construction and repair, water control structure installation or repair, bridge repair and construction, dredging, cable installation, and shoreline stabilization. Potential project modifications we have identified that may be required to prevent these types of projects from adversely modifying critical habitat include: project relocation; environmental conditions monitoring; horizontal directional drilling; road/utility corridor restrictions; alternative shoreline stabilization methods; dock size and width limits; restrictions on structures that modify freshwater flows; and sediment and turbidity control measures. See Table 15 of the Final 4(b)(2) Report.

Even though we cannot determine relative numbers of small and large entities that may be affected by this rule, there is no indication that affected project applicants would be limited to, nor disproportionately comprised of, small entities.

It is unclear whether small entities would be placed at a competitive disadvantage compared to large entities. However, as described in the Final 4(b)(2) Report, consultations and project modifications will be required based on the type of permitted action and its associated impacts on the essential critical habitat feature. Because the costs of many potential project modifications that may be required to avoid adverse modification of critical habitat are unit costs such that total project modification costs would be proportional to the size of the project, it is not unreasonable to assume that larger entities would be involved in implementing the larger projects with proportionally larger project modification costs.

It is also unclear whether the rule will significantly reduce profits or revenue for small businesses. As discussed throughout the Final 4(b)(2) Report, we made assumptions that all future consultations will be formal, that all will require project modifications, and that all costs of project modifications will be incremental impacts of the designation and not a requirement of other existing regulatory requirements including ESA requirements for protection of the sawfish itself. These assumptions likely overestimate the impacts of the designation. In addition, as stated above, though it is not possible to determine the exact cost of any given project modification resulting from consultation, the smaller projects most likely to be undertaken by small entities would likely result in relatively small modification costs.

There are no record-keeping requirements associated with the rule. Similarly, there are no reporting requirements other than those that might be associated with reporting on the progress and success of implementing project modifications. However, third party applicants or permittees would be expected to incur incremental costs associated with participating in the administrative process of consultation along with the permitting Federal agency, beyond the baseline administrative costs that would be required for consultations based on the sawfish itself. Estimates of the cost to third parties from consultations were developed from the estimated Section 7 costs identified in the *Economic Analysis of Critical Habitat Designation for the Gulf Sturgeon* (IEc 2003) inflated to 2009 (March) dollars. The maximum potential incremental third party cost for each consultation would be the difference between the cost of an informal consultation required solely for the presence of the sawfish and a formal consultation required to avoid destroying or adversely modifying the critical habitat ($2,000 difference per low complexity consultation and $1,600 difference per high complexity consultation). The total impact on third party costs would be the incremental cost of the formal consultation multiplied by the increased number of formal consultations. The maximum incremental third party costs for both Units are estimated to range from $136,200 to $170,000 (depending on complexity) over the 10-year planning period.

No Federal laws or regulations duplicate or conflict with the final rule. Existing Federal laws and regulations overlap with the final rule only to the extent that they provide protection to natural resources including mangroves generally. However, no existing laws or regulations specifically prohibit destruction or adverse modification of critical habitat for, and focus on the recovery of, the smalltooth sawfish.

The alternatives to the designation considered consisted of three alternatives: no-action, our preferred alternative, and an alternative with varying numbers of units. NMFS would not designate critical habitat for the smalltooth sawfish under the no action (status quo) alternative. Under this

alternative, conservation and recovery of the listed species would depend exclusively upon the protection provided under the ''jeopardy'' provisions of Section 7 of the ESA and implementation of the recovery plan. Under the status quo, there would be no increase in the number of ESA consultations or project modifications in the future that would not otherwise be required due to the listing of the smalltooth sawfish. However, the physical and biological features forming the basis for our final critical habitat designation are essential to sawfish conservation, and conservation for this species will not succeed without the availability of these features. Thus, the lack of protection of the critical habitat features from adverse modification could result in continued declines in abundance of smalltooth sawfish, and loss of associated values sawfish provide to society. Further, this alternative is not consistent with the requirement of the ESA to designate critical habitat to the maximum extent prudent and determinable.

Under the preferred alternative two specific areas that provide nursery functions for juvenile sawfish are included in the final critical habitat designation. These areas are located along peninsular Florida, encompassing portions of Charlotte, Lee, Collier, Monroe, and Miami-Dade counties. These two areas contain the physical and biological features essential to the conservation of the U.S. DPS of smalltooth sawfish. The essential features are red mangroves and shallow euryhaline habitats characterized by water depths between the MHW line and 3 ft (0.9 m) measured at MLLW that provide nursery area functions to smalltooth sawfish. The preferred alternative was selected because it best implements the critical habitat provisions of the ESA, by defining the specific features that are essential to the conservation of the species, and due to the important conservation benefits expected to result from this alternative relative to the no action alternative.

Under the varying number of units alternative, we considered both combining the Charlotte Harbor Estuary Unit and the TTI/E Unit into a single unit for designation, and alternatively we considered splitting both units into multiple smaller units.

Under the first scenario, the unit would include the Naples beach area between the two units, and thus would encompass a larger total area than the two units. Though juveniles have been encountered in the Naples beach area, they have not been encountered in high densities. We also do not believe that juveniles move between the Charlotte Harbor Estuary and TTI/E Units along this stretch of beach. Furthermore, while red mangroves exist along this area (though they are much more sparsely distributed than in the two units), the salinity regimes are much more purely marine than estuarine, and the features are not considered to provide the nursery functions essential to the conservation of the species in these areas. Thus, we rejected this alternative in our final critical habitat designation because the Naples Beach area is not considered to meet the definition of a nursery area.

Under the second scenario, we considered options to split both the Charlotte Harbor Estuary Unit and the TTI/E Unit into multiple smaller units. We considered designating Charlotte Harbor and the Caloosahatchee Rivers as separate units, including limiting the sizes of each of these areas strictly to locations of past high density encounters of juveniles. We considered the same type of partitioning of the TTI/E Unit into smaller isolated units based on past high density encounters alone. We rejected the alternative of separating Charlotte Harbor and the Caloosahatchee River because State and local water resource managers consider the systems as a single integrated aquatic system. For both units, we rejected the alternative of multiple smaller units drawn around past high density juvenile encounters because we believe it would have omitted habitat that is almost certain nursery habitat for the sawfish between the separated small units. In addition, the essential features are continuously distributed from the harbor into the river, so this option would have omitted areas that meet the definition of critical habitat. Moreover, a designation limited to past encounters would not take into account the limits of this type of data in defining the extent of habitat use by the sawfish, and it would not provide protection for expanded nursery habitat needed for a recovering population. In addition, it was not clear that designating multiple smaller units would result in lower economic impacts of the designation, as the precise location of future consultations within these areas cannot be predicted based on available information.

An environmental analysis as provided for under National Environmental Policy Act for critical habitat designations made pursuant to the ESA is not required. See *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Pursuant to the Executive Order on Federalism, E.O. 13132, the Assistant Secretary for Legislative and Governmental Affairs provided notice of this action and requested comments from the appropriate official(s) of the State of Florida. As mentioned above, Florida found the regulation consistent with its approved coastal management programs.

This action has undergone a pre-dissemination review and determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (Section 515 of Pub. L. 106–554).

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

References Cited

A complete list of all references cited in this rulemaking can be found on our Web site at *http://sero.nmfs.noaa.gov/pr/SmalltoothSawfish.htm* and is available upon request from the NMFS Southeast Regional Office in St. Petersburg, Florida (see **ADDRESSES**).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: August 27, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 226 as set forth below:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 2. Add § 226.218, to read as follows:

§ 226.218 Critical habitat for the U.S. DPS of smalltooth sawfish (Pristis pectinata). Critical habitat is designated for the U.S. DPS of smalltooth sawfish as described in this section. The textual descriptions in paragraph (b) of this section are the definitive source for determining the critical habitat boundaries. The maps of the critical habitat units provided in paragraph (d) of this section are for illustrative purposes only.

(a) *Physical and biological features essential to the conservation of the endangered U.S. DPS of smalltooth sawfish.* The physical and biological features essential to the conservation of the U.S. DPS of smalltooth sawfish, which provide nursery area functions are: red mangroves and shallow euryhaline habitats characterized by water depths between the Mean High Water line and 3 ft (0.9 m) measured at

Mean Lower Low Water (MLLW). These features are included in critical habitat within the boundaries of the specific areas in paragraph (b) of this section, except where the features were not physically accessible to sawfish at the time of this designation (September 2009); for example, areas where existing water control structures prevent sawfish passage to habitats beyond the structure.

(b) *Critical habitat boundaries.* Critical habitat includes two areas (units) located along the southwest coast of peninsular Florida. The northern unit is the Charlotte Harbor Estuary Unit and the southern unit is the Ten Thousand Islands/Everglades (TTI/E) Unit. The units encompass portions of Charlotte, Lee, Collier, Monroe, and Miami-Dade Counties.

(1) *Charlotte Harbor Estuary Unit.* The Charlotte Harbor Estuary Unit is located within Charlotte and Lee Counties. The unit includes Charlotte Harbor, Gasparilla Sound, Pine Island Sound, Matlacha Pass, San Carlos Bay, Estero Bay, and the Caloosahatchee River. The unit is defined by the following boundaries. It is bounded by the Peace River at the eastern extent at the mouth of Shell Creek at 81°59.467′ W, and the northern extent of the Charlotte Harbor Preserve State Park at 26°58.933′ N. At the Myakka River the unit is bounded by the SR–776 Bridge and in Gasparilla Sound by the SR–771 Bridge. The COLREGS–72 lines between Gasparilla Island, Lacosta Island, North Captiva Island, Captiva Island, Sanibel Island, and the northern point of Estero Island are used as the coastal boundary for the unit. The southern extent of the unit is the Estero Bay Aquatic Preserve, which is bounded on the south by the Lee/Collier County line. Inland waters are bounded by SR–867 (McGregor Boulevard) from Punta Rassa Road to SR–80 near Fort Myers, then by SR–80 (Palm Beach Boulevard) to Orange River Boulevard, then by Orange River Boulevard to Buckingham Road, then by Buckingham Road to SR–80, and then following SR–80 until it is due south of the Franklin Lock and Dam (S–79), which is the eastern boundary on the Caloosahatchee River and a structural barrier for sawfish access. Additional inland water boundaries north and west of the lock are bounded by North Franklin Lock Road to North River Road, then by North River Road to SR–31, then by SR–31 to SR–78 near Cape Coral, then by SR–78 to SR–765, then by SR–765 to US–41, then by US–41 to US–17 (Marion Avenue) in Punta Gorda, then by US–17 to Riverside Drive, and then by Riverside Drive to the eastern extent of the Peace River at 81°59.467′ W. From the northern extent of the Charlotte Harbor Preserve State Park at 26°58.933′ N, inland waters are bounded westward along that latitude to Harbor View Road, then by Harbor View Road to US–41, then by US–41 to SR–776, then by SR–776 to the Myakka River Bridge.

(2) *Ten Thousand Islands/Everglades Unit (TTI/E).* The TTI/E Unit is located within Collier, Monroe, and Miami-Dade Counties, Florida. The unit includes waters within Everglades National Park (ENP), including Florida Bay, in the vicinity of Everglades City, within the Cape Romano-Ten Thousand Islands Aquatic Preserve (AP), and within the portion of Rookery Bay AP south of SR–92. The boundaries match the portion of Rookery Bay AP south of SR–92, and the Cape Romano-Ten Thousand Islands Aquatic Preserve AP. The unit boundaries also closely match the ENP boundaries with the following two exceptions: the unit boundary connects points 55 and 57 as illustrated in the critical habitat map that follows, which extend beyond the ENP boundary; and the unit boundary is located inside the ENP boundary between points 77 and 2, omitting the northeast portion of the ENP. The boundary of the unit is comprised of the following connected points, listed by point number in the ID field, degrees North latitude, degrees West longitude, and brief description of the boundary.

TABLE 2—LIST OF LATITUDE AND LONGITUDE BOUNDARY POINTS

ID	Latitude	Longitude	Description
1	25.2527	−80.7988	Main Park Road (SR–9336) at Nine Mile Pond.
2	25.2874	−80.5736	Everglades National Park boundary.
3	25.2872	−80.4448	Everglades National Park boundary at US–HWY 1.
4	25.2237	−80.4308	Everglades National Park boundary at US–HWY 1.
5	25.1979	−80.4173	Everglades National Park boundary at US–HWY 1.
6	25.1846	−80.3887	Everglades National Park boundary at US–HWY 1.
7	25.1797	−80.3905	Everglades National Park boundary at US–HWY 1.
8	25.1480	−80.4179	Everglades National Park boundary at Intercoastal Waterway (ICW).
9	25.1432	−80.4249	Everglades National Park boundary at ICW.
10	25.1352	−80.4253	Everglades National Park boundary at ICW.
11	25.1309	−80.4226	Everglades National Park boundary at ICW.
12	25.1282	−80.4230	Everglades National Park boundary at ICW.
13	25.1265	−80.4268	Everglades National Park boundary at ICW.
14	25.1282	−80.4432	Everglades National Park boundary at ICW.
15	25.0813	−80.4747	Everglades National Park boundary at ICW.
16	25.0676	−80.4998	Everglades National Park boundary at ICW.
17	25.0582	−80.5218	Everglades National Park boundary at ICW.
18	25.0373	−80.5178	Everglades National Park boundary at ICW.
19	25.0326	−80.5188	Everglades National Park boundary at ICW.
20	25.0168	−80.5487	Everglades National Park boundary at ICW.
21	25.0075	−80.5578	Everglades National Park boundary at ICW.
22	24.9990	−80.5609	Everglades National Park boundary at ICW near Plantation.
23	24.9962	−80.5648	Everglades National Park boundary at ICW.
24	24.9655	−80.6347	Everglades National Park boundary at ICW.
25	24.9430	−80.6585	Everglades National Park boundary at ICW.
26	24.9388	−80.6716	Everglades National Park boundary at ICW.
27	24.9124	−80.7255	Everglades National Park boundary at ICW.
28	24.9006	−80.7348	Everglades National Park boundary at ICW.
29	24.8515	−80.8326	Everglades National Park boundary at COLREG–72.
30	24.8730	−80.8875	Everglades National Park boundary at Arsenic Bank Light.
31	24.9142	−80.9372	Everglades National Park boundary at Sprigger Bank Light.
32	25.0004	−81.0221	Everglades National Park boundary.

TABLE 2—LIST OF LATITUDE AND LONGITUDE BOUNDARY POINTS—Continued

ID	Latitude	Longitude	Description
33	25.0723	−81.0859	Everglades National Park boundary.
34	25.0868	−81.0858	Everglades National Park boundary.
35	25.1567	−81.1620	Everglades National Park boundary at Middle Cape Sable.
36	25.2262	−81.2044	Everglades National Park boundary.
37	25.3304	−81.1776	Everglades National Park boundary at Little Shark River.
38	25.4379	−81.1940	Everglades National Park boundary.
39	25.5682	−81.2581	Everglades National Park boundary.
40	25.7154	−81.3923	Everglades National Park boundary at Pavillion Key.
41	25.8181	−81.5205	Everglades National Park boundary.
42	25.8326	−81.5205	Everglades National Park boundary at Cape Romano—Ten Thousand Islands Aquatic Preserve.
43	25.8315	−81.7450	Rookery Bay Aquatic Preserve boundary (southwest corner).
44	25.9003	−81.7468	Rookery Bay Aquatic Preserve boundary.
45	25.9030	−81.6907	Rookery Bay Aquatic Preserve boundary.
46	25.9380	−81.6907	Rookery Bay Aquatic Preserve boundary at SR–92.
47	25.9378	−81.6834	Rookery Bay Aquatic Preserve boundary at SR–92.
48	25.9319	−81.6718	Rookery Bay Aquatic Preserve boundary at SR–92.
49	25.9330	−81.6508	Rookery Bay Aquatic Preserve boundary at SR–92.
50	25.9351	−81.6483	Rookery Bay Aquatic Preserve boundary at SR–92.
51	25.9464	−81.6433	Rookery Bay Aquatic Preserve boundary at SR–92.
52	25.9470	−81.6200	Cape Romano—Ten Thousand Islands Aquatic Preserve boundary.
53	25.9615	−81.6206	Cape Romano—Ten Thousand Islands Aquatic Preserve boundary.
54	25.9689	−81.6041	Cape Romano—Ten Thousand Islands Aquatic Preserve boundary.
55	25.9130	−81.4569	Cape Romano—Ten Thousand Islands Aquatic Preserve boundary.
56	25.8916	−81.4082	Everglades National Park boundary west of Everglades City.
57	25.8630	−81.3590	Everglades National Park boundary east of Everglades City.
58	25.8619	−81.2624	Everglades National Park boundary.
59	25.8040	−81.2602	Everglades National Park boundary.
60	25.8040	−81.2126	Everglades National Park boundary.
61	25.7892	−81.2128	Everglades National Park boundary.
62	25.7892	−81.1969	Everglades National Park boundary.
63	25.7743	−81.1966	Everglades National Park boundary.
64	25.7740	−81.1803	Everglades National Park boundary.
65	25.7591	−81.1803	Everglades National Park boundary.
66	25.7592	−81.1641	Everglades National Park boundary.
67	25.7295	−81.1638	Everglades National Park boundary.
68	25.7299	−81.1165	Everglades National Park boundary.
69	25.7153	−81.1164	Everglades National Park boundary.
70	25.7154	−81.1002	Everglades National Park boundary.
71	25.6859	−81.0997	Everglades National Park boundary.
72	25.6862	−81.0836	Everglades National Park boundary.
73	25.6715	−81.0835	Everglades National Park boundary.
74	25.6718	−81.0671	Everglades National Park boundary.
75	25.6497	−81.0665	Everglades National Park boundary.
76	25.6501	−81.0507	Everglades National Park boundary.
77	25.6128	−81.0497	Everglades National Park boundary.

(c) *Areas not included in critical habitat.* Critical habitat does not include the following particular areas where they overlap with the areas described in paragraph (b) of this section:

(1) Pursuant to ESA section 3(5)(A)(i), all areas containing existing (already constructed) federally authorized or permitted man-made structures such as channels or canals maintained at depths greater than 3 ft. at MLLW, boat ramps, docks, and marinas deeper than 3 ft. at MLLW.

(2) Pursuant to ESA section 3(5)(A)(i), all waters identified as existing (already constructed) federally authorized channels as follows:

(i) Charlotte Harbor.

(ii) Ft. Myers Beach (Matanzas Pass).

(iii) Portions of the Gulf Intracoastal Waterway in the Caloosahatchee River.

(d) *Maps.* Overview maps of designated critical habitat for the U.S. DPS of smalltooth sawfish follow.

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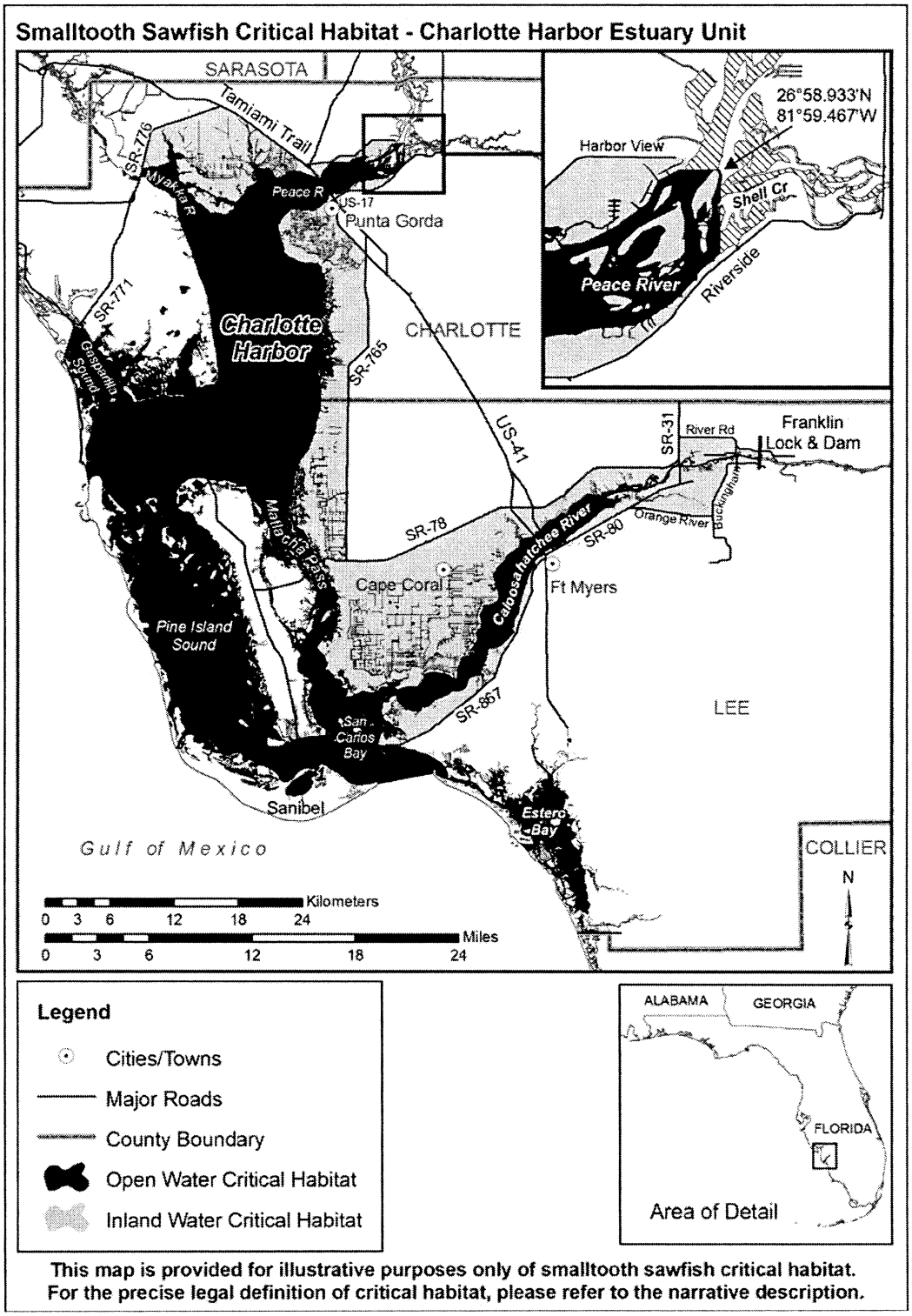
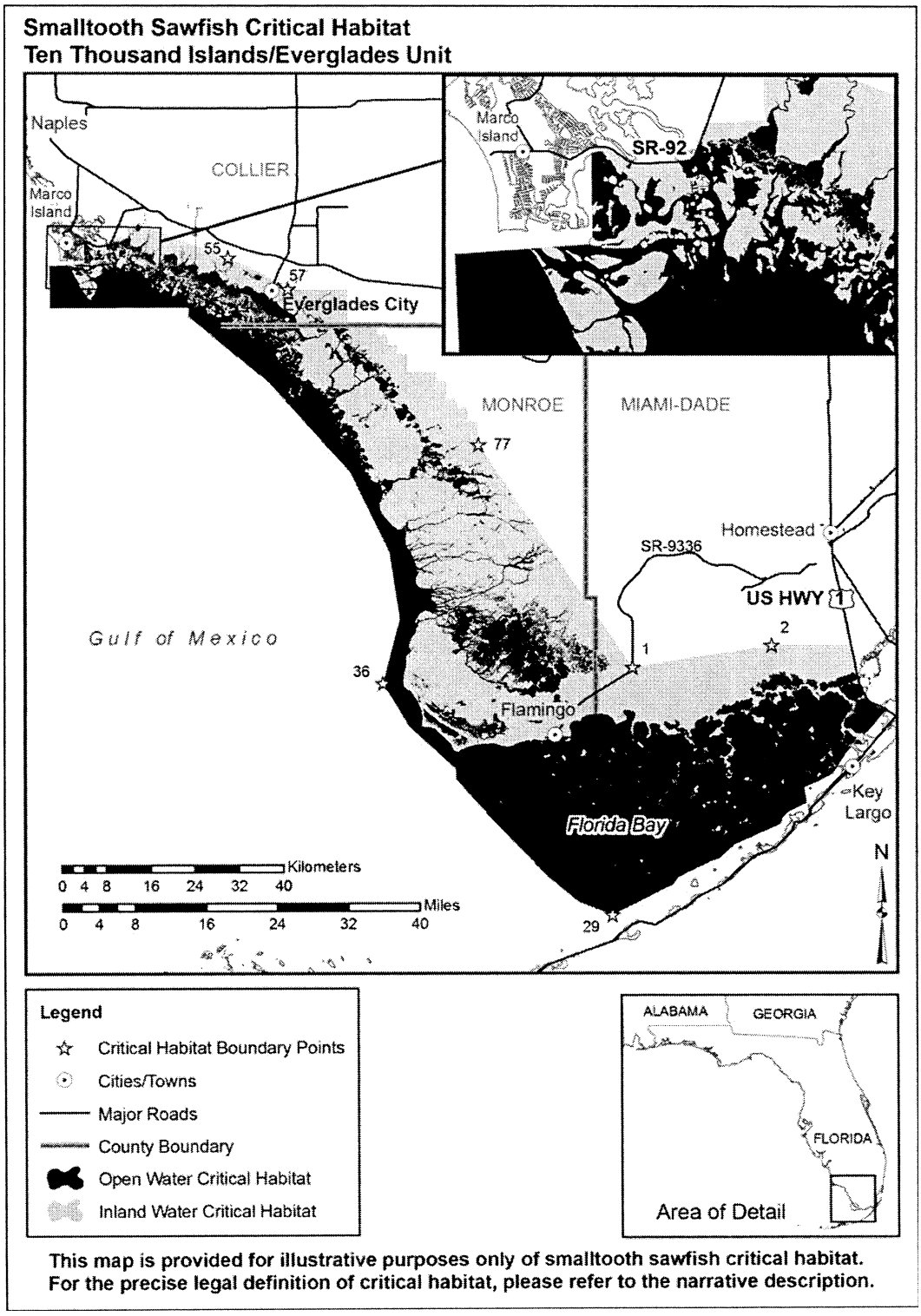


This map is provided for illustrative purposes only of smalltooth sawfish critical habitat. For the precise legal definition of critical habitat, please refer to the narrative description.


Smalltooth Sawfish Critical Habitat
Ten Thousand Islands/Everglades Unit
Naples
COLLIER
Marco Island
55
57
Everglades City
Marco Island
SR-92
MONROE
MIAMI-DADE
77
Homestead
SR-9336
US HWY 1
2
1
Gulf of Mexico
36
Flamingo
Key Largo
Florida Bay
N
Kilometers
0 4 8 16 24 32 40
Miles
0 4 8 16 24 32 40
29
Legend
Critical Habitat Boundary Points
Cities/Towns
Major Roads
County Boundary
Open Water Critical Habitat
Inland Water Critical Habitat
ALABAMA
GEORGIA
FLORIDA
Area of Detail
This map is provided for illustrative purposes only of smalltooth sawfish critical habitat.
For the precise legal definition of critical habitat, please refer to the narrative description.

[FR Doc. E9–21186 Filed 9–1–09; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XR33

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the fourth seasonal apportionment of the 2009 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 2, 2009, through 1200 hrs, A.l.t., October 1, 2009.

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

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

The fourth seasonal apportionment of the 2009 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 150 metric tons as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009), for the period 1200 hrs, A.l.t., September 1, 2009, through 1200 hrs, A.l.t., October 1, 2009.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the fourth seasonal apportionment of the 2009 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and ''other species.'' This inseason action does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This inseason action does not apply to vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 26, 2009.

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 27, 2009.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–21172 Filed 8–28–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XR37

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Subject to Amendment 80 Sideboard Limits in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2009 Pacific cod sideboard limit established for Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 28, 2009, until 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The 2009 Pacific cod sideboard limit established for Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA is two percent of the total allowable catch (TAC) according to § 679.20 table 37 (*http://www.alaskafisheries.noaa.gov/rr/tables/tabl37.pdf*). Two percent of the TAC for Pacific cod in the Western Regulatory Area of the GOA is 324 metric tons (mt), as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009) and

revisions (74 FR 11041, March 16, 2009).

In accordance with § 679.20(d)(1)(v)(A), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the Pacific cod sideboard limit established for Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA is sufficient to support a directed fishing allowance. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 319 mt in the Western Regulatory Area of the GOA. The remaining 5 mt in the Western Regulatory Area of the GOA will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(v)(C), the Regional Administrator finds that this Amendment 80 sideboard directed fishing allowance will be reached by the effective date of this temporary rule. Consequently, NMFS is prohibiting directed fishing for the 2009 Pacific cod sideboard limit by Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 26, 2009.

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

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

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

Dated: August 28, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–21170 Filed 8–28–09; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XR36

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closures and openings.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2009 total allowable catch (TAC) of Atka mackerel in these areas by vessels participating in the BSAI trawl limited access fishery. NMFS is also announcing the opening and closing dates of the first and second directed fisheries within the harvest limit area (HLA) in areas 542 and 543. These actions are necessary to conduct directed fishing for Atka mackerel in the HLA in areas 542 and 543.

DATES: The effective dates are provided in Table 1 under the **SUPPLEMENTARY INFORMATION** section of this temporary action.

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

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

The 2009 TAC of Atka mackerel for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea was established as 952 metric tons (mt) by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.20(d)(1)(i) and (d)(1)(ii)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 5 mt of the 2009 Atka mackerel TAC allocated to vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea will be necessary as incidental catch to support other anticipated groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 947 mt. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea by vessels participating in the BSAI trawl limited access fishery.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543, 48 hours after prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea. The Regional Administrator has established the opening dates for the second HLA directed fisheries as immediately after the last closure of the first HLA fisheries in either area 542 or 543 for those vessels participating in the Amendment 80 cooperative. The Regional Administrator also has established the opening dates for the second HLA directed fisheries as 48 hours after the last closure of the first HLA fisheries in either area 542 or 543 for those vessels participating in the Amendment 80 limited access sector. Consequently, NMFS is opening and closing directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under Table 1 of this notice.

TABLE 1—EFFECTIVE DATES AND TIMES

Action	Area	Effective Date[1]	
		From	To
Prohibiting Atka mackerel by vessels participating in the BSAI trawl limited access fishery	Eastern Aleutian District and the Bering Sea subarea	1200 hrs, September 1, 2009.	1200 hrs, November 1, 2009.
Opening the first and second directed fisheries in the HLA for the Amendment 80 cooperative	542 and 543 542 and 543	1200 hrs, September 3, 2009. 1200 hrs, September 17, 2009.	1200 hrs, September 17, 2009. 1200 hrs, October 1, 2009.
Opening the first and second directed fisheries in the HLA for vessels participating in the Amendment 80 limited access sector	542 and 543 542 and 543	1200 hrs, September 3, 2009. 1200 hrs, September 14, 2009.	1200 hrs, September 12, 2009. 1200 hrs, September 23, 2009.
Opening the first directed fishery in the HLA for vessels participating in the BSAI trawl limited access sector	542	1200 hrs, September 3, 2009.	1200 hrs, September 8, 2009.

[1] Alaska local time

In accordance with § 679.20(a)(8)(iii)(A) and § 679.20(a)(8)(iii)(B), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS (74 FR 40523, August 12, 2009).

In accordance with the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) and § 679.20(a)(8)(ii)(C)(1), the HLA limits of the B season allowance of the 2009 TACs in areas 542 and 543 are 5,039 mt and 2,783 mt, respectively, for vessels participating in the Amendment 80 limited access fishery. The HLA limits of the B season allowance of the 2009 TACs in areas 542 and 543 are 3,314 mt and 1,739 mt, respectively, for Amendment 80 cooperatives. The HLA limit of the B season allowance of the 2009 TAC in area 542 is 348 mt for the BSAI trawl limited access fishery. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the dates and times listed in Table 1 of this notice.

After the effective dates of these closures, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery and the opening and closing of the fisheries for the HLA limits established for area 542 and area 543 pursuant to the 2009 Atka mackerel TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 27, 2009. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: August 27, 2009.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–21171 Filed 8–28–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 74, No. 169

Wednesday, September 2, 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–2009–0557; Directorate Identifier 2009–CE–031–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA Model TBM 700 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would revise an existing AD. 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:

During a SOCATA flight test, it has been noted some difficulties for the pilot to release oxygen.

After investigation it has been found that, due to the design of the oxygen generator release pin, one of the mask's lanyard linked to the pin can be jammed when it is pulled by a pilot or a passenger.

This condition, if not corrected, would lead, in case of an emergency procedure due to decompression, to a risk of generator fault with subsequent lack of oxygen on crew and/or passenger.

For the reasons described above * * *.

This revision has been released to clarify the applicability.

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 October 19, 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: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *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–2009–0557; Directorate Identifier 2009–CE–031–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://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On June 10, 2009, we issued AD 2009–13–05, Amendment 39–15944 (74 FR 29126, June 19, 2009). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2009–13–05, SOCATA reported that an additional serial number not affected by the unsafe condition was inadvertently included in the applicability for the European Aviation Safety Agency (EASA) AD. As a result, we included that additional serial number in AD 2009–13–05.

EASA, which is the Technical Agent for the Member States of the European Community, has issued AD No. 2009–0096R1, dated July 10, 2009, (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During a SOCATA flight test, it has been noted some difficulties for the pilot to release oxygen.

After investigation it has been found that, due to the design of the oxygen generator release pin, one of the mask's lanyard linked to the pin can be jammed when it is pulled by a pilot or a passenger.

This condition, if not corrected, would lead, in case of an emergency procedure due to decompression, to a risk of generator fault with subsequent lack of oxygen on crew and/or passenger.

For the reason described above, SOCATA has released Pilot Operating Handbook (POH) Temporary Revision (TR) 03 which asks, in case of failure to release oxygen, to pull on the other mask lanyard in order to activate the oxygen generator.

This revision has been released to clarify the applicability.

A SOCATA modification enabling to solve this issue is under preparation. Once this modification has been release, this AD is expected to be revised to confirm the acceptability of that modification.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

SOCATA has issued SOCATA TBM 700 A & B Pilot Operating Handbook (POH), Temporary Revision No. 3, dated March 2009. The actions described in page 3.13.5 of 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.

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

We estimate that this proposed AD will affect 147 products of U.S. registry. We also estimate that it would take about 0.5 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,880, or $40 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 removing Amendment 39–15944 (74 FR 29126, June 19, 2009), and adding the following new AD:

SOCATA: Docket No. FAA–2009–0557; Directorate Identifier 2009–CE–031–AD.

Comments Due Date

(a) We must receive comments by October 19, 2009.

Affected ADs

(b) This AD revises AD 2009–13–05; Amendment 39–15944.

Applicability

(c) This AD applies to the following model and serial number airplanes that are:

(i) Certificated in any category; and

(ii) Equipped with a chemical oxygen generation system.

Model	Serial Nos.
TBM 700	1 through 204, 206 through 239, and 241 through 243.

Subject

(d) Air Transport Association of America (ATA) Code 35: Oxygen.

Reason

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

During a SOCATA flight test, it has been noted some difficulties for the pilot to release oxygen.

After investigation it has been found that, due to the design of the oxygen generator release pin, one of the mask's lanyard linked to the pin can be jammed when it is pulled by a pilot or a passenger.

This condition, if not corrected, would lead, in case of an emergency procedure due to decompression, to a risk of generator fault with subsequent lack of oxygen on crew and/or passenger.

For the reason described above, SOCATA has released Pilot Operating Handbook (POH) Temporary Revision (TR) 03 which asks, in case of failure to release oxygen, to pull on the other mask lanyard in order to activate the oxygen generator.

This revision has been released to clarify the applicability.

A SOCATA modification enabling to solve this issue is under preparation. Once this modification has been release, this AD is expected to be revised to confirm the acceptability of that modification.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Before further flight after July 9, 2009 (the effective date retained from AD 2009–13–05), insert Page 3.13.5 of Temporary Revision No. 3, dated March 2009, into the Emergency Procedures section and the Limitations sections of SOCATA TBM 700 A & B Pilot Operating Handbook (POH).

(2) Under 14 CFR 43.7 of the Federal Aviation Administration Regulations (14 CFR 43.7), the owner/operator holding at least a private pilot certificate is allowed to insert the temporary revision into the POH. Make an entry into the aircraft logbook showing compliance with this portion of the AD per compliance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

FAA AD Differences

Note: 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:* Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106;

telephone: (816) 329–4119; *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 European Aviation Safety Agency (EASA) AD No. 2009–0096R1, dated July 10, 2009, and SOCATA TBM 700 A & B Pilot Operating Handbook (POH), Temporary Revision No. 3, dated March 2009, for related information.

Issued in Kansas City, Missouri, on August 26, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–21145 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 090130108–9629–01]

RIN 0691–AA70

Direct Investment Surveys: BE–605, Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate With Foreign Parent

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule amends regulations of the Bureau of Economic Analysis (BEA) setting forth reporting requirements for the BE–605 quarterly survey of foreign direct investment in the United States. The survey obtains quarterly sample data on transactions and positions between foreign-owned U.S. business enterprises (U.S. affiliates) and their ''affiliated foreign groups'' (*i.e.,* their foreign parents and foreign affiliates of their foreign parents).

BEA proposes a number of changes to the BE–605 survey. BEA proposes to discontinue the use of separate forms for banks. Beginning with the first quarter of 2010, both bank and nonbank U.S. affiliates would file Form BE–605. In conjunction with this change, BEA proposes to change the title of Form BE–605. BEA proposes to add and delete certain items on the survey form and change the reporting criteria. BEA also proposes to collect identification information for affiliates filing Form BE–605 for the first time, and to make changes to the BE–605 form and instructions to bring them into conformity with the recently revised annual and benchmark surveys of foreign direct investment in the United States.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m. November 2, 2009.

ADDRESSES: You may submit comments, identified by RIN 0691–AA70, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. For agency, select ''Commerce Department—all.''
- *E-mail: David.Galler@bea.gov.*
- *Fax:* Office of the Chief, Direct Investment Division, (202) 606–5318.
- *Mail:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Washington, DC 20230.
- *Hand Delivery/Courier:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Shipping and Receiving, Section M100, 1441 L Street NW., Washington, DC 20005.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA through any of the methods above and to the Office of Management and Budget (OMB), O.I.R.A., Paperwork Reduction Project 0608–0009, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov,* or by FAX at (202) 395–7245.

Public Inspection: 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 commentator may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. BEA will accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: David H. Galler, Chief, Direct Investment Division, BE–50, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9835.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 15 CFR 806.15 to set forth the reporting requirements for the BE–605 quarterly survey of foreign direct investment in the United States. 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 comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 (''PRA'').

The BE–605 survey is a mandatory quarterly survey of foreign direct investment conducted by BEA under the International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108 (''the Act''). BEA will send BE–605 survey forms to potential respondents each quarter; responses will be due within 30 days after the end of each quarter, except for the final quarter of the fiscal year when reports will be due within 45 days of the end of the quarter.

Description of Changes

BEA proposes a number of changes to the BE–605 survey. First, BEA proposes to discontinue the use of separate forms for banks. Beginning with the first quarter of 2010, both bank and nonbank U.S. affiliates would file Form BE–605. In conjunction with this change, BEA proposes to change the title of Form BE–605 to ''Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate with Foreign Parent.'' Changes to language and instructions will be made to align Form BE–605 with recent changes to the annual and benchmark surveys of foreign direct investment.

BEA also proposes to add items to Form BE–605 to collect additional identification information on U.S. affiliates of foreign parents filing the survey for the first time. (BEA previously collected more extensive identification information on the U.S. business being established or acquired, and on the new foreign owner, through Form BE–13, Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a Business

Enterprise, Including Real Estate, which was recently discontinued.) These additional items include the date the business enterprise became a U.S. affiliate of a foreign parent, and the U.S. affiliate's industry. BEA also proposes to add a question to the survey that asks U.S. affiliates whether they are planning to construct, or are in the process of constructing, a new production establishment.

In addition, BEA proposes to discontinue collecting information on permanent intercompany debt funding, and interest receipts and payments associated with that funding, between U.S. affiliates that are banks and their foreign parents. This debt funding information is collected by the Treasury International Capital System, and recent changes in international statistical guidelines call for it now to be classified as portfolio investment. BEA also proposes to discontinue collecting data on loan loss reserves for banks, which, along with a number of related items, had been requested on the specialized bank form that will be discontinued. BEA will continue to collect intercompany debt and related interest data for the units of a consolidated U.S. bank affiliate that have insurance, real estate, or leasing activities.

Finally, BEA proposes to increase the exemption level for reporting on Form BE–605 from $30 million to $60 million. The exemption level is stated in terms of the U.S. affiliate's total assets, sales or gross operating revenues, and net income after U.S. income taxes. At the new reporting threshold, BEA expects about 4,000 U.S. affiliates to report each quarter. This number is slightly higher than the number—3,950—estimated at the time of the last clearance of the survey. However, the increase reflects growth in the number of foreign-owned firms, and would be significantly higher in the absence of the proposed increase in the reporting threshold.

Survey Background

The BEA conducts the BE–605 survey under the International Investment and Trade in Services Survey Act. Section 4(a) of the Act provides that, with respect to foreign direct investment in the United States, the President shall, to the extent he deems it necessary and feasible, ''conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment * * * position of the United States.''

In section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibility for performing functions under the Act concerning direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The BE–605 quarterly survey is a sample survey that collects data on transactions and positions between foreign-owned U.S. business enterprises and their ''affiliated foreign groups'' (*i.e.,* their foreign parents and foreign affiliates of their foreign parents). The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE–12, Benchmark Survey of Foreign Direct Investment in the United States, which is conducted every five years. The data are used in the preparation of the U.S. international transactions accounts, national income and product accounts, and input-output accounts. The data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act (''PRA''). The requirement will be submitted to OMB for approval as a revision to a collection currently approved under OMB Control Number 0608–0009.

Notwithstanding any other provisions of the 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 requirements of the PRA unless that collection displays a currently valid OMB control number.

As proposed, the BE–605 survey is expected to result in the filing of approximately 4,000 reports each financial quarter. The respondent burden for this collection of information is estimated to vary from one-half hour to three hours per response, with an average of one hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. (The burden will vary depending, in part, on the size and ownership structure of the U.S. business enterprise that is being reported.) Because reports are filed 4 times per year, 16,000 responses annually are expected. Thus, the average total annual respondent burden of the survey is estimated at 16,000 hours (4,000 respondents filing 4 times per year multiplied by 1 hour average burden). This estimate is slightly higher than the 15,800 burden hours currently in the OMB inventory for this survey because the increase in burden due to the growth in the number of foreign-owned firms slightly exceeds the reduction in burden resulting from the proposed increase in the reporting threshold.

Comments are requested concerning: (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 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.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA and OMB following the instructions given in the **ADDRESSES** section above.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities.

Few small U.S. businesses are subject to the reporting requirements of this survey. Under the proposed regulations, foreign-owned U.S. businesses would be required to report on the BE–605 survey only if they have total assets, sales or gross operating revenues, or net income after U.S. income taxes that exceed $60 million. These reporting thresholds will

exempt the majority of small businesses from the survey. For most industries, the size standard used by the Small Business Administration (SBA) for designating businesses as ''small'' is based on receipts or employment. For the industries designated as small based on receipts, the SBA size standards, as published in the Table of Small Business Size Standards, are all significantly below $60 million; it is reasonable to assume that few, if any, of the businesses in these industries would have to file the BE–605. For industries where the small business size standard is based on employment, a direct comparison with the BE–605 reporting criteria is not possible because employment is not used as a reporting criterion and is not collected on the survey. However, after examining the employment-based standards, and under the assumption they are roughly comparable to the receipts-based indicators in terms of the size of firm that is to be designated as small, BEA has concluded that it is unlikely that many small businesses in these industries would be required to file the BE–605. For certain types of banking and finance companies, the SBA size standard is based on assets. Approximately 20 small businesses in these industries would be required to file the BE–605. This number represents a small percentage (0.5%) of the expected total number of 4,000 filers of the BE–605. Additionally, based on the estimated average burden of one hour per response per quarter, BEA estimates the total respondent burden for the BE–605 on these businesses would be only 80 hours annually, while the total estimated respondent burden for all companies is 16,000 hours.

Because few small businesses are subject to the reporting requirements, and because those small businesses that are subject to reporting are subject to minimal record keeping burdens, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

Economic statistics, Foreign investment in the United States, International transactions, Penalties, Reporting and recordkeeping requirements.

Dated: July 30, 2009.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.15(h) is revised to read as follows:

§ 806.15 Foreign direct investment in the United States.

* * * * *

(h) *Quarterly report form.* BE–605, Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate with Foreign Parent: One report is required for each U.S. affiliate exceeding an exemption level of $60 million.

* * * * *

[FR Doc. E9–21132 Filed 9–1–09; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 6749]

RIN 1400–AC56

Exchange Visitor Program—Secondary School Students

AGENCY: Department of State.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Department seeks information on alternative and more specific means of screening potential families to host exchange visitors participating in the Secondary School Student category of the Exchange Visitor Program. Current regulations allow sponsors the flexibility to exercise their independent judgment when evaluating the financial resources, moral character, and composition of potential host families, as well as the suitability of potential home environments. The Department believes, however, that the lack of specificity or industry standards may have contributed to the recent degradation of the appropriateness of selected families, thereby putting at risk the health, safety, and welfare of this most vulnerable group of exchange visitors.

DATES: The Department will accept comments from the public up to October 2, 2009.

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

E-mail: JExchanges@state.gov. You must include the RIN in the subject line of your message.

Mail (paper, disk, or CD–ROM submissions): U.S. Department of State, Office of Designation, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20522–0505.

Fax: 202–632–2701.

Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchanges, U.S. Department of State, 2200 C Street, NW., SA–5, 5th Floor, Washington, DC 20522–0505; or e-mail at *JExchanges@state.gov.*

SUPPLEMENTARY INFORMATION: The Department of State (''Department'') designates academic, government, and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, *as amended.* Under this authority, some 1,450 program sponsors facilitate the entry of more than 350,000 exchange participants each year. Secondary school students—of which there were nearly 30,000 for the 2008–2009 academic year—have been a vital component of these exchange activities since 1956. This ANPRM is a general solicitation of public comments that seeks to gather input as to whether and, if so, how the Department should modify its regulations set forth in 22 CFR 62.25(j) (Host Family Selection) to provide more specific guidance to sponsors for screening and selecting host families with whom they place students attending high school in the United States on the Exchange Visitor Program.

The safety and security of these exchange student participants are of paramount importance to the Department. Although these students are generally 17 or even 18 years of age, some are as young as 15 and often away from home for the first time. Given the vulnerable status of such a population, most of whom are considered children under the laws of the 50 States where they are living and attending school, the Department modified the regulations governing this category of exchange in 2006. The Department adopted a requirement that sponsors immediately report to the Department any incident or allegation involving the actual or alleged sexual exploitation or abuse of an exchange student participant.

Sponsors were also required to report such allegations pursuant to the local mandatory child abuse and neglect reporting laws all 50 States and the District of Columbia adopted pursuant to the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101 *et seq.* In addition, the Department adopted regulations that required sponsors to vet officers, employees, representatives, agents, and volunteers acting on their behalf who had direct personal contact with exchange students and any member of a potential host family household 18 years or older through criminal background checks.

The Department has now had three years' experience with host family placements following the implementation of these regulatory modifications. Although complaints about the inappropriate placement or actual mistreatment of these young participants represent the exception rather than the rule, there have been a sufficient number of incidents of such severity that the Department has determined that more specific guidance for host family selection may be appropriate. Current regulations set forth the minimum steps that sponsors must take to screen potential host families. Among other things, sponsors must utilize a standard application form to collect broad categories of information (22 CFR 62.25(j)(2)), conduct an in-person interview of all family members residing in the home (22 CFR 62.25(j)(3)), and obtain two personal character references from the ''school or community'' for each host family. (22 CFR 62.25(j)(5)) They must also ascertain whether potential host families have adequate financial resources to undertake the hosting obligation (22 CFR 62.25(j)(6)), and they must verify that each member of the household 18 years or older has undergone criminal background checks. (22 CFR 62.25(j)(7)) Information gathered from commenting parties should allow the Department to determine whether it should clarify or strengthen these screening requirements.

The current standard application form must provide ''a detailed summary'' of each family, its composition, and the home and community environments. A subjective verbal description of a physical environment, however, may not always present an accurate depiction. The widespread availability of digital camera technology (*e.g.,* most cell phones have cameras) and the increased use of e-mail communications make it possible to obtain objective information about an exchange visitor's potential new home with great ease and little cost. Requiring photographs of the interior and exterior of a potential home, including the student's bedroom and the surrounding grounds, would complement any verbal description of the home and afford sponsors accurate information to use in assessing the suitability of the environment. The Department seeks information on whether sponsors' field staffs have access to the equipment and technology necessary to photograph potential residences and incorporate the images into either hard copy or online host family applications. In the alternative, the Department asks commenting parties to suggest other means of better capturing and describing potential homes.

The Department is aware that some field staffs allow relatives of potential host families to submit character references. In some instances, field staffs themselves serve as references. To ensure that character references were not biased, the Department recently reminded the sponsor community that the supplemental information accompanying the adoption of regulations governing secondary school student exchange programs explained that one potential host family reference should be from a member of the school community and the other, from the potential host family's social, residential, or business community. Many sponsors expressed concern that some potential host families (*e.g.,* ''empty nesters'') were not known in school communities, and that some schools would not be willing to provide such references. As a result, the Department seeks information on how better to identify neutral and dependable persons to serve as character references for potential host families. Specifically, the Department asks whether there are certain limiting criteria (*e.g.,* prohibiting local coordinators, other agents of the sponsors, or persons related to the host families by blood or marriage from serving as character references) or defining criteria (*e.g.,* knowing the potential host families for a certain number of years) that would provide the most meaningful references for potential host families. Sponsors may wish to provide specific questions that they have found to elicit particularly insightful information about potential host families or otherwise share their ''best practices.''

The Department has recently reminded the sponsor community that the public diplomacy underpinnings of the Exchange Visitor Program make it unacceptable for them to pay families to host students. This restriction reflects the statutory basis on which the entire program is founded. The Department is authorized, pursuant to the Mutual Educational and Cultural Exchange Act of 1961, 22 U.S.C. 2451 *et seq.,* (Fulbright-Hays Act) to facilitate and direct educational and cultural exchange activities to develop and promote mutual understanding between the people of the United States and other countries of the world. Allowing sponsors to pay host families introduces an incentive that could replace the current motivation of host families, *i.e.,* to further international understanding, to the potential detriment of the public policy intent of the Exchange Visitor Program. While this restriction may deny caring families with limited economic resources opportunities to participate in the program, the Department has steadfastly maintained this caveat to stay true to the purpose of the program as set forth in the Fulbright-Hays Act. As a result, sponsors must rely solely upon families' incomes when assessing their financial eligibility to host exchange students.

Determining whether families have adequate financial resources to host is not easy given the range of incomes of families in the United States, cost of living differences, and the inherently subjective views individuals have of what is a comfortable and nurturing home environment. Unfortunately, the Department has learned of situations in which sponsors have placed exchange visitors in unsuitable environments such as unsanitary or condemned homes and those without essential utilities. As a result, the Department seeks comment on how to objectively measure the minimum financial resources necessary for a family to host an exchange student. The Department asks sponsors to identify the single-point measures of income or series of indicators they currently use to assess financial eligibility of potential families. They may wish also to provide data on the percentage of their prior host families whose incomes met or exceeded such objective measures. The Department also seeks recommendations of alternative single-point measures or other accurate series of income indicators they may wish to adopt. Finally, the Department seeks comment on the impact the adoption of any of these objective measures might have on the ability of sponsors to place students.

The Department is also studying whether we should adopt standards for the criminal background checks that all adult members of a potential host family must undergo. Currently, the Department has no specific requirement

with respect to this regulation. Instead, we have left it to the individual sponsors to exercise ''those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interest and the interests of others'' (*i.e.,* the ''reasonable man'' legal standard that has developed under case law) when deciding how much to spend for each background check, which commercial services to engage, or which databases to query. Most importantly, the Department does not dictate how sponsors should evaluate the results of these background checks, again allowing sponsors to apply the ''reasonable man'' standard. The proliferation of media reports of American children being sexually abused across the nation, however, has escalated the Department's concern that sponsors may not be doing enough to protect the foreign visitors entrusted to their care.

Accordingly, the Department seeks information on the standards that other organizations use to deal with the safety and oversight of children to assess the suitability of volunteers or employees and the problems or benefits associated with adopting such practices. We also seek information on the identity of the service providers that current sponsors use, as well as the level and cost of the services obtained. Further, sponsors specifically are requested to recommend any Internet searches they may employ to supplement the formal background reports. Finally, we seek specific information from sponsors regarding their methods of evaluating the results of these reports, including identifying any acts that they believe render potential host families ineligible.

Public Law 105–251, The Volunteers for Children Act (''Act''), amended the National Child Protection Act of 1993, 42 U.S.C. 5119a, to allow organizations and businesses engaged in the care of other peoples' children to use national fingerprint-based criminal history checks to screen out volunteers and employees with relevant criminal records. The Department seeks information on which, if any, State laws would consider a host family to be a ''qualified entity'' as defined in the Act, thereby requiring sponsors to request national fingerprint-based checks of such volunteers. We seek comment on the costs and administrative effort that would result from requiring sponsors to vet adult members of potential host families through the FBI's national fingerprint database and whether any sponsors have been using this approach. To the extent possible, parties should comment on whether there is a relationship between the cost of criminal background checks and the comprehensiveness and accuracy of the resulting reports. Sponsors should also provide information on the procedures they employ to obtain criminal background checks on adult members who join a household or children who turn 18 after an exchange visitor is placed in the home. The Department asks that sponsors also identify the criteria they use to determine when a frequent adult visitor in a home (*e.g.,* a college student, grown child, or acquaintance of an adult family member) should also be vetted through the criminal background check process.

The regulations also require sponsors to conduct an in-person interview with all family members residing in the home. The Department requests comment from sponsors regarding how they identify ''all family members'' residing in the home. They should specify whether they interview every adult who is vetted by a background check and whether they conduct multiple interviews if all family members are not available at the same time. Parties should comment on whether they believe that requiring such interviews to be conducted in the home provides additional insight into the family dynamic and its suitability to host an exchange student.

The Department has never attempted to define a ''family'' for purposes of being eligible to host a foreign high school student. We take notice, however, of the fact that problematic placements often occur in homes of families that do not include a school-aged child. As a result, we are considering regulations that require host families to be comprised of, at a minimum, one adult and one school-aged child (natural, adopted, or foster) living in the home. Although this configuration would eliminate from the pool of host families a number of caring single adults or couples, such as ''empty-nesters,'' the Department believes that the presence of a school-aged child in a home may provide compensating advantages. The Department seeks information from sponsors on the configurations of families that have provided either successful or problematic placements in the past. We ask the sponsor community also to suggest alternative minimum configurations or to recommend extenuating circumstances under which minimum configurations might not be necessary to ensure appropriate placements. The Department asks parties to comment on the extent to which imposing more specific definitions of a family could impact the supply of potential host families and whether the increased suitability of selected families would compensate for the smaller pool of eligible host families.

Finally, the Department encourages parties to comment on aspects of host family screening and selecting in addition to those specifically raised. For example, sponsors may wish to share the methods they use in identifying potential host families. More importantly, they may wish to enumerate the methods that their experiences have found to be problematic or that they believe may encourage inappropriate adults to agree to host high school students. Sponsors are especially encouraged to share their best practices with the Department to provide the entire industry with guidance on how best to protect the health, safety, and welfare of high school-aged foreign exchange students.

Dated: August 27, 2009.

Stanley S. Colvin,

Deputy Assistant Secretary for Private Sector Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9–21185 Filed 9–1–09; 8:45 am]

BILLING CODE 4710–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket: R02–OAR–2009–0508; FRL–8952–3]

Approval and Promulgation of Implementation Plans; Puerto Rico; Guaynabo PM10 Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Limited Maintenance Plan for the Municipality of Guaynabo nonattainment area in Puerto Rico and grant the request by the Commonwealth of Puerto Rico to redesignate the area from nonattainment to attainment for National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). On March 31, 2009, the Commonwealth of Puerto Rico submitted a Limited Maintenance Plan for the Guaynabo nonattainment area for approval and concurrently requested that EPA redesignate the Guaynabo nonattainment area to attainment for PM10.

DATES: Comments must be received on or before October 2, 2009.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R02–OAR–2009–0508, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov*
- *Fax:* 212–637–3901
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. 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.

Instructions: Direct your comments to Docket No. EPA–R02–OAR–2009–0508. 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 or 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 Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kirk Wieber at telephone number: (212) 637–3381, e-mail address: *wieber.kirk@epa.gov,* fax number: (212) 637–3901, or the above EPA Region 2 address.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is EPA Proposing?
II. Background
III. Requirements for Redesignation
A. Clean Air Act Requirements for Redesignation of Nonattainment Areas
B. The Limited Maintenance Plan (LMP) Option for PM10 Nonattainment Areas
C. Conformity Under the Limited Maintenance Plan Option
IV. Review of the Puerto Rico Submittal Addressing the Requirements for Redesignation and Limited Maintenance Plans
A. Has the Guaynabo Nonattainnment Area (NAA) Attained the Applicable NAAQS?
B. Does the Guaynabo Nonattainment Area (NAA) Have a Fully Approved SIP Under Section 110(k) of the Clean Air Act (Act)?
C. Has Puerto Rico Met all Applicable Requirements Under Section 110 and Part D of the Act?
D. Has Puerto Rico Demonstrated That the Air Quality Improvement Is Due to Permanent and Enforceable Reductions?
E. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?
F. Has Puerto Rico Demonstrated That the Guaynabo NAA Qualifies for the LMP Option?
G. Does Puerto Rico Have an Approved Attainment Emissions Inventory Which Can Be Used To Demonstrate Attainment of the NAAQS?
H. Does the LMP Include an Assurance of Continued Operation of an Appropriate EPA-Approved Air Quality Monitoring Network, in Accordance With 40 CFR Part 58?
I. Does the Plan Meet the Clean Air Act Requirements for Contingency Provisions?
J. Has Puerto Rico Met the Conformity Requirements?
V. What Are EPA's Conclusions?
VI. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing?

The Environmental Protection Agency (EPA) is proposing to approve the Limited Maintenance Plan (LMP) for the Municipality of Guaynabo nonattainment area (Guaynabo NAA) and concurrently proposing to redesignate the Guaynabo NAA to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). The reader is referred to the Technical Support Document (TSD) that accompanies this proposal for more detailed information regarding EPA's evaluation of the LMP and redesignation request for the Guaynabo NAA.

II. Background

As required by the Clean Air Act (Act) in 1987, the EPA revised the particulate matter NAAQS from total suspended particles to PM10. The standard was changed to better protect public health and the environment.

The Act, as amended in 1990, required that all areas that have measured a violation of the NAAQS for PM10 before January 1, 1989 be designated nonattainment. On November 15, 1990 by operation of law, the Municipality of Guaynabo in Puerto Rico was designated nonattainment for PM10 and classified as moderate based on violations measured in 1987.

On November 14, 1993 the Puerto Rico Environmental Quality Board (PREQB) submitted to EPA a State Implementation Plan (SIP) revision which consisted of a PM10 SIP for the Municipality of Guaynabo. The Guaynabo PM10 SIP revision was reviewed and approved by EPA on May 31, 1995 and became effective on June 30, 1995 (60 FR 28333).

After completing the appropriate public notice and comment procedures, on March 31, 2009, the PREQB submitted to EPA a ''Limited Maintenance Plan 24 Hour Particulate Matter (PM10) National Ambient Air Quality Standards and Redesignation Request for the Municipality of Guaynabo Moderate Nonattainment

Area State Implementation Plan Revision.''

III. Requirements for Redesignation

A. Clean Air Act Requirements for Redesignation of Nonattainment Areas

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the Act, and the General Preamble for the implementation of Title I of the Act (General Preamble) provide the criteria for redesignation. See 57 FR 13498 (April 16, 1992). These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, ''Procedures for Processing Requests to Redesignate Areas to Attainment''. The criteria for redesignation are: (1) The Administrator has determined that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable SIP for the area under section 110(k) of the Act; (3) the state containing the area has met all requirements applicable to the area under section 110 and part D of the Act; (4) the Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions; and (5) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the Act.

B. The Limited Maintenance Plan (LMP) Option for PM10 Nonattainment Areas

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM10 nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled ''Limited Maintenance Plan Option for Moderate PM10 Nonattainment Areas,'' referred to as the LMP option memo. The LMP option memo contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. It follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP, are no longer necessary. To qualify for the LMP option: (1) The area should have attained the PM10 NAAQS; (2) the average annual PM10 design value for the area, based upon the most recent 5 years of air quality data at all monitors in the area, should be at or below 40 micrograms per cubic meter (μg/m^3); and (3) the 24 hour design value should be at or below 98 μg/m^3. If an area cannot meet this test, it may still be able to qualify for the LMP option if the average design value for the site is less than the site-specific critical design values. In addition, the area should expect only limited growth in on-road motor vehicle PM10 emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test. The LMP option memo also identifies core provisions that must be included in the LMP. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

C. Conformity Under the Limited Maintenance Plan Option

The transportation conformity rule and the general conformity rule (40 CFR part 93; also see 40 CFR part 51) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area. While EPA's LMP option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM10 NAAQS would result. For transportation conformity purposes, EPA would conclude that emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required. Similarly, federal actions subject to the general conformity rule could be considered to satisfy the ''budget test'' specified in 40 CFR 93.158(a)(5)(i)(A) as these budgets also are essentially considered to be unlimited.

IV. Review of the Puerto Rico Submittal Addressing the Requirements for Redesignation and Limited Maintenance Plan

A. Has the Guaynabo Nonattainment Area (NAA) Attained the Applicable NAAQS?

There are two separate NAAQS for PM10, an annual standard of 50 μg/m^3 and a 24-hour standard of 150 μg/m^3. States must demonstrate that an area has attained the PM10 NAAQS through analysis of ambient air quality data from an ambient air monitoring network representing peak PM10 concentrations. The data should be stored in the EPA Air Quality System (AQS) database. EPA determined that the Guaynabo NAA attained the PM10 NAAQS by its due date of December 31, 1994.

During the time period of 1995–2000, the EPA published in the **Federal Register** various notices identifying those moderate PM10 nonattainment areas (those designated in 1990 by operation of law) that did not attain by the December 31, 1994 attainment date. The Municipality of Guaynabo was not included in any of those notices. Therefore, by inference, EPA has determined that the Municipality of Guaynabo has attained the PM10 NAAQS based on air quality data.

Based on the most recent six years of air quality data in AQS, from 2002–2007, the area continues to be in compliance with both of the PM10 NAAQS. EPA notes that during the period 2002–2007, the Guaynabo NAA had experienced several exceedances of the 24-hour standard as a result of sahara dust events influencing air quality data. In an April 28, 2008 letter to the EPA, Puerto Rico requested that the EPA exclude air monitoring data from a number of days during 2002–2007. Almost all of these exceedances were flagged by Puerto Rico as exceptional events due to sahara dust events under EPA's Natural Events Policy. Based on the information provided by Puerto Rico about these events, in a September 25, 2008 letter from EPA to Puerto Rico, EPA concluded that many of the exceedances that occurred were due to sahara dust natural events. EPA concurred on the flagged days in AQS that were supported by information from Puerto Rico. EPA determined that the Guaynabo NAA was eligible for the LMP option when considering the flagged data that was influenced by exceptional events. Though not relevant to this redesignation request, EPA also notes that the Guaynabo NAA, and all of Puerto Rico, has always attained the more protective PM2.5 NAAQS.

B. Does the Guaynabo Nonattainment Area (NAA) Have a Fully Approved SIP Under Section 110(k) of the Clean Air Act (Act)?

Section 110(k) of the Act outlines EPA's actions on SIP submittals. In order to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area. As stated above, on May 31, 1995, EPA approved the Guaynabo moderate NAA plan which included a PM10 emissions inventory, a control strategy including reasonably available control measures (RACM) and reasonably available control technology (RACT), the demonstration that the Municipality of Guaynabo PM10 nonattainment area will attain the PM10 NAAQS by December 31, 1994 and maintain the PM10 NAAQS through 1999, New Source Review (NSR) permit provisions and contingency measures. See 60 FR 28333.

C. Has Puerto Rico Met All Applicable Requirements Under Section 110 and Part D of the Act?

Section 107(d)(3)(E) of the Act requires that a state containing a nonattainment area must meet all applicable requirements under section 110 and Subchapter 1, Part D (Part D) of the Act for an area to be redesignated to attainment. EPA interprets this to mean that the state must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. The following is a summary of how Puerto Rico meets these requirements.

(1) Clean Air Act Section 110 Requirements

Section 110(a)(2) of the Act contains general requirements for nonattainment plans. These requirements include, but are not limited to, submittal of a SIP that has been adopted by the state after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—NSR permit programs; criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling; and provisions for public and local agency participation. See the General Preamble for further explanation of these requirements. 57 FR 13498 (April 16, 1992).

For purposes of redesignation, EPA's review of the SIP shows that Puerto Rico has addressed all requirements under section 110(a)(2) of the Act as it relates to PM10 requirements. Further, in 40 CFR 52.2722, EPA has approved Puerto Rico's plan for the attainment and maintenance of the national standards under Section 110.

(2) Part D Requirements

Part D contains general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All PM10 nonattainment areas must meet the general provisions of Subpart 1 and the specific PM10 provisions in Subpart 4, ''Additional Provisions for Particulate Matter Nonattainment Areas.'' The following paragraphs discuss these requirements as they apply to the Guaynabo NAA.

(3) Part D, Subpart 1, Section 172(c)

Subpart 1, section 172(c) contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the General Preamble. See 57 FR 13538 (April 16, 1992). Section 172(c)(2) of the Act requires nonattainment plans to provide for reasonable further progress (RFP). Section 171(1) of the Act defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D of title I) or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' Since EPA determined that the Guaynabo NAA was in attainment of the PM10 NAAQS by 1997, no further showing of RFP or quantitative milestones is necessary.

(4) Part D, Subpart 1, Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the Act requires a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the Guaynabo PM10 nonattainment area. In addition, the LMP option memo states that for inventory purposes, the state is only required to submit an attainment inventory to EPA that is based on one of the years of monitoring data which shows attainment. There is no requirement to project emissions over the maintenance period. This means if 2002 is a calendar year which has monitoring data that demonstrates attainment, the 2002 base year inventory can be used as the attainment year inventory and no projection inventories are required over the years of the maintenance period. Only calendar year 2002 PM10 annual emissions summary data are required. In addition, this inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include emissions during the time period associated with the monitoring data showing attainment. The period of violation-free PM10 monitoring data for the Municipality of Guaynabo is 2002–2007. Therefore, 2002 is an appropriate year to select for an attainment inventory. EPA has determined that the 2002 base year inventory emissions inventory is current, accurate and comprehensive and therefore meets the requirements of Section 172(c)(3) of the Act and attainment inventory requirements outlined in the August 9, 2001 memorandum.

(5) Section 172(c)(5)—New Source Review

The Clean Air Act Amendments of 1990 contained revisions to the NSR program requirements for the construction and operation of new and modified major stationary sources located in nonattainment areas. The Act established June 30, 1992 as the submittal date for the revised NSR programs (Section 189 of the Act). The Part D NSR rules for PM10 nonattainment areas in Puerto Rico were approved by EPA on May 31, 1995 (60 FR 28333).

However, on December 31, 2002, EPA promulgated revisions to the NSR regulations. These revisions include among other things: (1) A new actual-to-projected-actual applicability test for existing sources; (2) a new Plant-wide Applicability Limitation option for existing major stationary sources with the ability to manage facility-wide emissions without triggering major NSR; and (3) new recordkeeping requirements for sources that avoid NSR review. Please note that there have been subsequent additional proposed/final revisions to the NSR regulations. However, some of these changes have either not yet been finalized, have been stayed by the Courts, or are subject to litigation and are not in effect yet. The December 31, 2002 revised regulations also required states to adopt these changes into their own state NSR rules and submit this revised rule to EPA no later than January 2, 2006.

EPA has determined that Puerto Rico has not revised its regulations to be consistent with the NSR reform requirements applicable to a moderate PM10 nonattainment area, i.e., for the

Municipality of Guaynabo. However, should Puerto Rico's redesignation request for the Guaynabo NAA be approved by EPA, the NSR reform requirements will become unnecessary. The redesignation process will eliminate the requirement for Puerto Rico to submit a nonattainment NSR SIP for the Municipality of Guaynabo.

(6) Section 172(c)(7) Compliance With Section 110(a)(2) of the Act: Air Quality Monitoring Requirements

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accord with 40 CFR part 58 to verify attainment status of the area. The PREQB operates two PM10 State and Local Air Monitoring Stations (SLAMS) in the Guaynabo NAA. Both monitoring sites meet EPA SLAMS network design and siting requirements set forth at 40 CFR part 58, appendices D and E. In the LMP submitted by Puerto Rico, section 3.e.iv contains Puerto Rico's commitment to continue operation of the monitoring network.

(7) Section 172(c)(9)—Contingency Measures

The Act requires that contingency measures take effect if the area fails to meet reasonable further progress requirements or fails to attain the NAAQS by the applicable attainment date. Since the Guaynabo NAA attained the NAAQS for PM10 by the applicable attainment date of December 31, 1994, contingency measures are no longer required under Section 172(c)(9) of the Act. However, contingency provisions are required for maintenance plans under Section 175A(d). We describe the contingency provisions which Puerto Rico provided in the Guaynabo LMP later in this proposed action.

(8) Part D Subpart 4

Part D Subpart 4, Section 189(a), (c) and (e) requirements apply to any moderate nonattainment area before the area can be redesignated to attainment. The requirements which were applicable prior to the submission of the request to redesignate the area must be fully approved into the SIP before redesignating the area to attainment. These requirements include: (a) Provisions to assure that RACM was implemented by December 10, 1993; (b) either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable; (c) quantitative milestones which were achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and (d) provisions to assure that the control requirements applicable to major stationary sources of PM10 also apply to major stationary sources of PM10 precursors except where the Administrator determined that such sources do not contribute significantly to PM10 levels which exceed the NAAQS in the area. These provisions were fully approved into the SIP upon EPA approval of the PM10 moderate area plan for the Guaynabo NAA on May 31, 1995 (60 FR 28333).

D. Has Puerto Rico Demonstrated That the Air Quality Improvement Is Due to Permanent and Enforceable Reductions?

The state must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the state must demonstrate that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic. Permanent and enforceable control measures in the Guaynabo NAA SIP include RACM and RACT. The Puerto Rico RACM analysis for the Guaynabo NAA concentrated on measures to control emissions from fugitive dust sources such as re-entrained dust from paved roads, unpaved roads and parking lots, construction sites and other areas from which windblown dust may emanate. The RACMs were implemented by the Commonwealth of Puerto Rico through a Memorandum of Understanding (MOU) between the Puerto Rico Environmental Quality Board and the following government entities:

- The Puerto Rico Department of Transportation and Public Works and the Executive Director of the Highway Authority to maintain and control the reconstruction of existing roads and the construction of new roads;
- The Municipality of Guaynabo to pave and maintain the streets, roads and parking areas located in the Municipality of Guaynabo; and
- The Puerto Rico Port Authority to pave and maintain the streets, roads, and parking areas that lead into the port area in Puerto Nuevo, Guaynabo and San Juan.

The control measures established through the MOUs are consistent with RACM requirements and have been implemented for at least 10 years. Table 1 contains a list of RACM implemented in Guaynabo. These control measures were approved into the SIP, and they are both permanent and federally enforceable. See 60 FR 28333 (May 31, 1995).

TABLE 1—GUAYNABO NAA, REASONABLY AVAILABLE CONTROL MEASURES

Control measure	State agency	Authority
Reduce particle matter by curb paving or stabilizing shoulders for the following highways PR–5, PR–22, PR–24, PR–165 located in the Municipality of Guaynabo. Reduce fugitive dust from paved roads by the operation of sweeping machines in the highways listed above at least once per week.	Department of Transportation and Public Works and Puerto Rico Highway Authority.	Rule 423(C) RCAP.
Reduce particulate matter by paving or chemically stabilize any unpaved roads or parking areas and any access points where unpaved traffic surfaces adjoin paved roads in their jurisdiction. Reduce fugitive dust from paved roads by the operation of sweeping machines in the roads, streets and parking areas above at least two times per week.	Municipality of Guaynabo.	Rule 423(C) RCAP.
Reduce particulate matter by paving or chemically stabilize any unpaved roads or parking areas and any access points where unpaved traffic surfaces adjoin paved roads in the following areas: port zone of Puerto Nuevo, Guaynabo, and San Juan. Reduce fugitive dust from paved roads by the operation of sweeping machines in the roads, streets and parking areas above at least two times per week.	Port Authority	Rule 423(C) RCAP.

TABLE 1—GUAYNABO NAA, REASONABLY AVAILABLE CONTROL MEASURES—Continued

Control measure	State agency	Authority
Implementation of engineering good practice for the control of particulate matter emissions during the construction of future projects in port zone of Puerto Nuevo, Guaynabo and San Juan.		

The emission inventory for the Guaynabo NAA identified the sources considered in the RACT analysis. Several minor sources were excluded from the analysis because additional control technology for these sources was determined to be unreasonable since they do not contribute significantly to the modeled exceedances of the PM10 NAAQS. However, some sources located outside the Guaynabo nonattainment area were considered in the RACT analysis because they contribute significantly to the modeled exceedances.

The categories included in Puerto Rico's RACT control strategy are: electric utilities, grain handling and processing facilities, petroleum refineries, asphalt plants, and quarries and rock crushing operations.

The adopted control strategies for stationary sources approved by EPA provided the necessary control measures to attain and maintain the PM10 NAAQS for the Guaynabo NAA. The RACT control strategies are incorporated into Rule 423 of the Puerto Rico Regulations of Control for Atmospheric Pollution (RCAP). Rule 423 is permanent and federally enforceable. The PREQB adopted revisions to Rules 102 and 423 of the Puerto Rico RCAP in support of its redesignation request and development of a maintenance plan for the Municipality of Guaynabo. The revisions to Rule 423 consist of administrative changes such as a revision to a definition and the title of Rule 423. Revisions to Rule 423 also included the removal of certain provisions applicable to sand, soda ash, cement and dust clinkers. These provisions, adopted by Puerto Rico after Rule 423 of the RCAP was approved into the SIP, had the effect of limiting the applicability of the PM10 SIP to these sources. PREQB's recent adoption to remove these provisions applicable to these sources now makes the rule consistent with the previous federally approved version of Rule 423. See 62 FR 3211 or the TSD for a more detailed discussion related to this provision.

Finally, EPA has determined that areas that qualify for the LMP will meet the NAAQS, even under worst case meteorological conditions. Under the LMP policy, the maintenance demonstration is presumed to be satisfied if an area meets the qualifying criteria. Thus, by qualifying for the LMP option, Puerto Rico has demonstrated that the air quality improvements in the Guaynabo area are the result of permanent emission reductions and not a result of either economic trends or meteorology. A description of the LMP qualifying criteria and how the Guaynabo area meets these criteria is provided in the following section.

E. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?

In this action, we are proposing to approve the Puerto Rico LMP for the Guaynabo NAA in accordance with the principles outlined in the LMP option memo. Upon the effective date of the final action of this proposal, the area will have a fully approved maintenance plan.

F. Has Puerto Rico Demonstrated That the Guaynabo NAA Qualifies for the LMP Option?

The LMP option memo outlines the requirements for an area to qualify for the LMP Option. First, the area should be attaining the NAAQS. As stated previously in Section IV.A., EPA has determined that the Guaynabo NAA has been in attainment of the PM10 NAAQS since 1997 and continues to meet the PM10 NAAQS for the period 2002–2007. Second, the average design value (ADV) for the past 5 years of monitoring data must be at or below the critical design value (CDV). The CDV is a margin of safety value and is the value at which an area has been determined to have a 1 in 10 probability of exceeding the NAAQS. The LMP option memo provides two methods for reviewing monitoring data for the purpose of qualifying for the LMP option. The first method is a comparison of a site's ADV with the CDV of 98 $\mu g/m^3$ for the 24-hour PM10 NAAQS and 40 $\mu g/m^3$ for the annual PM10 NAAQS. A second method that applies to the 24-hour PM10 NAAQS is the calculation of a site-specific CDV and a comparison of the site-specific CDV with the ADV for the past 5 years of monitoring data. The ADV for the 24-hour PM10 NAAQS for Guaynabo, based on data from all monitors located in the Municipality of Guaynabo for the years 2002–2006, is 85 $\mu g/m^3$. This value falls below the 24-hour CDV provided in the LMP option memo of 98 $\mu g/m^3$. Therefore, Guaynabo meets the design value criteria outlined in the LMP option memo.

Third, the area must meet the motor vehicle regional emissions analysis test in attachment B of the LMP option memo. Using the methodology outlined in the memo, based on monitoring data for the period 2002–2006, EPA has determined that the Guaynabo NAA passes the motor vehicle regional emissions analysis test. The monitoring data for the period 2002–2006 shows that Guaynabo has attained the NAAQS for PM10, and the 24-hour ADV and the annual ADV in Guaynabo are less than the site specific 24-hour PM10 CDV and the national annual CDV respectively. Finally, the area has met the regional vehicle emissions analysis test. Thus, the Guaynabo NAA area qualifies for the Limited Maintenance Plan option described in the LMP option memo. The LMP option memo also indicates that once a state selects the LMP option and it is in effect, the state will be expected to determine, on an annual basis, that the LMP criteria are still being met. If the state determines that the LMP criteria are not being met, it should take action to reduce PM10 concentrations enough to requalify for the LMP. One possible approach the state could take is to implement contingency measures. In section E of the Limited Maintenance Plan, Puerto Rico commits to evaluate, on an annual basis, the LMP criteria for the Guaynabo NAA. For these reasons and reasons explained below, we are proposing to approve the LMP for the Guaynabo NAA and the State's request to redesignate the Municipality of Guaynabo, PR from nonattainment to attainment for PM10.

G. Does Puerto Rico Have an Approved Attainment Emissions Inventory Which Can Be Used To Demonstrate Attainment of the NAAQS?

Pursuant to the LMP option memo, the state's approved attainment plan should include an emissions inventory (attainment inventory) which can be used to demonstrate attainment of the NAAQS. The attainment inventory should represent emissions during one

of the years during the same five year period associated with air quality data used to determine whether the area meets the applicability requirements of the LMP Option. The state should review its inventory every three years to ensure emissions growth is incorporated in the attainment inventory if necessary. In this instance, Puerto Rico completed an attainment year inventory for the calendar year 2002. EPA has reviewed the 2002 attainment year emissions inventory and determined that it is current, accurate and complete. In addition, the emissions inventory submitted with the Limited Maintenance Plan for the calendar year 2002 is representative of the level of emissions during the time period used to calculate the average design value since 2002 is one of the years during the five year period used to calculate the design value.

2002 GUAYNABO, PUERTO RICO PM10 ATTAINMENT EMISSION INVENTORY

[In tons per year]

Point	Area	Off-highway mobile	Highway mobile	Total
2,365	398*	130.5	49	2,942.5

* Area source emissions inventory includes emissions from paved and unpaved roads.

H. Does the LMP Include an Assurance of Continued Operation of an Appropriate EPA-Approved Air Quality Monitoring Network, in Accordance With 40 CFR Part 58?

The PM10 monitoring network for the Municipality of Guaynabo consists of two monitors. These sites are identified as (1) Site Number 7, located at the USGS and Water Resources Building and (2) Site 24, located at the Electrical Substation. These monitors are in close proximity to each other and are representative of the air quality for the area. Also, the Commonwealth of Puerto Rico has been affected by natural events such as the dust from the Sahara desert transported across the Atlantic Ocean and volcanic ash from the Soufriere Hills located on Montserrat Island. These natural events affect the air quality in the Municipality of Guaynabo. Once flagged and justified, these natural events can be excluded as part of the determination of attainment with the PM10 NAAQS in accordance with the provisions of ''Treatment of Data Influenced by Exceptional Events; Final Rule,'' published March 22, 2007 and Appendix K to 40 CFR Part 50.

The monitoring network was developed and has been maintained in accordance with federal siting and design criteria in 40 CFR Part 58, Appendices D and E and in consultation with Region 2. In the LMP submitted by Puerto Rico, section 3.e.iv contains Puerto Rico's commitment to continue to operate its monitoring network to meet EPA requirements.

I. Does the Plan Meet the Clean Air Act Requirements for Contingency Provisions?

Section 175A(d) of the Act states that a maintenance plan must include contingency provisions, as necessary, to promptly correct any violation of the NAAQS which may occur after redesignation of the area to attainment. As explained in the LMP option memo, these contingency measures do not have to be fully adopted at the time of redesignation. In compliance with the requirements of section 172(c)(9) of the Act, Puerto Rico included contingency measures in the PM10 SIP for the Municipality of Guaynabo approved by EPA on May 31, 1995.

The contingency measures established in Rule 423(D) of the RCAP will continue to be in place for the period established by the LMP policy. The following are the contingency measures that are in place and will continue to be in place for the Municipality of Guaynabo:

(1) The Puerto Rico Department of Transportation shall collect data on silt content and dust loadings for highways in Guaynabo Municipality using EPA procedures for better estimating PM10 emissions following AP–42 procedures.

(2) Guaynabo Municipality shall require vegetation, chemical stabilization, or other abatement of wind erodible soils.

(3) Diesel fuel oil with a sulfur in fuel level less than 0.05% shall be used by all vessels while they operate in San Juan Bay which is specifically defined as the navigable waters south of the imaginary line connecting Punta del Morro and Isla de Cabras.

(4) No visible emissions from any vessel shall be permitted in the San Juan Bay except as provided in Rule 403 of this Regulation.

(5) The Puerto Rico Port Authority shall implement a street cleaning program or other program to prevent dust from collecting on paved surfaces in their jurisdiction.

(6) The San Juan Municipality must revise the dust and fire abatement programs at its sanitary landfill in order to establish additional pollution abatement control strategies.

EPA believes that the contingency measures in Guaynabo's Limited Maintenance Plan meet the requirements for contingency measures as outlined in the Limited Maintenance Plan Option memo.

J. Has Puerto Rico Met the Conformity Requirements?

(1) Transportation Conformity

Under the LMP option, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result. While areas with maintenance plans approved under the LMP option memo are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the Commonwealth must document and ensure that: (a) Conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; (b) The MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105; (c) Transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108; (d) The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111; (e) Transportation plans and projects provide for timely implementation of SIP transportation control measures in accordance with 40 CFR 93.113; (f) Projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and (g) Project sponsors and/or operators provide written

commitments as specified in 40 CFR 93.125.

On May 12, 2009, EPA initiated an adequacy review of the Guaynabo LMP for transportation conformity purposes in accordance with 40 CFR 93.118(f), in a posting on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.* As stated above, LMP budgets are unconstrained and consequently, the adequacy review period for these maintenance plans serves to allow the public to comment on whether limited maintenance is appropriate for these areas. The comment period for the adequacy posting for the Guaynabo LMP ended on June 11, 2009. EPA did not receive any comments on this posting.

(2) General Conformity

For federal actions which are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that ''the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State or Commonwealth agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP.'' 40 CFR 93.158(a)(5)(i)(A). The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the Commonwealth and local air quality agencies. These emissions budgets are different than those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels. Puerto Rico has chosen not to include specific emissions allocations for federal projects that would be subject to the provisions of general conformity.

V. What Are EPA's Conclusions?

EPA has determined that the PM10 Limited Maintenance Plan submitted by the PREQB on March 31, 2009 for the Municipality of Guaynabo meets all Clean Air Act provisions and EPA policy and guidance, including the criteria outlined in EPA's LMP option memo. Therefore, EPA is proposing to approve the PM10 Limited Maintenance Plan for the Municipality of Guaynabo and all of its components as they were submitted by PREQB on March 31, 2009. Specifically, EPA is proposing to approve the 2002 PM10 attainment emissions inventory, attainment plan, maintenance demonstration, contingency measures, monitoring network, transportation conformity analysis and revisions to Rules 102 and 423 of the Puerto Rico RCAP.

EPA is also proposing to approve the redesignation request for the Municipality of Guaynabo submitted by the PREQB on March 31, 2009 based on EPA's determination that the supporting documentation for redesignation satisfies all Clean Air Act requirements and EPA's policy and guidance, including the criteria outlined in EPA's redesignation guidance memorandum.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 proposed action:

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

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 18, 2009.

Barbara A. Finazzo,

Acting Regional Administrator, Region 2.

[FR Doc. E9–21169 Filed 9–1–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, 15, 42, and 49

[FAR Case 2008–016; Docket 2009-0032, Sequence 1]

RIN 9000–AL45

Federal Acquisition Regulation; FAR Case 2008–016, Termination for Default Reporting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to establish procedures for contracting officers to provide contractor information into the Past Performance Information System (PPIRS). This case sets forth requirements for reporting defective cost or pricing data and terminations for cause or default. Evaluation of past performance information, especially terminations, manages risks associated with timely, effective and cost efficient completion of contracts, a key objective of the President's March 4, 2009, Memorandum on Government Contracting.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before November 2, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2008–016 by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2008–016'' into the field ''Keyword''. Select the link that corresponds with FAR Case 2008–016. Follow the instructions provided to submit your comment. Please include your name, company name (if any), and ''FAR Case 2008–016'' on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2008–016 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Cromer, Procurement Analyst, at (202) 501–1448 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR case 2008–016.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed case is subsequent to and supplements FAR Case 2006–022, Contractor Performance Information, that was published in the **Federal Register** as a final rule on July 1, 2009 (74 FR 31557). FAR Case 2006–022 provided requirements for contractor performance information to be entered into PPIRS. This case, at the request of the Office of Federal Procurement Policy (OFPP), expands on FAR Case 2006–022 by adding requirements for other contractor information to be entered into PPIRS, such as defective cost or pricing data and terminations for cause or default.

The Councils further considered the memorandum issued by the Office of the Under Secretary of Defense, subject Termination Notification dated July 23, 2008, in drafting this proposed rule. (See *www.acq.osd.mil/dpap/ops/policy__vault__archive.html.*)

This proposed FAR rule includes the following:

1. Addition of language in FAR 8.406–8, Reporting, for the ordering activity contracting officer, in accordance with agency procedures, to ensure that information related to termination for cause notices and any amendments are included in PPIRS, and in the event the termination for cause is subsequently converted to a termination for convenience, or is otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is included in PPIRS.

2. Addition of language in FAR 12.403(c)(4) for the contracting officer, in accordance with agency procedures, to ensure that information related to termination for cause notices and any amendments are included in PPIRS in accordance with FAR 42.1503(f), and, in the event the termination for cause is subsequently converted to a termination for convenience, or is otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is included in PPIRS.

3. Addition of language in FAR 15.407–1(d) for the contracting officer, in accordance with agency procedures, to ensure that information relating to a determination that the contractor submitted defective cost or pricing data is provided for inclusion in PPIRS.

4. Addition of language in FAR 42.1503(f) setting forth the procedure for contracting officers within 10 days after determining that a contractor has submitted defective cost or pricing data, or a termination for cause or default notice has been issued or any subsequent conversions or withdrawals have been issued, to ensure information related to these issues are provided for inclusion in PPIRS.

5. Addition of language in FAR 49.402–8, Reporting Information, for the contracting officer, in accordance with agency procedures, to ensure that information relating to the termination for default notice and any subsequent conversions or withdrawals are provided for inclusion in PPIRS.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any additional requirements on small businesses. The collection and reporting of contractor information is an internal process to the Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 8, 12, 15, 42, and 49 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2008–016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 8, 12, 15, 42, and 49

Government procurement.

Dated: August 27, 2009.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 8, 12, 15, 42, and 49 as set forth below:

1. The authority citation for 48 CFR parts 8, 12, 15, 42, and 49 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Add section 8.406–8 to read as follows:

8.406–8 Reporting.

An ordering activity contracting officer, in accordance with agency procedures, shall ensure that information related to termination for cause notices and any amendments are included in PPIRS in accordance with 42.1503(f). In the event the termination for cause is subsequently converted to a termination for convenience, or is otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is included in PPIRS.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 12.403 by adding paragraph (c)(4) to read as follows:

12.403 Termination.

* * * * *

(c) * * *

(4) The contracting officer, in accordance with agency procedures, shall ensure that information related to termination for cause notices and any amendments are included in PPIRS in accordance with 42.1503(f). In the event the termination for cause is subsequently converted to a termination for convenience, or is otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is included in PPIRS.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

4. Amend section 15.407–1 by adding a new sentence to the end of paragraph (d) to read as follows:

15.407–1 Defective cost or pricing data.

* * * * *

(d) * * * When the contracting officer determines that the contractor submitted defective cost or pricing data, the contracting officer, in accordance with agency procedures, shall ensure that information relating to the determination is provided for inclusion in PPIRS in accordance with 42.1503(f).

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

5. Amend section 42.1502 by adding paragraph (i) to read as follows:

42.1502 Policy.

* * * * *

(i) Agencies shall promptly provide other contractor information for inclusion in PPIRS in accordance with 42.1503(f).

6. Amend section 42.1503 by removing from paragraph (a) the words ''office, end'' and adding ''office, audit office, end'' in its place; and adding paragraph (f) to read as follows:

42.1503 Procedures.

* * * * *

(f) *Other contractor information.* Within 10 days after a contracting officer determines that a contractor has submitted defective cost or pricing data, or a termination for cause or default notice has been issued or any subsequent conversions or withdrawals have been issued, agencies shall ensure information related to these issues are provided for inclusion in PPIRS.

PART 49—TERMINATION OF CONTRACTS

7. Add section 49.402–8 to read as follows:

49.402–8 Reporting Information.

The contracting officer, in accordance with agency procedures, shall ensure that information relating to the termination for default notice and any subsequent conversions or withdrawals are provided for inclusion in PPIRS in accordance with 42.1503(f).

[FR Doc. E9–21176 Filed 9–1–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R2-ES-2008-0110]
[MO 9221050083-B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Sacramento Mountains Checkerspot Butterfly as Endangered with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12–month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 12–month finding on a petition to list the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) as an endangered species and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we find that listing the subspecies is not warranted at this time. We ask the public to continue to submit to us any new information that becomes available concerning the status of or threats to the subspecies. This information will help us to monitor and encourage the conservation of the subspecies.

DATES: This finding was made on September 2, 2009.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS-R2-ES-2008-0110. Supporting documentation we used to prepare this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 2105 Osuna NE, Albuquerque, NM 87113; telephone (505) 346-2525; facsimile (505) 346-2542. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, New Mexico Ecological Services Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the List of Endangered and Threatened Wildlife that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Wildlife. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months.

We must publish these findings in the **Federal Register**.

Previous Federal Actions

On January 28, 1999, we received a petition from Mr. Kieran Suckling of the Southwest Center for Biological Diversity (now Center for Biological Diversity) requesting emergency listing of the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) (butterfly) as endangered with critical habitat. On December 27, 1999, we published a 90–day finding that the petition presented substantial information that listing the butterfly may be warranted, but that emergency listing was not warranted; that document also initiated a status review of the subspecies (64 FR 72300).

On September 6, 2001, we published a 12–month finding and proposed rule to list the butterfly as endangered with critical habitat (66 FR 46575). On October 7, 2004, we published a notice of availability of our draft Conservation Plan for the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) (Conservation Plan) (69 FR 60178), which we finalized in 2005 (Service *et al.* 2005). On November 8, 2004, we published a notice of availability of a draft economic analysis and draft environmental assessment on our proposed designation of critical habitat for the butterfly (69 FR 64710). On December 21, 2004, we withdrew the proposed rule (69 FR 76428), concluding that the threats to the species were not as great as we had perceived when we proposed it for listing.

On July 5, 2007, we received a petition dated June 28, 2007, from Forest Guardians (now WildEarth Guardians) and the Center for Biological Diversity requesting that we emergency list the butterfly as endangered and that we designate critical habitat concurrently with the listing. In a July 26, 2007, letter to the petitioners, we acknowledged the petition and responded that we intended to make a finding on whether the petition presented substantial information that the requested action may be warranted, to the maximum extent practicable within 90 days of receipt of the petition, according to the provisions of section 4(b)(3) of the Act. On October 16, 2007, we informed the petitioners that an emergency listing of the butterfly was not warranted at that time because the insect control that had been scheduled to occur had been postponed until later in the autumn when the butterfly larvae were likely to be inactive and not threatened by the insect control actions. In a December 10, 2007, letter, we notified the petitioners that funding was available to complete the 90–day finding in fiscal year 2008. On January 3, 2008, Forest Guardians filed suit against the Service for failure to issue a 90–day finding on the petition (*Forest Guardians, et al.* v. *Kempthorne*, 1:08-CV-00011-RMU (D. D.C.)). On April 15, 2008, a settlement was reached that required the Service to submit to the **Federal Register** a determination of whether the petition presents substantial information indicating that the petitioned action of listing the butterfly may be warranted.

On December 5, 2008, we published a 90–day petition finding for the butterfly in the **Federal Register** (73 FR 74123). We found that the petition presented substantial information indicating that listing the subspecies may be warranted, and we initiated a review of the subspecies' status within its range. This notice constitutes our 12–month finding for the petition to list the butterfly as endangered with critical habitat.

Species Information

The Sacramento Mountains checkerspot butterfly is a member of the brush-footed butterfly family (Nymphalidae). The adults have a wingspan of approximately 5 centimeters (cm) (2 inches (in)), and they are checkered with dark brown, red, orange, white, and black spots and lines. Larvae are black-and-white banded with orange dorsal bumps and black spines. Larvae reach a maximum length of about 2.5 cm (1 in) (Pittenger and Yori 2003, p. 8). The taxon was described in 1980 (Ferris and Holland 1980).

The butterfly inhabits meadows within the mixed-conifer forest (Lower Canadian Zone) at an elevation between 2,380 to 2,750 meters (m) (7,800 to 9,000 feet (ft)) in the vicinity of the Village of Cloudcroft, Otero County, New Mexico. The adult butterfly is often found in association with the larval food plants *Penstemon neomexicanus* (New Mexico penstemon) and *Valeriana edulis* (valerian) and adult nectar sources, such as *Helenium hoopesii* (sneezeweed). *Penstemon neomexicanus* is a narrow endemic species (Sivinski and Knight 1996), restricted to the Sacramento and Capitan Mountains of south-central New Mexico.

Adult butterflies are known to lay their eggs only on *Penstemon neomexicanus* (Service *et al.* 2005, p. 10), although the larvae feed on both *P. neomexicanus* and *Valeriana edulis* (Service *et al.* 2005, p. 11). After hatching, larvae feed on host plants and, during the fourth or fifth instar (the period between molts in the larval stage of the butterfly), enter an obligatory and extended diapause (maintaining a state of prolonged inactivity), generally as the food plants die back in the autumn from freezing. Some larvae may remain in diapause for more than one year, depending on environmental conditions. During diapause, larvae probably remain in leaf or grass litter near the base of shrubs, under the bark of conifers, or in the loose soils associated with pocket gopher (*Thomomys bottae*) mounds (Service *et al.* 2005, p. 10). Once the larvae break diapause, they feed and grow through three or four more instars before pupating (entering the inactive stage within a chrysalis) and emerging as adults. Diapause is generally broken in spring (March and April), and adults emerge from the chrysalis in summer (June and July).

We do not know the extent of the historical range of the butterfly due to limited information collected on this taxon prior to the time it was formally acknowledged as a new subspecies (Ferris and Holland 1980). The current known range of the butterfly is restricted to the Sacramento Mountains and is bordered on the north by the Mescalero Apache Nation lands, on the west by Bailey Canyon at the mouth of Mexican Canyon, on the east by Spud Patch Canyon, and on the south by Cox Canyon (U.S. Forest Service (USFS) 2009a, pp. 1 and appendices; Service *et al.* 2005, p. 12). The potential range of the butterfly to the east and west is likely restricted because the nonforested areas are below 2,377 m (7,800 ft) in elevation, and the butterfly does not occur below this elevation (Service *et al.* 2005, p. 9).

The USFS estimates that there are about 1,093 hectares (ha) (2,700 acres (ac)) of suitable butterfly habitat on USFS (560 ha (1,385 ac)) and private lands (532 ha (1,315 ac)) (USFS 2004a, 2008a, p. 18). Of this, about 60 to 70 percent, or roughly 647 to 769 ha (1,600 to 1,900 ac), might be occupied in a given year (USFS 2004a, p. 2; 2009b, p. 2). These estimates are the best and most recent information we have regarding the range and distribution of the butterfly.

Overview of Survey Data

Larval and adult abundance surveys have been conducted for the butterfly since 1998 (USFS 2009a; Pittenger and Yori 2003). Many surveys have been ad hoc and not based upon rigorous methodology. Often, individuals were tallied along transects or during chance encounter surveys. The USFS has also established and monitored larval plots

since 1999 (USFS 2009a). Analysis of these coarse surveys for larvae provide only relative comparisons of mean abundance between years. These ad hoc estimates of abundance are based upon total larval counts. This type of abundance estimate, frequently known as an index to abundance, is known to be biased low (that is, the estimate is always lower than the true population number) (White *et al.* 1982, p. 32; Pollock *et al.* 1990, pp. 30-32). Thus, these data document presence or absence on specific plots through time, but are of little use in determining population trends of the butterfly. This is, in part, because from 1999 to 2003, larval tents that were found on one sampling day were not marked, so they may have been recounted on a subsequent sampling day (USFS 2004b, pp. 10-11).

In addition, confounding factors (such as weather, observer bias, varying effort), limited replication (one sample per meadow per year), and sampling errors limit the applicability of those factors in evaluating the butterfly's status (see USFS 2009a). Moreover, in some years, the USFS also conducted ad hoc surveys of adult butterflies (USFS 2009a). Adult and larval surveys were not conducted at randomly selected locations and may not correspond to the butterfly population rangewide. The larval plots (areas that are permanently marked and annually surveyed) are located within 10 meadows but are only about 223 square (sq) m (2,400 sq ft). Our review of the data from the larval plots found that the small scale of survey plots does not relate meaningfully to the demographics of the butterfly. For example, the USFS did not detect larvae within 6 of 10 plots in 2008, but adults were observed within the four meadows where larvae were not found on the plots, confirming the continued occupancy by the subspecies (USFS 2009a). Had we relied upon the larval plot data, we would have inaccurately concluded that the butterfly was absent from the meadows. Moreover, the disparity among survey methods, effort, and the data collected make it difficult to assess the butterfly population not only in occupied meadows, but also rangewide. Thus, the low numbers of butterflies observed during dry years, low survey effort, and spatial variability of food plants make it difficult to evaluate any historical trends or to make predictions about future population trends.

The rangewide population size of the butterfly remains unknown because comprehensive surveys are logistically difficult and, therefore, have not been conducted. As noted above, limited surveys have been conducted only in small parts of its range. An assessment of population trends using these data would not be accurate, unless we could demonstrate that these limited data are representative of the overall population. We expect detecting overall trends will be difficult for this species, given data limitations, the cost of comprehensive surveys; and the likelihood of natural, annual, and spatial variations.

The USFS has been conducting presence-or-absence surveys since 1998 to estimate the range of the butterfly (USFS 2009a). The known range of the butterfly has not been expanded since 2004 (USFS 2009a). Although we do not have standardized monitoring data to evaluate whether the butterfly's population is increasing, stable, or declining on a gross scale, our observations indicate that neither the range of the butterfly, nor its persistence within general localities has decreased. Based on the best available information, we find that the butterfly continues to persist within the same general localities (USFS 2009a; Service 2009; Pittenger and Yori 2003; McIntyre 2005, 2008; Ryan 2007, pp. 11-12). The USFS and Service will continue to survey and monitor the butterfly population, although we intend to refine the techniques used to improve the quality and applicability of the data collected (USFS 2009a, p. 1).

For more information on the butterfly, refer to the September 6, 2001, proposed rule (66 FR 46575); the November 1, 2005, Conservation Plan (Service *et al.* 2005); and the December 21, 2004, withdrawal of the proposed rule (69 FR 76428). Some of this information is discussed in our analysis below. The Conservation Plan (Service *et al.* 2005) with the Village of Cloudcroft, Otero County, USFS, and the Service was developed to identify and commit to implementing actions to conserve the butterfly.

Summary of Factors Affecting the Species

Section 4 of the Act (U.S.C. 1533 *et seq.*) and implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. In making this finding, we summarize below the information regarding the status and threats to the butterfly in relation to the five factors provided in section 4(a)(1) of the Act. Under section 4(a)(1) of the Act, we may list a species on the basis of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this 12–month finding, we have considered all scientific and commercial information received or acquired up to the publication of the 2004 withdrawal of the proposed rule (69 FR 76428; December 21, 2004) and any information received after that finding, including information in response to the most recent 90–day finding (73 FR 74123; December 5, 2008). The petitioners provided additional comments and information on the butterfly during the comment period for the 90–day finding. We reviewed and incorporated this information where appropriate. Our evaluation of this information is presented below.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Under Factor A, we considered whether the Sacramento Mountain checkerspot butterfly is threatened by the following: Private property development, recreational impacts; habitat-altering projects in relation to roads, powerlines, and other small-scale impacts; livestock grazing; catastrophic wildfire and fire suppression; noxious weeds.

Development

The petitioners assert that, although development within the Village of Cloudcroft decreased following the September 6, 2001, publication of the proposed rule to list the butterfly (66 FR 46575), development has nonetheless continued and, combined with other threats to the butterfly, remains significant. The petitioners correctly note that, as passed, the amended Otero County Subdivision Ordinance of 2005 will expire on July 1, 2011 (Otero County 2005, p. 2). The ordinance requires that, for any new subdivision to be developed within potential butterfly habitat, a survey be conducted for the butterfly, its habitat, and its larval host plant *Penstemon neomexicanus.* If the survey is positive for the presence of the butterfly or its habitat, the developer is required to submit plans to address wildfire control, avoidance of destruction of the butterfly and its habitat, and, if avoidance is not possible, relocation of butterflies and restoration of destroyed habitat. The ordinance also contains a section on enforcement, penalties, and remedies. The amendment to the subdivision ordinance was not in place when we

made our withdrawal of the proposed listing rule in 2004, so we did not rely on it when we concluded that development was not a significant threat to the butterfly. The Village of Cloudcroft has received no permit applications for new subdivisions since the ordinance became effective in 2005, although one survey was conducted within potential habitat and found no butterflies present (J. McIntyre, pers. comm., 2009). The lack of development may be because the area has experienced water shortages in recent years (Friederici 2007, p. 1). In fact, water was so scarce that the Village of Cloudcroft was forced to haul water in recent years and subsequently installed the nation's first reuse system, where treated wastewater is combined with incoming water to produce water for household use (Kurland 2007). The petition presents information on these issues that was previously submitted in comments on the draft Conservation Plan (69 FR 60178; October 7, 2004), draft environmental assessment (69 FR 64710; November 8, 2004), and draft economic analysis (69 FR 64710; November 8, 2004) for the butterfly. The draft environmental assessment and draft economic analysis did not contemplate effects of the then-future ordinance.

In our 2004 draft economic analysis, we found that approximately 8 to 10 new homes had been constructed annually since 2000 within the boundary of the proposed critical habitat designation of approximately 140 sq kilometers (km) (54 square miles (mi)) in the vicinity of the Village of Cloudcroft (Service 2004). Based upon this trend of 8 to 10 new homes annually, over the next 20 years, approximately 160 to 200 new residential projects may be built within the boundary of the then-proposed critical habitat for the butterfly. However, not all of these new residential projects would be located within areas that contain butterfly habitat. The economic analysis assumed that 55 to 69 of the landowners would conduct butterfly surveys because they would be located within areas that were proposed as critical habitat and that provide butterfly habitat. Our draft economic analysis estimated that butterflies would be found in 8 to 24 of those 55 residential project areas surveyed. Our draft economic analysis also estimated that the median lot size of these developments was 0.14 ha (0.34 ac), indicating that up to 3.4 ha (8.2 ac) of occupied butterfly habitat may be affected by residential and commercial development activities (for a detailed discussion, see Service 2004). In the 2001 proposed rule, we described an additional 4 ha (10 ac) of impacts from a private (residential) development on the east side of the Village of Cloudcroft. Thus, we continue to estimate that about 2 percent of the suitable occupied butterfly habitat on private lands (7.4 of 314 ha (18 of 777 ac), using the USFS (2004a, p. 2) estimate of occupied acres on private lands) may be subject to development. It is likely that a small but unknown number of butterflies may be taken through development actions. Nevertheless, we do not believe that this level of impact is a significant threat to the butterfly. The discussion of residential and commercial development in the withdrawal for the butterfly (69 FR 76428; December 21, 2004) is still the best available information that we have. As such, we have no reason to believe that residential and commercial development will threaten the butterfly in the future.

Off-Highway Vehicles

In our 2004 withdrawal of the proposed rule, we evaluated increased efforts by the USFS to reduce off-highway vehicle (OHV) use in Bailey Canyon and campgrounds where the butterfly occurs, and we analyzed information on the extent and nature of off-road impacts to the butterfly and its food plants. We concluded that the specific actions (fencing, signs, and barriers) the USFS had taken to reduce OHV impacts appeared to be effective, that only a small proportion of occupied habitat would be impacted annually by continuing OHV use, that the magnitude of the impact is low, and that OHV use does not significantly threaten the butterfly (69 FR 76428; December 21, 2004). As detailed below, we find this continues to reflect the best available information.

The 90–day finding noted that we had no additional information on the increase in OHV use since our withdrawal of the proposed rule to list the butterfly in 2004 (73 FR 74123). The petitioners presented some additional information during the open comment period. They claim that the butterfly will not be considered in the forthcoming travel management regulations (described below) until it is listed, a candidate, or proposed for listing, and section 7 consultations are required for activities that may affect the species (WildEarth Guardians 2009, p. 7). Additionally, they believe that OHV use is a growing activity on the Lincoln National Forest (Forest) since 2004, based on a 2007 monitoring report from the Forest (WildEarth Guardians 2009, p. 7; USFS 2008b, pp. 9-10).

We previously recognized that OHV use was increasing on the Forest, and that impacts were occurring on about half of the occupied butterfly habitat (225 ha (555 ac)) (69 FR 76428; December 21, 2004; USFS 2004a). In 2004, we found that fencing, signs, and monitoring by law enforcement personnel had stopped OHVs from entering butterfly habitat on USFS lands, and very little habitat disturbance can be attributed to OHVs in a given year (69 FR 76440). We also noted that the USFS is revising its travel management regulations to designate a system of existing roads and trails and to regulate or prohibit certain motor vehicle uses (69 FR 42381; July 15, 2004, and 69 FR 76428; December 21, 2004). In November 2005, the USFS issued the Travel Management Rule for designation of routes and areas for motorized vehicle use (36 CFR 212.56). The rule requires that the USFS designate a system of roads, trails, and areas for motor vehicle use by vehicle class and, if appropriate, by time of year (70 FR 68264; November 5, 2005). The directives establishing agency policy and standard processes to follow were recently finalized (December 9, 2008; 73 FR 74689). As part of this effort, the Forest inventoried and mapped dispersed recreation sites (USFS 2008b, p. 2). The current policy on the Forest permits driving vehicles up to 91 m (300 ft) from either side of an open, authorized road or trail to camp or picnic (USFS 2009c, p. 1). In some areas, the Forest found that user-created roads had expanded beyond the 91-m (300-ft) distance currently allowed under the Forest Plan (USFS 2008b, p. 2). Through the travel management process, the Forest intends to restrict the current distance to 30 m (100 ft) (USFS 2009d, p. 1) and will produce new maps to reflect that. Once the designation of existing roads and trails that are open for motor vehicle use is complete, the Forest will prohibit motor vehicle use off the designated system. Still, this Rule will not increase the agency's budget or the number of law enforcement officers. However, the designation of a system of roads and trails will enhance enforcement by substituting a regulatory prohibition for closure orders and providing for a standardized motor vehicle use map supplemented by signage (70 FR 68270; November 9, 2005). This process should be complete during fiscal year 2009 (USFS 2009e, p. 5). We agree that some individual butterflies or their food plants may be killed or injured by

OHVs. However, we believe the revised travel management regulations will further reduce the impact of motorized vehicles on the butterfly and its habitat by providing a consistent policy that can be applied to all classes of motor vehicles, including OHVs. We have considered the information presented by WildEarth Guardians, including the travel analysis report on the Lincoln National Forest (USFS 2008a, entire document), and conclude that OHVs are not a significant threat to the butterfly now or in the future.

The USFS reported the quantity of land currently in use as Forest roads and within the habitats of species that are potentially affected by the presence of roads (USFS 2008a, p. 18). One category of data reported is ''acres of habitat lost to road.'' The Forest estimated that 51 ha (126 ac) of Forest-wide roads occurred in meadows within the range of the butterfly's habitat. The petitioners claim that this amount of occupied butterfly habitat has been lost to road construction and believe that this loss may be even more significant to the survival of the butterfly than the amount of private lands impacted by development. This category is a simple calculation based upon the total miles of roads that traverse meadow habitat of the butterfly multiplied by the average road width. That is, 119 km (74 mi) of roads multiplied by an average road width of 4.2 m (14 feet), equaling 51 ha (126 ac), traverse butterfly habitat (USFS 2008a, p. 18). While the estimate is new information, we previously recognized that roads have been historically constructed within meadows likely occupied by the butterfly. Therefore, we do not consider these existing roads a new threat because none was constructed since our 2004 withdrawal (69 FR 76428; December 21, 2004). After reviewing this information, we affirm that the OHV use and road construction do not present a current or foreseeable future threat to the butterfly.

Camping

As noted above, the existing policy on the Forest for the past 20 years has been to allow motorized travel anywhere within 91 m (300 ft) of either side of an open road or trail on USFS lands to reach a dispersed camp site (USFS 2008a, p. 27). On current motorized trails, use is limited to vehicles that are less than 127 centimeters (50 inches) wide (USFS 2008a, p. 22). The Forest gathered data in July 2007 to locate as many dispersed camping sites as possible (USFS 2008a, pp. 27-28). They recorded 477 dispersed camping sites on the entire Sacramento Ranger District, but did not report how many were within meadows occupied by the butterfly or other habitat types (USFS 2008a, p. 27). Nevertheless, to address this situation, the Forest intends to limit driving to those dispersed camping sites within 30 m (100 ft) of an open, authorized road or trail through the Travel Management Rule process that will be finalized in Fiscal Year 2009 (USFS 2009c; p. 1; 2009d, p. 1). This action would prohibit the use of a motorized vehicle to access 305 of the 477 of the dispersed camping sites on the Sacramento Ranger District that are currently beyond the 30-m (100-ft) distance (USFS 2008a, p. 27). This change will lessen the chances of individual butterflies and their food plants being harmed from these activities. We believe this process will further protect butterflies and food plants from deleterious effects of motorized vehicles and camping.

In our 2004 withdrawal of the proposed rule, we discussed increased efforts by the USFS to reduce impacts to the butterfly from dispersed camping and camping at established campgrounds. Although the petitioners acknowledge that the USFS has taken measures to reduce recreational impacts to the butterfly at established campgrounds, they claim that increased camping can result in harm to the butterfly. We have no information to indicate that camping has increased since 2004 in habitats occupied by the butterfly. The USFS reduced capacity within Deerhead Campground by 20 percent and intends to reduce the capacity of Sleepygrass Campground by 12 percent (removal of 21 campsites, 27 picnic locations, and 8 toilets) within occupied butterfly habitat by 2012 (USFS 2005a, p. 5; 2008c, pp. 13-14). Since 2004, they have also reduced the amount of disturbance within occupied butterfly habitat in Black Bear, Slide, Aspen, and Deerhead campgrounds (USFS 2005a, pp. 2-4; 2009a; 2009b, p. 1). These actions have included restricting access to occupied butterfly habitat, and surveying and moving larvae in three campgrounds prior to capital improvements that redesigned camping facilities to reduce the number of campers and remove picnic tables (Service 2005; 2005b, p. 11; USFS 2003, 2009a). Similar improvements to butterfly habitat within Sleepygrass Campground have not yet been initiated but will likely be initiated this year and be completed by 2012 (USFS 2008c, p. 14; 2009d, p. 1). When the project within Sleepygrass Campground is complete, all eight of the campgrounds that contain occupied butterfly habitat will have improved, thereby resulting in significantly fewer impacts to the species than in 2001. We are not aware of any information that supports the contention that camping-related impacts to the butterfly or its habitat have increased or are likely to do so in the foreseeable future. We do not believe that camping-related activities will result in significant population-level impacts to the butterfly. Therefore, we do not consider disturbance related to camping or campgrounds to be a threat to the butterfly now or in the foreseeable future.

Mountain Biking

In our 2004 withdrawal of the proposed rule, we acknowledged that butterfly larvae were known to occur on and adjacent to mountain bike trails, and we reviewed efforts routinely made by the USFS to address potential impacts to the butterfly, including surveys and either avoiding or moving larvae during large events, such as mountain bike races (69 FR 76428; December 21, 2004). We concluded that, while mountain biking does affect the butterfly and its food plants to some extent, it did not appear that the impacts were likely significant to the butterfly. The petitioners do not present information that impacts from mountain biking have increased in habitats occupied by the butterfly, and we have no information that such impacts have increased since 2004. Consequently, based on the best available information, we find that mountain biking is not a threat to the butterfly currently or in the foreseeable future.

Powerlines and Other Small-Scale Impacts

The petitioners discuss the impacts of powerlines and other small-scale impacts by comparing our discussion of those impacts in our 2004 withdrawal of the proposed rule (69 FR 76428; December 21, 2004) to our discussion of those impacts in our 2001 proposed rule (66 FR 46575; September 6, 2001). The USFS has committed to continuing the use of seasonal restrictions, surveying and moving larvae, or placing avoidance buffer areas around larvae to avoid or minimize impacts to the butterfly when the USFS is planning and implementing projects (USFS 2008e, p. 36; 2009a). As noted below, some temporary impacts to food plants and habitat have occurred, but we believe these restrictions have significantly reduced impacts on the butterfly. In a letter from the Forest Supervisor, the USFS expressed a commitment to measures aimed at minimizing potential impacts to the butterfly from activities within the purview of their authority as a land

management agency (USFS 2009a, p. 1). Because the USFS continues to carefully monitor and coordinate with the Service, we believe these stipulations (the use of seasonal restrictions, surveying and moving larvae, and placing avoidance buffer areas around larvae) will continue to be adequate to minimize potential impacts to the butterfly.

Since the Service's withdrawal of the proposed rule, we are aware of the following project-related impacts on USFS lands: Village of Cloudcroft waterline (2.8 ha (6.8 ac) of temporary impacts); Pines Campground water repair (0.04 ha (0.1 ac) of temporary impacts); Cox Canyon Powerline (3.1 ha (7.6 ac) of temporary impacts); mowing along Highway 82 (1.2 ha (2.9 ac) of temporary impacts), and Silver Springs Powerline (1.1 ha (2.8 ac) of temporary impacts) (USFS 2007a, p.1). These projects were all completed within the growing season and revegetated the following year with host plants (Service 2004b). We are also aware that up to about 2.8 ha (7 ac) of habitat may be temporarily impacted by a recent proposal to salvage logs (USFS 2008e, p.42). Previous monitoring found that small temporary disturbances to butterfly habitat, such as from dragging a salvaged log through a meadow occupied by the butterfly, naturally revegetated with native plants in one growing season (USFS 2002a, p. 1; Service 2004b). We have found that small-scale temporary impacts to the butterfly and its habitat do not appear to affect the viability of the species because it continues to be found in the area, although we do not know whether the butterfly population in the area is increasing or decreasing. We do not consider this level of limited take of individuals or temporary disturbance of habitat to be a significant threat to the butterfly. In our withdrawal, we acknowledged that, although some restrictions were likely to be placed on ground-disturbing projects (such as when constructing a new powerline), the nature of these impacts and the recognition that adjacent habitat will remain intact enabled us to conclude that the activity represented only a limited threat to the species (69 FR 73428). We believe this is still the best available information. The current level of impact is not a threat to the butterfly. We have no information or reason to believe that this level of impact will increase in the foreseeable future.

Cattle Grazing

The petitioners claim that livestock grazing continues to threaten butterfly habitat. In our 2004 withdrawal of the proposed rule, we found that, because the USFS is managing allotments for medium-intensity grazing, the effects on the butterfly and its habitat would be minimal and would not result in the butterfly population being compromised (69 FR 76428). We concluded that the current and future occurrence of grazing does not represent a principal factor in the viability of the butterfly and its habitat. The petitioners presented some new information about cattle grazing in their comments on the 2008 90–day finding. We review this and other new information below.

The USFS monitors and manages allotments to maintain a minimum of 10 cm (4 in) end-of-season stubble height, which generally equates to 35 percent forage utilization (Holechek and Galt 2000, p. 13; USFS 2004c, 2009f). The USFS manages cattle allotments consistent with existing range management standards and guidelines under its Forest Plan, and when management adjustments are necessary to meet the forage levels, adjustments are made through the permit administration process (USFS 2004d). Moreover, the USFS manages and protects long-term range conditions consistent with their range management regulations (for example, see 36 CFR 222) (USFS 2004c).

In our December 21, 2004, withdrawal (69 FR 76428), we found that cattle grazing is compatible with conservation of the butterfly because the USFS is currently and will continue to manage its allotments that are occupied by butterflies for moderate-intensity grazing (10-cm end-of-season stubble height or 35-percent forage utilization or both). Although we also acknowledged that grazing can incidentally kill butterflies through trampling or accidental ingestion of larvae or eggs (for example, see Pittenger and Yori 2003; White 1986), and anticipated such effects are occurring within allotments that overlap with occupied butterfly habitat, we found that these effects were minimal and did not result in the butterfly population being compromised. Although the relationship between cattle grazing and the butterfly is not completely clear, as analyzed below, we continue to affirm that butterflies persist within allotments under a moderate-intensity grazing regime.

The petitioners presented information on five allotments: CC Walker, Sacramento, Russia Canyon, James Canyon, and Pumphouse. They claim that forage overutilization in CC Walker, Sacramento, and Russia Canyon Allotments indicates severe rangeland deterioration within butterfly habitat. However, the butterfly has never been detected within the CC Walker Allotment (USFS 2004a, map; USFS 2009a). Additionally, as we detailed in the withdrawal of the proposed rule in 2004, no livestock grazing occurs in the portion of the Sacramento Allotment occupied by the butterfly, because the meadows are bounded by steep canyons that are inaccessible to cattle (Service 2004a, pp. 1-2). For these reasons, we conclude that no impacts are occurring to the butterfly within the CC Walker and Sacramento Allotments.

The butterfly occurs only within about 7.2 ha (17 ac) of the Russia Canyon Allotment (USFS 2004e). That allotment has two permittees. One is permitted for 6 head of cattle from May 16 to October 31 (USFS 2007c, p. 61); the other is permitted for 32 head from May 16 through October 31 (USFS 2007c, p. 61). We reviewed information collected between 2001 and 2008 from the Russia Canyon Allotment and find that the authorized minimum 10-cm (4-in) end-of-season stubble heights (i.e., grazing standards) have generally not been exceeded (WildEarth Guardians 2009, Attachment 2; USFS 2009f, p. 1). Therefore, severe rangeland deterioration is not occurring within butterfly habitat on the Russia Canyon Allotment (WildEarth Guardians 2009, Attachment 2; USFS 2009f, p. 1). Moreover, the butterfly continues to persist within the grazed area of this allotment (Service 2009). Additionally, after reviewing monitoring data that demonstrate the consistent application of the authorized moderate-intensity grazing standards on the Russia Canyon Allotment, we continue to find that some minor impacts are likely occurring from trampling of larvae by cattle and ingestion of food plants, but we do not consider these to be a significant threat to the butterfly or its habitat currently or in the foreseeable future, because the USFS has been monitoring and managing this allotment to attain the moderate-intensity standards, while butterflies continue to persist in this area. In 2004, we concluded that this management strategy will ensure larval and adult food plants are maintained. The new information we reviewed is consistent with our previous conclusion. We continue to find that cattle grazing is not a significant threat to the butterfly now or in the future.

The petitioners cite a statement in the Conservation Plan that the James Canyon Allotment will be reopened to grazing in 2007 (WildEarth Guardians 2009, p. 5; Service *et al.* 2005, p. 29). The Conservation Plan foreshadowed the opening of parts of the James Allotment by 2007 but also indicated

the Forest may leave one pasture ungrazed for the conservation of the butterfly (Service *et al.* 2005, p. 29). In 2005, the Forest analyzed an alternative to permanently close 2,751 ha (6,878 ac) to livestock grazing within the center of the allotment but did not finalize the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et. seq.*) decision. The remaining 2,655 ha (6,561 ac) occur within the Beard (837 ha (2,068 ac)), Zinker (984 ha (2,432 ac)), and Bailey (834 ha (2,061 ac)) pastures. This alternative would have used a deferred rotation grazing system, whereby livestock are moved through three pastures during the grazing season to maintain forage utilization between 30 and 40 percent and stubble heights of at least 11.4 cm (4.5 in) (USFS 2004f, p. 1). Of these pastures, the Beard pasture is outside of the known range of the butterfly (USFS 2004a, map 1; 2004f, map 1), whereas Zinker and Bailey pastures contain occupied butterfly habitat. Under this alternative, 67 percent (8,946 of 13,439 acres) of the allotment (5,376 ha) would be either outside the known range or closed to livestock grazing (USFS 2004f; Service *et al.* 2005, p. 29).

The USFS anticipates updating its NEPA analysis for the James Allotment in 2010 (USFS 2009f, p. 1). It intends to carry the same alternative forward that was analyzed in 2005 but not finalized, along with any other alternatives that may develop through the scoping process (USFS 2009f, p. 1). As part of this process, we intend to provide information to the USFS and encourage the selection of the same alternative that was developed in 2005 or an even more conservative alternative for the butterfly. The goal would be to minimize impacts to the butterfly by managing this allotment to attain a moderate or lower level of grazing and eliminate impacts to the butterfly by closing some areas to grazing.

There is currently no authorized grazing within James allotment, which has been the case since 1995 (USFS 2009f, p. 2). Similar to other USFS allotments, it is likely that a new term permit for the James Allotment will propose an end-of-the-season stubble height of 10 cm (4 in) or a forage utilization level of 35 percent (2004h). As noted above, in 2004, we concluded that this level of moderate-intensity grazing was compatible with conservation of the butterfly and limited potential adverse effects (69 FR 76437, December 21, 2004). This is because the butterfly continues to persist in areas that have been historically and are currently grazed by cattle. We still believe this is the best available information.

We recognize the USFS could analyze and choose an alternative that does not close any of the areas within the allotment that contain occupied butterfly habitat. Under such a scenario, we would envision that impacts to the butterfly would be increased from trampling or ingestion of larvae or eggs. However, based on our current understanding of cattle grazing, we would anticipate butterflies would continue to persist within areas that are grazed at moderate intensity. Nevertheless, during the NEPA process, we intend to encourage the USFS to permanently close occupied butterfly habitat to cattle grazing in order to provide the greatest conservation benefit. We believe this would exemplify the USFS' commitment under the Conservation Plan to conserve and manage the species (Service *et al.* 2005).

The Pumphouse Allotment also contains suitable and occupied butterfly habitat that is open to livestock grazing and is managed to maintain moderate-intensity forage utilization between 30 and 40 percent (USFS 2005b, p. 1; 2009f, p. 1). We found that this level of livestock grazing would have insignificant and discountable effects to the plants that compose a part of Mexican spotted owl (*Strix occidentalis lucida*) critical habitat within meadows because the USFS would ensure forage standards were not violated (Service 2006, p. 1). These areas of critical habitat also contain butterfly food plants and habitat. Although livestock grazing within occupied butterfly habitat creates the potential for impacts to the species through trampling and loss of larval food plants, the USFS conducted regular monitoring and demonstrated that authorized grazing standards were annually attained (USFS 2004f, pp. 18-19; 2005b, p. 1; 2009f, p. 1). The USFS manages this and other allotments consistent with existing range management standards and guidelines under its Forest Plan, and when management adjustments are necessary to meet the forage levels, adjustments can be made through the permit administration process (USFS 2004g, p. 3, 2004d, p. 2, Service *et al.* 2005, p. 49; 69 FR 76437, December 21, 2004). Similar to the Russia Allotment discussed above, we reviewed data from 2001 to 2008 and find the minimum end-of-season stubble heights of greater than 10 cm (4 in) were maintained within the Pumphouse Allotment, and butterflies continue to persist in this area (WildEarth Guardians 2009, Attachment 2; USFS 2009f, p. 1; 2009a). We continue to believe that this level of forage utilization is compatible with the butterfly now and in the foreseeable future.

Based on our review of this information, we find that, at current and predicted future livestock grazing levels within habitat occupied by the butterfly, there is not sufficient evidence to conclude that the subspecies is threatened. We have no evidence from any allotments that indicates ongoing livestock grazing affects the butterfly to such an extent that it would be likely to become endangered within the foreseeable future. USFS management of livestock allotments that are currently occupied by the butterfly is based on systematic vegetation monitoring in key areas to ensure the moderate intensity standards are attained. Forage utilization or stubble heights or both are measured by key area on key forage species within various pastures encompassing a grazing allotment. Key areas are locations readily accessible to water and forage and are located on level to intermediate slopes. Key species are herbaceous and woody vegetation that livestock prefer at any given time of the year, some of which are likely butterfly food plants. By monitoring key areas, the USFS ensures that an allotment or pastures within an allotment are not overgrazed. However, if forage utilization levels or stubble heights in a key area are reached, livestock can be moved out of that portion of a pasture, out of a pasture altogether, or off the entire allotment. This type of flexibility in range management operations is directed by USFS policy in using adaptive management (FSH 2209.13, Chapter 90) and is enforced through monitoring of allotments. This process generally limits exceeding utilization standards or stubble heights or both, and we believe it has and will continue to ensure the continued existence of the butterfly and its habitat.

Based on our review of these data, we conclude that the current and future occurrence of grazing does not represent a principal factor in the viability of the butterfly and its habitat, although the larval food plant *Penstemon neomexicanus* is likely routinely grazed upon by cattle. It was previously recognized that livestock grazing has the potential to impact the butterfly directly through trampling or ingestion of individuals and indirectly through the reduction in ground cover (Service *et al.* 2005, pp. 29-30). We continue to believe this is accurate, but have determined that USFS management and monitoring of livestock grazing standards on all allotments within the range of the butterfly are compatible with the

continued existence of the species. Although the potential for impacts to the butterfly exists, our review found no information indicating that livestock grazing significantly affects the status of the butterfly now or will do so in the foreseeable future. Therefore, we conclude that livestock grazing is not a significant threat to the butterfly.

Trespass Horses

In the withdrawal of the butterfly proposed rule, we noted trespass (feral) horses occurred within butterfly habitat in the northern portion of the Sacramento Ranger District (69 FR 76428; December 21, 2004). We found that these horses have the potential to affect the butterfly and its food plants, but horses were considered a low threat because they occur in a limited number of meadows in the James Allotment (Service *et al.* 2005, p. 49; USFS 2004f, pp. 18-19; USFS 2004g. p. 1). We also noted that the USFS committed in the Conservation Plan to removing the feral horses from the James Allotment. The USFS recently followed through on its commitment and removed feral horses from this area (Service *et al.* 2005, p. 49; USFS 2004c, p. 1; 2008f, p. 1). Although we continue to view feral horses as a low threat, the removal will benefit the butterfly and its habitat.

Fire

In addressing the threat of fire suppression and wildfire, the petitioners compare the analysis used in our September 6, 2001, proposed rule (66 FR 46575) to our analysis in the withdrawal of the proposed rule (69 FR 76428; December 21, 2004). The discussion and analysis related to wildfire and the butterfly in the withdrawal of the proposed rule are still the best available information that we have. In our withdrawal, we used information from the USFS, assessed new and continued efforts to reduce the risk of catastrophic wildfire in the Sacramento Mountains, and concluded that the threat to the butterfly from catastrophic wildfire had been reduced and was no longer significant (see also Service *et al.* 2005, pp. 21-25). For example, the areas where the larval host plant grows tend to lack continuous fine fuels that would effectively carry a fire (Service *et al.* 2005, p. 21). Moreover, we found that fire and activities conducted to reduce the risk of fire may be beneficial by increasing connectivity between areas of suitable butterfly habitat. Since 2004, the USFS has continued efforts to reduce the risk of wildfire (USFS 2007c, pp. 21-24). Increases in fuels management actions have been funded and implemented, and these activities will continue for the foreseeable future (USFS 2009i). Within the last 5 years the USFS has accomplished a substantial fuels reduction work within 1 mile of the Village of Cloudcroft (e.g., see USFS 2007c, p. 33). Approximately 1,216 ha (3,005 ac) have received at least one, if not several, treatments, which include pre-commercial thinning, commercial timber harvest, mastication (shredding of felled trees), prescribed burns, and logging (USFS 2002b, 2004h, 2004i, 2004j, 2007b, 2007c, 2009g). As a result, the reduction of tree density, disposal of the resulting woody debris and appropriate use of prescribed fire will not only improve forest health, but also greatly reduce the probability of bark beetle outbreaks and decrease the risk of wildfire (USFS 2004k, p. 2).

Climate change may have an impact on wildfire. In a recent study, Westerling *et al.* (2006, p. 943) found that increased wildfire activity is at least partially the result of a changing climate and a resulting longer wildfire season, although the southwestern forests were less affected by changes in the timing of spring than forests of the northern Rocky Mountains. Other authors have described similar patterns of increased fires or risk of fires (Schoennagel *et al.* 2004; Running 2006). Nevertheless, any attempt to describe the relationship between climate change and the probability of butterfly habitat catastrophically burning is problematic, given that the scale of these studies is too large for us to draw any firm conclusions at the local scale within the range of the butterfly. On this basis, we conclude that the threat of wildfires has not increased within the range of the butterfly since our 2004 withdrawal of the proposed rule. For these reasons, we do not consider wildfire a significant threat to the species now or in the foreseeable future.

Noxious Weeds

The petitioners assert that the manual weed-pulling program to control noxious weeds does not fully address the threat of noxious weeds to the butterfly. The USFS began the weed-pulling program in 2001, and the program is described in the Conservation Plan (Service *et al.* 2005, p. 34). In our 2004 withdrawal of the proposed listing (69 FR 76428), we found that nonnative vegetation and the application of herbicides are currently being managed, and we concluded that the nonnative vegetation is a not a significant threat to the butterfly. There is no information available to suggest that nonnative or noxious weeds are or will become a threat to the Sacramento Mountains butterfly.

In summary, we have no information to indicate that any of the following are significant threats to the subspecies: Development; recreation; projects such as roads, powerlines, and other small-scale impacts; cattle or feral horse grazing; wildfire; and noxious weeds. On the basis of the information presented above, we find the present or threatened destruction, modification, or curtailment of the habitat or range of the butterfly is not a threat now and we do not foresee that it will be in the future.

B. Overutilization For Commercial, Recreational, Scientific, or Educational Purposes

The petitioners believe that collection threatens the butterfly, reiterating our preliminary finding from the 2001 proposed rule that the butterfly's life history characteristics, attractiveness to collectors due to rarity, and newspaper publications promote collection (66 FR 46575). In our 2004 withdrawal, we concluded that the closure of USFS lands to butterfly collecting in 2000 had reduced the threat of overcollection and that this threat was no longer significant. We did not receive any new information or any explanation as to why the butterfly is threatened by collection now or in the future. Likewise, we have no new information on the potential threat of overcollection since the 2004 withdrawal. We do not have any recent evidence of risks to the butterfly from overutilization for commercial, recreational, scientific, or educational purposes, and we have no reason to believe this factor will become a threat to the species in the future. Therefore, we find overutilization for commercial, recreational, scientific, or educational purposes does not threaten the butterfly now or in the foreseeable future.

C. Disease or Predation

We are not aware of any information indicating that disease or predation threaten the butterfly. Therefore, we find that disease and predation are not threats to the butterfly now or in the foreseeable future.

D. Inadequacy of Existing Regulatory Mechanisms

The petitioners claim that new USFS regulations were recently passed that remove any species viability standard protections that were previously provided in 36 CFR 219.20, a regulation requiring the USFS to address ecological conditions necessary to maintain species viability. The petition also asserts that conservation measures

resulting from section 7 (of the Act) conferencing no longer apply because the species is no longer proposed for listing. Additionally, the petitioners assert that the butterfly has no State protection, as New Mexico does not recognize insects as ''wildlife.''

USFS Protections

The butterfly has been designated by the Regional Forester as a Forest sensitive species. Under this designation, the USFS currently analyzes all planned, funded, executed, or permitted programs and activities for possible effects to the species (USFS 2008e and 2009a; 2009h, p. 3). Sensitive species receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing (USFS 2009h, p. 3). As a current Forest sensitive species, the butterfly is included in impact analyses by the USFS in all applicable NEPA documents to ensure its continued viability and preclude the need for Federal listing.

On April 21, 2008, a new USFS planning rule (73 FR 21468) was made final. However, on June 30, 2009, the United States District Court for the Northern District of California issued a decision in *Citizens for Better Forestry* v. *United States Department of Agriculture*, No. C 08-1927 CW (N.D. Cal. June 30, 2009). The court enjoined the USFS from implementing and using the 2008 planning rule and remanded the matter to them for further proceedings. The Government has not yet determined whether to appeal the District Court's June 30, 2009, decision to the Ninth Circuit Court of Appeals. Nevertheless, on July 15, 2009, the USFS issued legal guidance that the planning rule from November 9, 2000 (65 FR 67514) is now in effect (USFS 2009l). As a result, the information on the management and protection of the butterfly on public lands presented in the withdrawal for the butterfly (69 FR 76428; December 21, 2004) is still the best available information that we have. The intent of the Regional Forester's sensitive species designation is to provide a proactive approach to conserving species to prevent a trend toward listing under the Act, and to ensure the continued existence of viable, well-distributed populations.

The USFS policy (FSM 2670.3) states that Biological Evaluations (BEs) must be completed for sensitive species and signed by a journey-level biologist or botanist. The Lincoln National Forest will continue developing BEs and conducting NEPA analyses for each project that will affect the butterfly or its habitat. This analysis will ensure that projects do not singularly or cumulatively impact the butterfly to such an extent that the species would require Federal listing. Through this process, the USFS will analyze specific project proposals to ensure that the actions being contemplated are consistent with any specific guidelines and standards for the butterfly under the current or a future revised LRMP. In practice, the USFS has taken actions to conserve and avoid impacts to sensitive species, including the butterfly and its habitat (see USFS 2004a, 2004c, 2007c, 2007d, 2007e, 2009a). This NEPA analysis process has been adequate to protect the butterfly. Under the current legal guidance, this oversight and protection will continue under the LRMP and when it is revised (UFSF 2009l).

In summary, because the USFS had some authority and regulations in place as we reviewed in our 2004 withdrawal and will continue such efforts into the future, we find these efforts contribute significantly to the adequacy of existing regulatory mechanisms.

On the basis of this information, we believe the butterfly will receive protection and consideration in the future on Forest-wide and project-specific levels by continuing to be analyzed in all applicable NEPA documents. The Service's 2004 withdrawal of the proposed listing rule for the butterfly relied partly on the butterfly's inclusion in the Forest sensitive species designation for maintenance of certain protections for the butterfly through NEPA. Since the butterfly will continue to be considered a sensitive species and specific protections will be provided under the current or future revised LRMP, we find this process adequate to protect the butterfly currently and in the foreseeable future.

New Mexico Statute

The petitioners state that the butterfly has no State protection, because New Mexico does not recognize insects as ''wildlife.'' This is correct. We presented information about this in the October 7, 2004, draft Conservation Plan for which we invited public comment (69 FR 60178), and we considered this information when we withdrew the proposal to list the species.

Conservation Plan

We signed a Memorandum of Understanding with the Village of Cloudcroft, Otero County, and the USFS, and cooperatively developed a Conservation Plan (Service *et al.* 2005). The Memorandum of Understanding demonstrates the parties' good-faith efforts to identify and undertake protective measures for the butterfly and its habitat, and it refers to the implementation schedule for specific actions, including time and cost estimates and responsible partners, named in the Conservation Plan to be undertaken to achieve its goals. The goal of the Conservation Plan is to provide conservation and management on public and private lands within the range of the butterfly (69 FR 60178; October 7, 2004).

Otero County has completed one of the conservation measures, amending its subdivision ordinance, which requires that, for any new subdivision to be developed within potential butterfly habitat, a survey be conducted for the butterfly, its habitat, and its larval host plant.

The USFS is committed to continue the implementation of the Conservation Plan (USFS 2009a, p.1), which it has been implementing for the past 4 years. The Conservation Plan called for a variety of measures that the USFS would implement to reduce impacts to the butterfly, including: (1) Managing domestic livestock and controlling of trespass livestock; (2) managing public recreation; (3) protecting the butterfly from the threat of collection; (4) using best management practices during projects; and (5) protecting and managing butterfly habitat. We relied in this finding on these measures because the USFS has demonstrated that these conservation efforts are being implemented and that they are effective. Therefore, we were not required to analyze them under the Service's Policy for Evaluation of Conservation Efforts When Making Listing Determinations (68 FR 15100; March 28, 2003) (PECE).

We did not rely on other conservation efforts identified in the Conservation Plan if they have not yet been fully or reliably implemented because it would require us to speculate on the certainty of their implementation and effectiveness. These efforts are concentrated on conducting research to fill in information gaps. These include determining the duration of larval diapause, investigating the influence of fire on butterfly habitat, and determining whether planting host plants influences butterfly occupancy (Service *et al.* 2005, pp. 56-59). Therefore, we did not analyze those particular conservation efforts as they relate to PECE. Other conservation measures, investigating the influence of grazing on butterfly habitat and analyzing the genetics of the butterfly, are ongoing, while another—evaluating the effectiveness of transplanting

butterflies to augment or expand the range of the species—will be conducted in the near future (for example, McIntyre 2005, Ryan 2007, 2009).

We continue to support the implementation of the Conservation Plan and believe it has assisted in further improving the status of the butterfly and its habitat. For example, we have held two meetings with the implementation team for the Conservation Plan and provided technical assistance on actions proposed by team members (for example, avoidance of impacts from proposed insecticide spraying). The USFS has continued to allocate resources towards conservation efforts and coordinated with all parties involved with the conservation of the butterfly (USFS 2009a). Otero County passed the subdivision ordinance and, similarly, requested technical assistance on minimizing impacts with spraying of a forest insect outbreak (see *E. Other Natural or Manmade Factors Affecting the Species' Continued Existence*).

Private Lands

Beyond the Otero County subdivision ordinance, we are not aware of any specific prohibition on private lands to limit or avoid the destruction of the butterfly and its habitat. Half of the butterfly habitat is in private ownership. However, there are no data available that would allow us to make a conclusion concerning the quality of butterfly habitat on these private lands. The status of the butterfly on private lands is essentially unknown because access is controlled. The only available data concerning private lands are the approximations of the amount of habitat potentially available (USFS 2004a). Although there is a potential for the current and future management of these lands to affect the butterfly or its food plants, we lack specific information on how a lack of protection on private lands threatens the butterfly. As noted under Factor A (*Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*), we do not believe that private property development is a significant threat to the butterfly currently or in the foreseeable future. We have no information on threats to populations of the butterfly on private lands, but land uses likely include private property development; some recreational use; small-scale habitat impacts in relation to roads, powerlines. and waterlines; livestock grazing; fire suppression; and perhaps noxious weed eradication. Moreover, it is likely that some level of habitat loss has already occurred on private lands and will occur in the foreseeable future. Nevertheless, this amount of loss is not thought to be a significant threat to the butterfly or its habitat on private lands, given that the butterfly continues to persist on the adjacent public lands managed by the USFS, where these potential impacts do not significantly affect the species.

There are few regulatory mechanisms in place on private lands address the conservation of the butterfly or its habitat, although, as described below, a lack of protection should not affect the ability of the species to persist on private lands currently or in the future. As noted under Factor E (*Other Natural or Manmade Factors Affecting the Species' Continued Existence*), a minimal amount of insecticide spraying from the ground recently occurred on adjoining forested lands, and a small number of butterflies may have been affected if the spray drifted from the targeted forest into nearby meadows and directly contacted the butterflies. However, we concluded under Factor E that such spraying will only affect such a small amount of occupied butterfly habitat that it does not threaten the butterfly with future endangerment. If ground or aerial application of insecticides results in large contiguous blocks of occupied habitat being affected during the active period of the butterfly, these applications would be considered a significant threat. However, as discussed under Factor E, given the recent resolution of a threat from spraying through requests from Otero County and USFS for technical assistance from the Service, we believe that the timing of spraying and areas sprayed in the forests will be adequately controlled so the butterfly will not be threatened with endangerment. This is because the high cost of effective aerial spraying will drive private landowners and developers to combine such efforts on private lands with USFS efforts on USFS lands. Under such a scenario, the butterfly would be considered and analyzed within NEPA conducted by the USFS, which is what happened during the recent spraying of forest insects with *Bacillus thuringiensis* var. *kurstaki (*Btk) in 2007 (USFS 2007).

Although we would be concerned about the loss or alteration of large contiguous blocks of butterfly habitat on private lands, we have no information to indicate that such loss has occurred or will occur in the foreseeable future, nor whether any the loss of butterflies from activities on private lands has affected or will negatively affect the overall ability of the species to persist currently or in the future. Therefore, we find the butterfly is not threatened by a lack of regulatory mechanisms on private lands at present or in the foreseeable future.

In summary, the butterfly currently receives adequate regulatory protection through the USFS sensitive species designation and the commitments provided in the Conservation Plan. We did not find that lack of State regulatory authority threatens the butterfly, because the USFS, the land management agency with authority over half of the butterfly's range, has instituted proactive protective measures by analyzing potential impacts through the NEPA process and by fulfilling the commitments in the conservation plan. On the basis of our review, we find similar protections will be implemented in the future under a revised LRMP. Their practices have included measures to either avoid impacts or to survey and move the species prior to habitat disturbance. We believe take at a level consistent with prior levels will not cause a decline in the species or affect its future viability such that impacts resulting from actions within occupied habitat constitute a significant threat to the species on USFS or private lands. There are few regulatory mechanisms in place on private lands that specifically target the conservation of the butterfly or its habitat, yet we believe this has not and will not affect the overall ability of the species to persist on private lands currently or in the future. In light of this information, we conclude that adequate regulatory mechanisms exist now and will continue into the foreseeable future.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Insecticide Spraying

The petition asserts that control of pest insects, climate change, and extreme weather threaten the butterfly under Factor E. The petitioners requested that we emergency-list the butterfly due to the perceived immediate threat to the butterfly's continued existence from a proposed aerial spraying in the autumn of 2007 of the naturally occurring bacterium *Bacillus thuringiensis* var. *kurstaki* (Btk) to control a fir looper moth (*Nepytia janetae*). However, as explained below, we determined that the potential spraying did not warrant emergency listing.

During summer and autumn 2007, Otero County and the USFS requested, and we provided, technical assistance on appropriate measures to minimize or avoid impacts to the butterfly (USFS 2007c; Otero County 2007a, 2007b). We advised them that mortality from the

application of Btk could be significant if it was applied when larvae of the butterfly were actively feeding (Service 2007a, 2007b, 2007c, 2007d, 2007e, 2007f). The USFS conducted an environmental assessment under NEPA that analyzed the effects to private and Federal lands of Btk spraying on Federal lands (USFS 2007d, 2007f, 2007d). Following that environmental assessment, the USFS, the Village of Cloudcroft, and Otero County waited to spray Btk on 1,788 ha (4,419 ac) of forest to control the fir looper until they and the Service determined from surveys that the larvae of the butterfly were in diapause (inactive and not feeding) (USFS 2007e, 2007g; Service 2007g, 2007h). Surveys confirmed that larvae of the butterfly were in diapause prior to spraying of Btk on November 5, 2007 (USFS 2007e, 2007h, Service 2007g).

Btk is sensitive to sunlight, usually becoming inactive within 7 to 10 days after application (USFS 2007f, p. 30). Therefore, Btk would have been inactive when larvae of the butterfly emerged from diapause in the spring of 2008. Btk is activated by the alkaline condition of the mid-gut of larvae that ingest it. Consequently, larvae must ingest Btk for the bacteria to be toxic. Post-treatment surveys conducted at six localities during July 2008, found no difference in abundance of adult butterflies when compared with pre-treatment surveys in July 2007 (McIntyre 2008, p. 1). This indicates that butterflies survived the spraying of Btk during November 2007, and the spraying of forest insects did not measurably affect the butterfly. Post-spraying monitoring in the autumn of 2007 determined that the fir looper population had declined to nearly undetectable levels on the Forest and adjacent lands (Anderson 2008). Therefore, the USFS concluded that no spraying was needed during March 2008 (Anderson 2008).

As described under Factor D (*Inadequacy of Existing Regulatory Mechanisms*), the butterfly is considered a sensitive species of under the 2000 USFS planning rule (USFS 2009l). Therefore, any future proposed insect treatment by the USFS would undergo an analysis of the potential impacts under NEPA and would follow the applicable LRMP. This analysis would ensure that any insect spraying being contemplated would be consistent with the specific guidelines and standards for the butterfly under the current or a future revised LRMP. We note that the Conservation Plan provided the framework under which the USFS and Otero County requested and received technical assistance on the avoidance of impacts to the butterfly. Through this framework and subsequent dialog, the USFS carefully chose the timing of Btk application to specifically avoid larvae of the butterfly (USFS 2008h, p. 34). We found that this process successfully avoided impacts to the butterfly. Based principally on information related to the spraying of insecticides that occurred during November 2007 on USFS and private lands and the LRMP standards and guidelines, we believe the framework of the Conservation Plan and applicable NEPA analysis will ensure that, if any future insect control efforts are proposed, effects to the butterfly will be minimized.

The petitioners state that insect control from the ground on private lands was conducted within the Village of Cloudcroft. Newspaper articles provided by the petitioners substantiate that spraying of Confirm 2F was used on an area of private land in June of 2007. In the proposed rule (66 FR 46575; September 6, 2001), we estimated that there were about 4 ha (10 ac) of potentially suitable butterfly habitat within a private development on the east side of the Village of Cloudcroft. From information we have, we believe this private development is the same area sprayed with Confirm 2F. It is unknown how much of the potentially suitable butterfly habitat was sprayed, because no further information is available. It is unlikely that all of the 4 ha (10 ac) of potentially suitable butterfly habitat were sprayed, because insect control was targeting the fir looper within the adjoining mixed conifer forest, whereas the butterfly is found within open meadow habitat. If we assume a worst-case scenario (that drift from the spray affected all of the 4 ha (10 ac) of potentially suitable butterfly habitat within this area), impacts would be less than 0.4 percent of the suitable butterfly habitat (4 of 1,096 ha (10 of 2,709 ac)). In relation to the species' range, this would not be considered a significant impact affecting the future viability of the species and, therefore, does not rise to the level of being a threat.

If future small, ground applications of insecticide spraying (such as Btk) occur on private forested lands, impacts could similarly occur to the butterfly from drift. Spraying meadows would be ineffective for the control of forest insects and a waste of landowner or developer money. It is unlikely that such ground applications would be implemented on a large enough scale to be effective in controlling a severe outbreak of a forest insect pest, suggesting that ground applications are not likely to affect a significant proportion of occupied butterfly habitat. Nevertheless, if ground or aerial application of Btk or other insecticide results in large contiguous blocks of occupied habitat being affected during the active period of the butterfly, insecticide spraying would be considered a significant threat that would cause the species to become endangered in the foreseeable future. However, given the recent resolution of a threat from insecticide spraying through requests for technical assistance from Otero County and USFS, we believe that concerns over the viability of the butterfly would weigh strongly in any decision to control forest insects. Moreover, we believe it is unlikely that large contiguous blocks of butterfly habitat would be sprayed for forest insects on private lands without combining such efforts with the USFS. Insect control of such a magnitude could only be achieved through aerial spraying; the cost of such efforts averages from 15 to 50 dollars per acre (0.4 ha) (Wisconsin Department of Natural Resources 2009, p. 6; Park Ridge, Illinois 2008), which, over several hundred acres, may be prohibitive for private landowners, unless they work with USFS. Under this scenario, the butterfly would be considered and analyzed within NEPA conducted by the USFS. In fact, this is what transpired during the recent spraying of Btk in 2007 (USFS 2007).

Although we do not anticipate future forest insecticide spraying on private lands to be at a scale that would cause the butterfly to become endangered, we recognize there are currently no mandatory requirements to minimize impacts to the butterfly if spraying was to occur on private lands. Hence, we encourage the Village of Cloudcroft and Otero County to intervene with any private landowner that might contemplate spraying an outbreak of forest insects on their land and request assistance from us under the auspices of the Conservation Plan. A request for technical assistance may be even more likely, given that the previous spraying of forest insects generated a variety of press releases from the USFS and newspaper articles by local press (Anderson 2008; Associated Press 2007; USFS 2007d, 2008). As discussed under Factor D (*Inadequacy of Existing Regulatory Mechanisms)*, the Village of Cloudcroft and Otero County have a history of requesting assistance from the Service to avoid impacts to the butterfly when they consider spraying for the fir looper on private lands, and we have provided that assistance. Although past requests for assistance do not guarantee

future requests, they demonstrate a willingness by the Village of Cloudcroft and Otero County to do so. As described below, the fir looper population has declined (USFS 2008g, pp. 1-2), and we do not have any information to indicate that spraying to control future insect outbreaks will occur or that the process followed in 2007 to minimize impacts from spraying would not be followed. We are not aware of any information that demonstrates the butterfly is threatened now or in the foreseeable future from the spraying of Btk or other insecticide.

Alternatively, a NEPA analysis is not required for non-Federal agency spraying on private lands, which comprise about half of the butterfly's suitable habitat; we do not know how much of that suitable habitat on private lands is actually occupied by the butterfly. As described above, landowner spraying on private lands has the potential to affect the butterfly. We acknowledge that if Btk or chemical insecticides, such as Carbaryl or Confirm 2F, are applied over large areas when larvae of the butterfly are actively feeding, insect control would pose a serious threat by potentially killing large numbers of the butterfly if the spray occurred within significant amounts of occupied habitat. As discussed above, if large-scale spraying occurs in the future, it is unlikely it would occur without requiring the USFS to consider and analyze the effects to the butterfly under NEPA. It is unknown how much of the potentially suitable or occupied butterfly habitat could be inadvertently sprayed because no information is available on the probability of future forest insect outbreaks. However, the Conservation Plan provided the framework under which Otero County requested and received technical assistance on the avoidance of impacts to the butterfly. One conservation action agreed to in the Conservation Plan was for the Service to provide technical assistance on management of the butterfly when requested. Beyond the impacts from spraying on private lands detailed above, this process avoided impacts on the vast majority of butterfly habitat on private lands.

As described in the withdrawal of the proposed rule (69 FR 76428) and in the discussion above, the USFS has continued efforts to reduce the risk of wildfire. As a result, the probability of bark beetle outbreaks will be greatly reduced (USFS 2004k, p. 2). Although it is likely that periodic insect outbreaks will occur within the range of the butterfly (e.g., see: Logan *et al.* 2003; Logan and Powell 2005; USFS 2008h), we have no information to evaluate the potential for impacts due to spraying of forest insects with Btk or other insecticide on USFS or private lands because the duration and extent of insect outbreaks cannot be easily predicted (e.g., see Logan *et al.* 2003, p. 133; USFS 2009j, p. 3; Fellin and Dewey 1992, p. 1). For example, the recent outbreak of fir looper was the first outbreak in New Mexico attributed to this species (USFS 2007c, p. 25). Insect outbreaks occur when conditions favor an insect population expanding beyond the control of its natural enemies. These enemies may include parasitic flies and wasps, disease, and predators. Natural enemies are generally the primary cause of the collapse of a defoliating insect outbreak; however, Btk or other insecticides are sometimes used to expedite the collapse (USFS 2007f). As an example, parasites were responsible for the collapse of the short-lived Douglas-fir tussock moth outbreak on the Sacramento District in 2001 and likely partially responsible for the collapse of the fir looper by 2008 (USFS 2007f, p. 25; 2008). Moreover, at least five other forest insect pests have been documented in recent years on the Lincoln National Forest (USFS 2007f, p. 26; 2008h, p. 27), but it is unknown whether any of these will cause an outbreak of such magnitude that insect control would be considered. In our review of the recent insect-pest outbreak and spraying to control forest insects, we found no other reports of documented spraying. While we acknowledge spraying of insecticides has the potential to impact the butterfly if it is conducted within occupied habitat, we have no knowledge or information to assess the potential for insect outbreaks and the possibility of spraying now or in the future.

Climate Change

The petition asserts that climate change is likely a greater threat to the butterfly than was previously considered by the Service. The petitioners assert that scientific information not considered in, or published subsequent to, the 2004 withdrawal indicates that the impact of climate change will be especially severe in New Mexico and the southwestern United States. They cite a State of New Mexico website, which states that the impacts of climate change and climate variability on the environment include the potential for prolonged drought, severe forest fires, warmer temperatures, increased snowmelt, and reduced snow pack (*http://www.nmclimatechange.us/background-impacts.cfm*). The petitioners also note that harm from climate change to butterflies has been particularly well documented for other species of checkerspot butterflies.

The petitioners cite Parmesan (1996) to support their claim that the butterfly will be imperiled by climate change. Parmesan (1996, p. 765) documented a range shift due to population extinctions in the non-migratory Edith's checkerspot butterfly (*Euphydryas editha*), a related species, in western North America and presented arguments on why the shift was attributable to climate change. The petition correctly indicates that *Penstemon neomexicanus*, the only plant on which the Sacramento Mountains checkerspot butterfly has been found to lay eggs, is known within portions of the Capitan Mountains, which are adjacent to and north of the current range of the butterfly in the Sacramento Mountains. The petition asserts that a slight shift in either the butterfly's or *P. neomexicanus*' distribution, productivity, phenology, or other factors resulting from climate change could imperil the butterfly. The apparent northward range ''shift'' in the Edith's checkerspot butterfly was due to greater population extinctions at southern latitudes, not to a northward expansion of its range (Parmesan 1996, p. 765). Parmesan (1996, pp. 765-766) discussed why these extinctions were most likely attributable to climate change rather than habitat destruction. If the butterfly were to respond similarly, it may decline at the southern portion of its range, but not expand northward to the Capitan Mountains. However, as described below, we have little information to accurately predict or assess how the butterfly or its food plants will respond to a changing climate.

According to the Intergovernmental Panel on Climate Change (IPCC) (2007), ''Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.'' For the next two decades a global warming of about 0.2 °C (0.4 °F) per decade is projected (IPCC 2007). Afterwards, temperature projections increasingly depend on specific emission scenarios (IPCC 2007). Various emissions scenarios suggest that by the end of the 21st century, average global temperatures are expected to increase 0.6 °C to 4.0 °C (1.1 °F to 7.2 °F), with the greatest warming expected over land (IPCC 2007). Localized projections suggest the Southwest may experience the greatest temperature increase of any area in the lower 48 States (IPCC 2007). The IPCC states it is very likely that

extreme high temperatures, heat waves, and heavy precipitation will increase in frequency (IPCC 2007). Because the butterfly occupies a relatively small area of specialized habitat, it may be vulnerable to climatic changes that could decrease suitable habitat or alter food plant seasonal growth patterns (phenology). However, while it appears reasonable to assume that the butterfly may be affected, as detailed below, we lack sufficient certainty to know specifically how climate change will affect the subspecies.

Parmesan (2009, p. 2) noted that the relationship between climate and survival is driven more by the indirect effects of seasonal growth patterns of host plants and the life cycle of Edith's checkerspot than by the direct effects of temperature and precipitation. However, predicting seasonal growth patterns of butterfly host plants is complicated, because these patterns are likely more sensitive to moisture than temperature, which is predicted to be highly variable and uncertain, especially for the southwestern United States (Bale *et al.* 2002, p. 11; Archer and Predick 2008, p. 2; Enquist and Gori 2008, pp. 16, 30; New Mexico Agency Climate Change Technical Work Group 2005, p. 7). Uncertainty about climate change does not mean that impacts may or may not occur; it means that the risks of a given outcome are difficult to quantify or accurately predict (New Mexico Agency Climate Change Technical Work Group 2005). The interplay between host plant distribution, larval and adult butterfly dispersal, and female choice of where to lay eggs will ultimately determine the population response to climate change (Parmesan 2009, p. 3). However, determining the long-term responses to climate change from even well-studied butterflies in the genus *Euphydryas* is unclear, given their ability to switch to alternative larval food plants in some instances (Parmesan 2009, p. 3; Hellman 2002, p. 933; Singer *et al.* 2007, pp. 312-319; Singer and Thomas 1996, pp. S33-34). Attempts to analyze the interplay between climate and host plant growth patterns using predictive models or general State-wide assessments and to relate these to the butterfly are equally complicated. Despite the potential for future climate change in the Southwest, as discussed above, we have not identified nor are we aware of any data on an appropriate scale to evaluate habitat or populations trends for the butterfly or the Sacramento Mountains or to make predictions on future trends and whether the species will be significantly impacted.

During the active season of prediapause larvae (late summer to early fall), the species *Euphydryas anicia* feeds primarily on plants of the family Scrophulariaceae, including species of *Castilleja* and *Penstemon* (Robinson *et al.* 2009, pp. 1-9). Although the USFS and others have conducted surveys and monitored the butterfly, the subspecies remains poorly studied relative to other butterflies in the genus *Euphydryas* (for example, see Ehrlich and Hanski 2004). We believe that the larvae of this subspecies currently use the food plants *P. neomexicanus* and *V. edulis* (Service *et al.* 2005, pp. 9-11). We have no information that indicates the degree to which, if any, the butterfly uses other plants in the Scrophulariacea or Plantaginaceae family. In fact, there have been no published studies on food plant preference or use for the butterfly. However, alternative food plant use is not only possible, but probable given that many checkerspot populations in western North America use two or more larval host plants (Ehrlich and Hanski 2004, p. 270; Singer and Wee 2005, p. 350), and this species has already been found to eat other food plants in captivity. For example, Pratt (2008, p. 1) reared larvae on *P. gloxinoides*, whereas Ryan (2009, pers. comm.) reared them on a commercially available *Penstemon* sp. Hutchins (1974, pp. 424-437) reported that almost 40 species of plants in the Scrophulariacea family occur in the region. Additionally, shifts to new or alternative food plants have been documented in related species, allowing them to colonize new habitat and increase survival of larvae (Singer and Thomas 1996; Hanski and Singer 2001). Available information suggests that if climate change disrupts seasonal growth patterns of food plants, it is conceivable that the butterfly may use alternative food plants that occur within its range (Service *et al.* 2005, p. 38). Nevertheless, we have no information indicating the likelihood that any of these changes will occur in the foreseeable future.

We also have no data on the overlap of seasonal growth patterns between *P. neomexicanus* and the butterfly. No one has monitored the timing of the lifecycle of the butterfly relative to their host plants, *P. neomexicanus* or *V. edulis*, nor how each responds to extreme weather events (drought, late frosts, or storms). Parmesan (2007, p. 1869) has reported that a lifecycle mismatch can cause a shortening of the time window available for larval feeding, causing the death of those individuals unable to complete their larval development into the shortened period. Still, a high proportion of the butterflies Parmesan (2007 p. 1869) studied fed on annual host plants whose emergence and desiccation are likely more closely linked to annual precipitation patterns than *P. neomexicanus*, which is a perennial, generally living for 2 years or longer (NMRPTC 2005, p. 1). We are not yet capable of making meaningful predictions on whether climate variability (such as higher temperatures or drier conditions) will influence *P. neomexicanus*'s life cycle such that it is out of sequence with the butterfly's larval development (for example, see Parmesan 2007, p. 1869; Service *et al.* 2005, pp. 36-38). Without these data, it remains unclear how climate change will affect the long-term viability of the butterfly.

Predicting future population dynamics and distributions is even more complex for such animals as butterflies that have two very different physiological stages (larva and adult) (for example, see Bale *et al.* 2002, p. 5). Moreover, forecasting the responses of butterflies and other insects to elevated temperatures or decreased precipitation is largely based on field and laboratory studies (Hellmann 2002, pp. 927-929). However, the relationship between these changing environmental conditions and the butterfly has not been studied. Likewise, we have no survey data from the presumed northern end of the butterfly's range. For example, we currently do not know whether the immediately adjacent lands of the Mescalero Apache Tribe are occupied by the butterfly. The host plant for the butterfly occurs south of the current range of the species and to the north in parts of the Sacramento Mountains and into the Capitan Mountains, about 40 to 80 kilometers (25 to 50 miles) north of the current range of the butterfly (Hutchins 1974, pp. 434-435; USFS 2000 pp. 11-12, 19-21). This suggests that the host plants also may be found in some areas of the intervening Tribal lands. Given the similarity in habitat and elevation and the close proximity between Tribal and USFS lands, some of the area may be occupied by the butterfly.

We have identified no reports of apparent habitat, food plant, or population changes of the butterfly related to climate change in New Mexico. Moreover, there is a lack of any real-time data on the relationship between temperature or precipitation trends and the butterfly or its food plants (Service *et al.* 2005, p. 38). We have no specific information on how the butterfly will react to a changing climate, either an increase in temperature or the increasing variability of precipitation. For this reason, the

effect of higher temperatures and the unpredictability of extreme weather and precipitation on the distribution and abundance of the butterfly remains unknown.

Because larvae of the butterfly are closely tied to their food, the distribution of these plants defines the potential distribution of the species. The ability of larvae to move, in conjunction with host plant availability, can lessen the potential effects of climate change (for example, see Hellmann 2002). For example, some species of butterflies may expand their geographical ranges northward or upward elevationally (e.g., see Parmesan 1996; Parmesan *et al.* 1999). If the butterfly moves northward from its current range or higher in elevation, similar to some documented range shifts by other species in the genus *Euphydryas*, suitable habitat may be present. For example, adjacent contiguous areas are available northward on lands owned by the Mescalero Apache Tribe. Alternatively, only 3.2 km (2 mi) south of the butterfly's current range, potential higher elevation (over 2,750 m (9,000 ft)) habitat that contains the foodplants of the butterfly are available (Service 2009). However, we do not have information to predict how the climate will change in the range of the butterfly, and we do not know how any change may alter the range of the species.

As described above, it is likely that insect pest outbreaks will occur within the range of the butterfly, although we do not know whether any insect control would be considered. Nevertheless, climate change may contribute to the proliferation of some forest pest insects, which can lead to defoliation and forest die-back in some areas (Easterling *et al.* 2007, p. 290; Enquist *et al.* 2008, p. 2; USFS 2008g, p. 1). Insect outbreaks in response to the recent drought in the southwest (e.g., Enquist *et al.* 2008, pp. 2, 13) may exemplify this type of climate-related event. Elevated moisture stress from drought in southwestern forests and woodlands has been shown to amplify the effects of insect outbreaks and fire, in addition to increasing the risk of large-scale forest die-back events (Breshears *et al.* 2005, Westerling *et al.* 2006). These disturbances are expected to increase. One of the recent insect outbreaks in the Sacramento Mountains may lead to a short-term increase in the amount of potential butterfly habitat. For example, portions of the mixed conifer forest in the Sacramento Mountains of New Mexico have experienced defoliating insect outbreaks since 2002 (USFS 2008e, p. 1). An infestation of the forest insect species tussock moth (*Orgyia pseudotsugata*), western spruce budworm (*Choristoneura occidentalis*), New Mexico fir looper *(Galenara consimilis*), and a looper species, *Nepytia janetae* (no common name) resulted in approximately 5,868 ha (14,500 ac) of forest defoliation (USFS 2008e, p. 1). Within this area, tree mortality will average about 50 percent (USFS 2008e, p. 2). The insects primarily defoliated *Pseudotsuga menziesii* (Douglas-fir) and *Abies concolor* (white fir), but *Pinus strobiformis* (southwestern white pine), *Picea engelmannii* (Englemann spruce), and *Pinus ponderosa* (ponderosa pine) were also affected (USFS 2008e, p. 2). About 227 ha (570 ac) of occupied butterfly habitat is interspersed or adjacent to the defoliated areas of the mixed conifer forest (USFS 2008e, p. 41). *Penstemon neomexicanus* and other forbs or grasses will likely respond in the coming years to the increased available sunlight within areas containing a high percentage of dead trees. As a result, *P. neomexicanus* and *Helenium hoopesii* may spread into these adjacent areas, thereby increasing the connectivity between patches of occupied butterfly habitat or increasing the overall amount of potential butterfly habitat. We intend to the monitor these areas to determine how the butterfly responds to these changes.

In summary, we have identified and reviewed relevant information on the butterfly and climate change. We acknowledge the potential for climate to change in the Southwest and, thus, within the range of the butterfly. However, as discussed above, there is a great amount of uncertainty with respect to the potential impact on the butterfly or its food plants. No specific data on the seasonal growth patterns and overlap between the food plants or butterfly larvae are available. The ability of other butterfly species in the same genus to switch food plants has been documented. The response of this species to suitable habitat that may be created in the future by climate change is unknown. Weather and climate, particularly precipitation, are highly unpredictable within the range of the species. Multiple hypothetical outcomes associated with climate change could potentially affect butterfly habitat. However, unlike documented declines in other species in the genus *Euphydryas* (e.g., Parmesan 1996, 2006), we lack predictive models on how climate change will affect butterfly habitat. Given that reliable, predictive models have not been developed for use at the local scale in New Mexico's Sacramento Mountains, currently there is little certainty regarding the timing, magnitude, and net effect of impact. It is possible that the butterfly may be vulnerable to climate change; however, we cannot reliably predict effects of climate-induced changes given the large number of unknowns and the current limitations in available data and climate models. Based on the best available information and our current knowledge and understanding, we find that the effects related to climate change will not result in significant impacts to the butterfly now or in the foreseeable future. Although, we conclude that climate change is not a threat to the butterfly, we intend to continue surveying and monitoring the butterfly population.

The petition asserts that extreme weather threatens the butterfly. However, other than reiterating our preliminary finding from the 2001 proposed listing rule (66 FR 46575; September 6, 2001) that this may be a threat to the species, the petition presents no information or explanation regarding why the butterfly is threatened as a result of extreme weather. In our 2004 proposed listing withdrawal, we found that the butterfly can survive and persist despite natural events such as drought (69 FR 76428; December 21, 2004). Since our finding in that 2004 withdrawal, we have no new information indicating that there is any such threat from extreme weather currently or in the foreseeable future.

Foreseeable Future

The Act does not define the term ''foreseeable future.'' However, in a January 16, 2009, memorandum addressed to the Acting Director of the U.S. Fish and Wildlife Service, the Office of the Solicitor, Department of the Interior, concluded, ''* * * [As] used in the [Act], Congress intended the term 'foreseeable future' to describe the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species.'' In discussing the concept of foreseeable future for the butterfly, we considered: (1) The biological and demographic characteristics of the species (such as generation times, persistence of current populations); (2) our ability to predict or extrapolate the effects of threats facing the butterfly into the future; and (3) the relative permanency or irreversibility of these threats.

Although we did not find any information to allow us to reliably predict that threats would increase significantly in the future, predicting and managing for the effects of potential future threats will be facilitated by the

Conservation Plan and Memorandum of Understanding among the Service, USFS, Otero County and Village of Cloudcroft that are in place and cover the butterfly rangewide (see Conservation Plan section under Factor D). Monitoring of butterfly population numbers and habitat conditions by the USFS is included in the Conservation Plan and any significant decreases in butterfly numbers or habitat conditions should be identified and effectively mitigated by the Service providing technical assistance to the USFS, Otero County, and the Village of Cloudcroft. The Memorandum of Understanding and Conservation Plan will be in place and operating until the tasks identified in the Conservation Plan are successfully completed, after which the Memorandum of Understanding can be renewed, modified, or terminated. The Memorandum of Understanding can be terminated by mutual concurrence of all parties, but because the Conservation Plan has been successfully implemented for 4 years through agreement in the Memorandum of Understanding, we have no reason to believe it will be terminated. Most of the tasks identified in the Conservation Plan are expected to be completed within 15 to 20 years and some will be ongoing. We find this to be a reasonable timeframe for considering the foreseeable future.

Significant Portion of the Range

The Act defines an endangered species as one ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as one ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''significant portion of its range'' is not defined by the statute. For the purposes of this finding, a significant portion of a species' range is an area that is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

If an analysis of whether a species is threatened or endangered in a significant portion of its range is appropriate, we engage in a systematic process that begins with identifying any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) The portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

We next address whether any portions of the butterfly's range warrant further consideration. On the basis of our review, we found no geographic concentration of threats either on USFS or private lands such that the subspecies may be in danger of extinction in that portion. Although the potential future opening of the James Allotment to cattle grazing may impact the butterfly and its larval food plants to some extent, we have found that allotments that are grazed by cattle and occupied by the species have not resulted in a significant threat to the butterfly. Similarly, we found that there is no area, either on USFS or private lands, within the range of the butterfly where the potential threat of insecticide spraying may be significantly concentrated or may be substantially greater than in other portions of the range. Therefore, we find that these possible actions will also not result in the endangerment of the butterfly in the foreseeable future within this portion or all of its range. The factors affecting the species are essentially uniform throughout its range, indicating that no portion of the butterfly's range warrants further consideration of possible threatened or endangered status.

Finding

In our review of the status of the butterfly, we carefully examined the best scientific and commercial information available. We identified a number of potential threats to this subspecies, including: Residential and commercial property development; OHV and other recreational impacts; habitat altering projects in relation to roads, powerlines, and other small-scale impacts; cattle and feral horse grazing; wildfire; noxious weeds; butterfly collection; lack of regulatory mechanisms; insect control; climate change; and extreme weather events. To determine whether these factors individually or collectively put the species in danger of extinction throughout its range, or are likely to do so within the foreseeable future, we first considered whether the risk factors significantly affected the butterfly, or were likely to do so in the future.

Information on population size and trends for the butterfly is limited. The overall population size is unknown because comprehensive surveys are logistically expensive and difficult to conduct and have not been conducted. Some data are available from periodic adult surveys and annual larval surveys, but confounding factors, lack of replication, and sampling errors limit their applicability in evaluating the butterfly's status. Few surveys have been conducted and only in small parts of its range, and, for this and the other reasons listed above, an assessment of population trends using these data would not be accurate. We can draw no conclusions on trend information for the butterfly. Notwithstanding these issues, based on the best available information, we find that the butterfly continues to persist within the same general localities (USFS 2009a; McIntyre2005, 2008, Ryan 2007, pp. 11-12).

As required by the Act, we considered the five potential factors to assess whether the butterfly is threatened or endangered throughout all or a significant portion of its range. We evaluated existing and potential threats on the butterfly to determine what effects on the species were currently occurring, and whether these impacts currently threaten the butterfly or were likely to increase or decrease in the future. We did not find any current significant threats to the butterfly. We also considered and found that none of these factors were likely to increase within the foreseeable future.

We do not that believe that recreational impacts are likely to increase in the foreseeable future, because the USFS has nearly completed reconfiguring their campgrounds to reduce their capacity, thereby limiting potential conflicts with the butterfly. We determined that projects such as roads, powerlines, and other small-scale disturbances have affected and will likely continue to affect the butterfly and its habitat, but do not pose a significant threat to the subspecies. Cattle grazing is being managed by the USFS to attain moderate-intensity grazing that appears to be compatible with the butterfly and its host plants. The potential for significant impacts from wildfire continue to be reduced through the USFS's thinning and prescribed burning program. Moreover, the potential for private property

development still appears to be low, given the scarcity of municipal water within the range of the butterfly. The potential impact of butterfly overcollection continues to be minimal due to a butterfly closure order imposed by the USFS. We determined that the regulatory mechanisms are adequate to provide for the protection of the butterfly on USFS and private lands. We find no reason to conclude that forest insect outbreaks similar to the 2007 event and treatment are likely to disappear. Still, although some spraying occurred on a small area of private lands, we believe that the commitments through the 2005 Conservation Plan and the process for providing technical assistance avoided further impacts to the butterfly. We have no reason to conclude that this process currently in place would change if insecticide spraying is proposed in the future. As detailed above, we find the butterfly is not threatened by a lack of regulatory mechanisms on private lands at present or in the foreseeable future. Emergency listing of the butterfly will always remain an option if the magnitude of a proposed action is likely to make the species become threatened or endangered within the foreseeable future.

Climate change is also likely to continue for the foreseeable future, but there is substantial uncertainty as to how climate change, described in Factor E, will affect the butterfly or its habitat. The uncertainty associated with the information we reviewed does not permit us to make an accurate prediction whether climate change will affect the future viability of the subspecies. We also have no new information indicating that there is any such threat from extreme weather currently or in the foreseeable future.

We reviewed the petition and associated documents, information available in our files, and other published and unpublished information submitted to us during the public comment period following our 90–day petition finding. We have carefully assessed the best scientific and commercial information regarding the biology of this species and its threats. We conclude that the butterfly is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range. We further conclude that the butterfly is not in danger of extinction throughout all or a significant portion of its range. In our judgment, the butterfly will continue to persist into the foreseeable future. Therefore, we find that listing the Sacramento Mountains checkerspot butterfly as a threatened or endangered species is not warranted.

We will continue to monitor the status of the subspecies and to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references cited in this finding is available upon request from the New Mexico Ecological Services Office (see **ADDRESSES**).

Author

The primary authors of this rule are the staff members of the New Mexico Ecological Services Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 24, 2009.

Daniel M. Ashe,

Acting Director, Fish and Wildlife Service.

[FR Doc. E9–21195 Filed 9–1–09; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register

Vol. 74, No. 169

Wednesday, September 2, 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

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by November 2, 2009.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5162–South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. FAX: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires 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 RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information 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. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: Request for Release of Lien and/or Approval of Sale.

OMB Control Number: 0572–0041.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric and telecommunications systems to provide and improve electric and telecommunications service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq,*) (RE Act). All current and future capital assets of RUS borrowers are ordinarily mortgaged or pledged to the Federal Government as security for RUS loans. Assets include tangible and intangible utility plant, non-utility property, construction in progress, and materials, supplies, and equipment normally used in a telecommunications system. The RE Act and the various security instruments, e.g., the RUS mortgage, limit the rights of a RUS borrower to dispose of its capital assets. The RUS Form 793, Request for Release of Lien and/or Approval of Sale, allows the telecommunications program borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's system. RUS telecommunications borrowers fill out the form to request RUS approval in order to sell capital assets.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.75 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 110.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis, at (202) 720–0812. FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 26, 2009.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. E9–21212 Filed 9–1–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0064]

Notice of Request for Extension of Approval of an Information Collection; Importation of Unshu Oranges From the Republic of Korea Into Alaska

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of unshu oranges from the Republic of Korea into Alaska.

DATES: We will consider all comments that we receive on or before November 2, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0064* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0064, Regulatory Analysis and Development,

PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0064.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of unshu oranges from the Republic of Korea into Alaska, contact Mr. Alex Belano, Branch Chief, Risk Management and Plants for Planting Policy, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–5333. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION: *Title:* Importation of Unshu Oranges from the Republic of Korea into Alaska.

OMB Number: 0579–0314.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 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. As authorized by the PPA, APHIS regulates the importation of citrus fruit from certain parts of the world as provided in ''Subpart—Citrus Fruit'' (7 CFR 319.28).

In accordance with these regulations, unshu oranges from the Republic of Korea may be imported into Alaska only under certain conditions to prevent the introduction of plant pests into the United States. These conditions involve the use of information collection activities, including a phytosanitary certificate with an additional declaration statement and box labeling.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0056932 hours per response.

Respondents: Importers and the national plant protection organization of the Republic of Korea.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 1,089.

Estimated annual number of responses: 5,445.

Estimated total annual burden on respondents: 31 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 26th day of August 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–21276 Filed 8–31–09; 11:15 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Whitefish, Indian and Carp National Wild and Scenic Rivers; Hiawatha National Forest; Alger, Delta, Schoolcraft, Mackinac Counties; Michigan

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundaries of the Whitefish, Indian and Carp National Wild and Scenic Rivers to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Ted Schiltz, Recreation Program Manager, Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, MI 49829. Telephone 906–789–3346.

SUPPLEMENTARY INFORMATION: The Whitefish, Indian and Carp Wild and Scenic River boundaries are available for review at the following offices: USDA Forest Service, Office of the Chief, 1400 Independence Avenue SW., Washington, DC 20024; USDA Forest Service, Eastern Region, Suite 400, 626 East Wisconsin Avenue, Milwaukee, WI 53202 and; Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, MI 49829. A detailed legal description is available upon request.

The Michigan Wild and Scenic Rivers Act (Pub. L. 102–249) of March 3, 1991, designated the Whitefish, Indian and Carp Rivers, Michigan, as a National Wild and Scenic Rivers, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until ninety days after Congress receives the transmittal.

Dated: August 19, 2009.

Thomas A. Schmidt,

Forest Supervisor.

[FR Doc. E9–21078 Filed 9–1–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0156]

Pioneer Hi-Bred International, Inc.; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Genetically Engineered High-Oleic Soybeans

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Pioneer Hi-Bred International, Inc., seeking a determination of nonregulated status for soybean designated as transformation

event 305423, which has been genetically engineered to have higher levels of oleic acid, and lower levels of linoleic and linolenic acids in the soybean oil. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting comments on whether this genetically engineered soybean is or could be a plant pest. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments we receive on or before November 2, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0156* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0156, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0156.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Karen Green, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0672, e-mail: *karen.c.green@aphis.usda.gov.* To obtain copies of the petition or the draft environmental assessment, contact Ms. Cindy Eck at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.* The petition, the draft environmental assessment, and the plant pest risk assessment are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/06_35401p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/06_35401p_ea.pdf,* and *http://www.aphis.usda.gov/brs/aphisdocs/06_35401p_pra.pdf.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On December 20, 2006, APHIS received a petition seeking a determination of nonregulated status (APHIS Petition No. 06–354–01p) from Pioneer Hi-Bred International, Inc., of Johnston, IA (Pioneer), for soybean (*Glycine max* L.) designated as transformation event 305423, which has been genetically engineered for higher levels of oleic acid, a monounsaturated fat in soybean oil, stating that soybean line 305423 does not present a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, 305423 soybean has been genetically engineered to suppress the expression of the soybean endogenous microsomal omega-6 desaturases gene (*FAD2–1*). The introduced endogenous *FAD2–1* gene fragment acts to silence expression of the endogenous *FAD2–1* gene, which is responsible for an increased level of oleic acid and decreased levels of linoleic acid, a major polyunsaturated fatty acid present in soybean oil.

In addition, Pioneer 305423 soybean contains a slightly modified version of an endogenous acetolactate synthase gene (ALS). Expression of the protein can increase the inherent tolerance level to the ALS-inhibiting class of herbicides. This trait is intended for selecting and identifying this bioengineered event, rather than as a separate commercial trait as this version of the gene does not confer commercial levels of herbicide tolerance in Pioneer 305423 soybean.

APHIS has prepared an environmental assessment (EA) that presents two alternatives based on APHIS' analyses of data submitted by Pioneer, a review of other scientific data, and information obtained during field tests conducted under APHIS oversight. APHIS may either: (1) Take no action, i.e., APHIS would not change the regulatory status of 305423 soybeans and they would continue to be regulated articles, or (2) deregulate 305423 soybeans in whole.

Section 403 of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), defines ''plant pest'' as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this plant pest definition broadly to cover direct or indirect injury, disease, or damage not just to agricultural crops, but also to other plants, for example, native species, as well as organisms that may be beneficial to plants, such as honeybees.

The FDA's policy statement concerning regulation of products derived from new plant varieties, including those genetically engineered, was published in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). Under this policy, FDA uses what is termed a consultation process to ensure that human and animal feed safety issues or other regulatory issues (e.g., labeling) are resolved prior to commercial distribution of a bioengineered food. Pioneer submitted a food and feed safety and nutritional assessment summary to the FDA for 305423 soybeans. On January 15, 2009, the FDA concluded their review of the data submitted by Pioneer and had no further questions regarding the safety of 305423 soybean.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status for 305423 soybeans, an EA has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969

(NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with 7 CFR 340.6(d), we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. During the same comment period, we are also soliciting written comments from interested or affected persons on the plant pest risk assessment and on the EA prepared to examine any environmental impacts of the proposed deregulation determination for the subject soybean event. The petition, plant pest risk assessment, EA, and any comments we receive are available for public review, and copies of the petition, plant pest risk assessment, and EA are available as indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

After the comment period closes, APHIS will review all written comments received during the 60-day comment period and any other relevant information. All public comments received regarding the petition, plant pest risk assessment, and draft EA will be available for public review. After reviewing and evaluating the comments on the petition, plant pest risk assessment, draft EA, and other data, APHIS will furnish a response to the petitioner, either approving in whole or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Pioneer's 305423 soybean and the availability of APHIS' written decision.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.8, and 371.3.

Done in Washington, DC, this 26th day of August 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–21277 Filed 8–31–09; 11:15 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0119]

Implementation of Revised Lacey Act Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to provide, among other things, that importers submit a declaration at the time of importation for certain plants and plant products. The declaration requirements of the Lacey Act became effective on December 15, 2008, and enforcement of those requirements is being phased in. The purpose of this notice is to inform the public of the Federal Government's revised plan to phase in enforcement of the declaration requirement and other implementation plans.

DATES: We will consider all comments that we receive on or before November 2, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0119* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0119, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0119.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Branch Chief, Risk Management and Plants for Planting Policy, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The Lacey Act (16 U.S.C. 3371 *et seq.*), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in ''illegal'' wildlife, fish, or plants. The Food, Conservation, and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). As amended, the Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken in violation of the laws of a U.S. State or any foreign law that protects plants. The Lacey Act also now makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant. In addition, Section 3 of the Lacey Act, as amended (16 U.S.C. 3372), makes it unlawful to import certain plants and plant products without an import declaration. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from where the plant was harvested. For paper and paperboard products containing recycled content, the declaration also must include the average percent of recycled content without regard for species or country of harvest.

Comment Analysis

On October 8, 2008, we published a notice in the **Federal Register** (73 FR 58925–58927, Docket No. APHIS–2008–0119) announcing our plans to begin phased-in enforcement of the declaration requirement on April 1, 2009, and provided dates and products covered for the first three phases of enforcement. We solicited comments on the proposed phase-in plan for 60 days ending on December 8, 2008, and received 124 comments by that date. On February 3, 2009, we published a second notice in the **Federal Register** (74 FR 5911–5913, Docket No. APHIS–2008–0119) and provided a revised, more detailed phase-in schedule based on comments we received in response to the October notice. We solicited comment on the revised phase-in plan for 60 days ending on April 6, 2009, and received 41 comments by that date. The comments covered a range of topics,

including the scope of the declaration requirement, the specific products covered in each phase, definitions of terms, length of phases, effects on trade/industry, and enforcement issues. While we will not specifically address each of the comments in this notice, we have revised the phase-in schedule based on the comments we received and our experience with implementation to date. We will also publish a separate notice in the **Federal Register** to respond to the substantive comments that we have received to date. We will continue to take into account public comments as we continue to implement the provisions related to the declaration requirement of the Lacey Act.

Revised Phase-in Schedule

After review of the comments received, further internal consideration, and experience with implementation of the first phase of enforcement of the declaration requirement, we have revised the phase-in schedule, which covers the period from December 15, 2008, to August 31, 2010. In our February notice, we committed to providing affected individuals and industry with at least 6 months' notice for any products that would be added to the phase-in schedule. Although we have modified phase III, which is scheduled to begin on October 1, 2009, we have only removed items from this phase. Phase IV, scheduled to begin April 1, 2010, has been substantially revised. Those changes were based on information supplied by commenters and further consideration within the interagency group of the products that would supply the most valuable information to inform the Federal Government as we continue to implement the statute and develop recommendations for Congress as required by the Act.

Several commenters contended that identifying composite and recycled or reused materials (*e.g.,* medium density fiberboard, particleboard, and scrap wood) to the genus and/or species level would be difficult and in some cases impossible. In response to those comments, we have decided to further delay enforcement of the declaration for such products. We currently propose to begin enforcing the declaration for those products no earlier than September 1, 2010. This delay in enforcement of the declaration requirement will allow the Federal Government more time to evaluate options for enforcing the declaration for these goods.

The revised phased-in enforcement schedule through August 31, 2010, is described in the table below with the date that enforcement of the declaration requirement begins listed at the top of each column. It is important to note that while enforcement of the declaration requirement is being phased in, the other Lacey Act amendments are already effective, and actions to enforce provisions of the Act other than the declaration requirement may be taken at any time.

PHASE-IN SCHEDULE OF ENFORCEMENT OF THE DECLARATION REQUIREMENT FOR GOODS OF, OR CONTAINING, PLANTS OR PLANT PRODUCTS*

II April 1, 2009	III October 1, 2009	IV April 1, 2010
HTS Chapters:	HTS Chapters:	HTS Chapters:
Ch. 44 Headings (wood & articles of wood)	Ch. 44 Headings (wood & articles of wood)	Ch. 44 Headings (wood & articles of wood)
4401—(Fuel wood)	4402—Wood charcoal	4421—Other articles of wood.
4403—(Wood in the rough)	4412—Plywood, veneered panels, except 44129906 and 44129957.	Ch. 66 Headings (umbrellas, walking sticks, riding crops).
4404—Hoopwood; poles, piles, stakes)	4414—Wooden frames	6602—Walking sticks, whips, crops.
4406—Railway or tramway sleepers)	4419—Tableware & kitchenware of wood	Ch. 82 Headings (tools, implements).
4407—(Wood sawn or chipped lengthwise)	4420—Wood marquetry, caskets, statuettes.	8201—Hand tools.
4408—(Sheets for veneering)	.....	Ch. 92 Headings (musical instruments).
4409—(Wood continuously shaped)	.....	9201—Pianos.
4417—(Tools, tool handles, broom handles).	.....	9202—Other stringed instruments.
4418—(Builders' joinery and carpentry of wood).	.....	Ch. 93 Headings (arms and ammunition).
		9302—Revolvers and pistols.
		93051020—Parts and accessories for revolvers and pistols.
		Ch. 94 Headings (furniture, etc.).
		940169—Seats with wood frames.
		Ch. 95 Headings (toys, games, & sporting equipment).
		950420—Articles and accessories for billiards.
		Ch. 97 Headings (works of art).
		9703—Sculptures.
	PLUS PHASE II	PLUS PHASES II & III.

* Declaration requirements were effective as of December15, 2008. All declarations submitted must be accurate; false statements may be referred for enforcement. Failure to submit a declaration will not be prosecuted, and customs clearance will not be denied for lack of a declaration until after the phase-in date above.

Federal enforcement will address failures to file declarations for entries of products in the Harmonized Tariff Schedule (HTS) subchapters listed in the above phase-in schedule, unless APHIS publishes another notice in the **Federal Register** announcing an amended implementation plan. We recognize that many of the headings listed in phase IV of the phase-in schedule contain goods that are not composed of wood or other plant material. We wish to clarify that a declaration is not required for products that have no wood or other plant content. For example, both metal hammers and hammers with wooden handles are included in HTS Chapter

82. In that example, only the hammers with wooden handles would require a declaration as of April 1, 2010.

There will be no further additions to phases III or IV. We intend to provide at least 6 months' notice to persons and industries affected by changes to the phase-in schedule to facilitate compliance with the new requirements. Changes will be announced in the **Federal Register**. We invite public comment on the revised schedule for enforcement of the declaration.

We also seek comment on the following HTS chapters/subchapters currently under consideration for subsequent phases that would be scheduled to begin on or after September 1, 2010:

- Ch. 44 Headings (wood & articles of wood)
  - 4405—Wood wool [excelsior]
  - 4410—Particle board
  - 4411—Fiberboard of wood
  - 4412—Plywood, including 44129906 and 44129957
  - 4413—Densified wood
  - 4415—Packing cases, boxes, crates, drums
  - 4416—Casks, barrels, vats, tubs
- Ch. 47 Headings (wood pulp)
  - 4701—Mechanical wood pulp
  - 4702—Chemical wood pulp, dissolving
  - 4703—Chemical wood pulp, sulfate
  - 4704—Chemical wood pulp, sulfite
  - 4705—Combination mechanical and chemical
- Ch. 92 Headings (musical instruments)
  - 9205—Wind musical instruments
- Ch. 48 Headings (paper & articles of)
  - 4801—Newsprint
  - 4802—Uncoated writing paper
  - 4803—Toilet or facial tissue stock
  - 4804—Uncoated kraft paper
  - 4805—Other uncoated paper and board
  - 4806—Vegetable parchment, etc.
  - 4807—Composite paper and board
  - 4808—Corrugated paper and board
  - 4809—Carbon paper
  - 4810—Coated paper and board
  - 4811—Paper coated, etc.
- Ch. 66 Headings (umbrellas, walking sticks, riding crops)
  - 6601—Umbrellas
  - 6603—Umbrella parts
- Ch. 94 Headings (furniture, etc.)
  - 9401—Seats
  - 940330—Wooden office furniture
  - 940340—Wooden kitchen furniture
  - 940350—Wooden bedroom furniture
  - 940360—Other wooden furniture
  - 940381—Furniture of cane, osier, bamboo, rattan, or similar materials
- Ch. 95 Headings (toys, games & sporting equipment)
  - 9504—Articles for arcade, table, or parlor games

We continue to consider the applicability of the declaration requirement to other products not included in the revised phase-in schedule or listed above. In particular, we seek comment on how the declaration requirement should be enforced as to additional goods classified under the following HTS headings:

- Ch. 48 Paper & articles of
- Ch. 82 Tools, implements
- Ch. 89 Ships, boats, & floating structures
- Ch. 93 Arms and ammunition
- Ch. 94 Furniture, etc.
- Ch. 95 Toys, games, & sporting equipment
- Ch. 96 Brooms, pencils, buttons

As noted in the February 2009 **Federal Register** notice, the Federal Government is also conducting studies on other HTS headings to inform its implementation of the Lacey Act.

Blanket Declarations

Several commenters requested that APHIS consider the use of blanket declarations instead of shipment-by-shipment declarations. Blanket declarations could be used to declare routine and/or repeat shipments. The commenters noted that such declarations would reduce the paperwork burden on affected entities, reduce costs, and could, in addition, improve the quality and usefulness of the information collected. Some commenters provided detailed descriptions of possible blanket declaration programs.

The Federal Government is making every effort to implement the amended Lacey Act, including the declaration requirement, in a manner that is consistent with the Act and, at the same time, recognizes the burden of compliance on industry. We also have an objective of improving the overall quality of the information contained in the import declarations. In that context, we are currently evaluating options for blanket certification programs. We recently announced a pilot blanket declaration program for participants in Customs and Border Protection's expedited border release programs, Automated Line Release (ALR) or Border Release Advance Screening and Selectivity (BRASS). This pilot program will test the feasibility of collecting the information required through the use of a periodic ''blanket'' declaration, with subsequent reconciliation reports. Information on how to participate in this program is available on APHIS' Lacey Act Web page *http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml.*

Use of Spp. To Identify Species of Imported Plants

Several commenters proposed that APHIS allow for importers to provide only the genus name in circumstances where the individual species would be difficult to identify. The commenters contended that in some circumstances, the individual species used to manufacture the product would be impossible to identify and that they would therefore have to list dozens or even hundreds of possible species. The commenters contended that this information would be of little value to the Federal Government as it relates to enforcement of the declaration requirement and that it would result in significantly greater filing costs for them. Along similar lines, some of those commenters asked that APHIS allow for the use of common nomenclature for species identification. One example provided is SPF, a common grade of lumber manufactured from varying proportions of spruce, pine, or fir species in Canada. SPF imports from Canada are a combination of several distinct species, but identifying the particular species in any individual shipment would be difficult. The commenter recommended that APHIS develop a list of shorthand designations that would satisfy the requirement to provide genus and species information for these common nomenclature groups.

The amended Lacey Act explicitly states that the import declaration must contain both the genus and the species of the imported plant material. Further, the Act states that if a species is unknown, then the declaration should contain a list of all of the possible species that may be present in the product. Therefore, in circumstances where the list of possible species in a particular product includes all species in a genus, it is acceptable to use ''spp.'' following the genus name on the import declaration form. However, when reference to all possible species in a genus is not accurate (based on geographical or other factors), importers are expected to provide either the single genus and species, or a specific list on the import declaration form of all possible species that may have been used to produce the plant product.

With regard to the use of shorthand group designations like SPF, the Federal Government is currently considering this approach. Specifically, we are considering criteria that might be used to define genus and species groups and the extent to which we might accept the

use of group designations on the import declaration either under our current authority or through the regulatory authority provided in the amended Lacey Act.

Declaration Form

A printable declaration form is currently available for voluntary submission on the Internet at *http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml* or from the person listed under **FOR FURTHER INFORMATION CONTACT.** We will continue to revise the declaration form to make editorial changes and otherwise clarify the requirements for the form. To ensure that you are using the most updated form, please visit the APHIS Web site to verify the current version. You may submit completed declaration forms by mail to: The Lacey Act, c/o U.S. Dept of Agriculture, Box 10, 4700 River Road, Riverdale, MD 20737.

As indicated previously, we encourage importers to file the data required by the amended Lacey Act electronically through the Automated Commercial System (ACS). If a paper declaration is used, please submit the original. The declaration form cannot be submitted online or by e-mail.

Additional Information

APHIS will continue to provide the latest information regarding the Lacey Act on our Web site, *http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml.* The Web site currently contains the Lacey Act, as amended; a slideshow covering background and context, new requirements, commodities and products covered, information on prohibitions, and the current status of implementation of the declaration requirement of the Lacey Act; frequently asked questions; the phase-in implementation plan; and the paper declaration form. The Web site will be updated as new materials become available. We encourage persons interested in receiving timely updates on APHIS' Lacey Act efforts to register for our stakeholder registry at *https://web01.aphis.usda.gov/PPQStakeWeb2.nsf* and select ''Lacey Act Declaration'' as a topic of interest.

Done in Washington, DC, this 27th day of August 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–21216 Filed 9–1–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items covered include: (1) Introductions, (2) Approve Minutes, (3) Public Comment, (4) Project Presentations for FY08 and FY09, (5) Project Voting by RAC Members, (6) General Discussion, (7) Next Agenda.

DATES: The meeting will be held on September 28, 2009, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals who wish to speak or propose agenda items send their names and proposals to Eduardo Olmedo, Designated Federal Official, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Matt Ellis, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–3316; e–mail *matthewellis@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee will file written statements with the Committee staff before or after the meeting. Public input sessions are provided and individuals who made written requests by September 21, 2009 have the opportunity to address the committee at those sessions.

Dated: August 25, 2009.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. E9–21073 Filed 9–1–09; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Missouri Advisory Committee to the Commission will convene by conference call at 1:30 p.m. and adjourn at approximately 2:30 p.m. on Monday, September 21, 2009. The purpose of this meeting is to plan activities for a public meeting titled ''Educational Opportunities in Urban Public School Settings and Education Reform in Missouri * * * Kansas City and St. Louis Public School Districts.''

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 26870820. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on September 14, 2009.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by October 21, 2009. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 27, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination United States Commission on Civil Rights.

[FR Doc. E9–21130 Filed 9–1–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Water and Energy Conservation: U.S. Department of Commerce Services for Agribusiness

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Commerce (DOC) will host a one-day conference for participants in the agribusiness industry during which senior U.S. government officials will inform private sector stakeholders, particularly manufacturers of irrigation and agricultural equipment and relevant alternative energy technology, food processors, and specialized service providers, of Commerce Department programs, services, and data that may be of assistance to them in reducing their consumption of water and energy. By lowering U.S. companies' costs associated with water and energy consumption, Commerce Department programs can assist American firms to be more competitive in domestic and international markets, as well as advance U.S. Government objectives with respect to sustainability and climate change.

A secondary purpose is to inform attendees of preparations for the United Nations Framework Convention on Climate Change (UNFCCC) negotiations and for them to advise U.S. officials on the impact a new UNFCCC agreement could have on their respective operations and on associated commercial opportunities.

The conference will be held in El Centro, California at the Barcelona Event Center.

DATES: September 17, 2009.

ADDRESSES: To register for the conferences, please visit the following Web site: *http://www.ivedc.com/?pid=1188.*

SUPPLEMENTARY INFORMATION:

Selection Criteria

Participation is on a first-come-first served basis. A $30 fee will be charged.

National Oceanic and Atmospheric Administration—The Mission of the National Oceanic and Atmospheric Administration (NOAA) is to understand and predict changes in Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs.

A number of NOAA organizations offer data and services to assist agribusiness in responding to drought and the need to conserve water. These include the National Climatic Data Center (NCDC), which provides and ensures timely access to global environmental data from satellites and other sources, provides information services, and develops science products; the National Integrated Drought Information System (NIDIS), which provides authoritative, reliable information for farmers, forestry professionals, urban water managers, and other decision makers who need to prepare for and mitigate the effects of drought.; and the Western Regional Climate Center (WRCC), one of six such centers that produce and deliver useful climate data, information and knowledge in a timely manner for decision makers and other users at the local, state, regional and national levels.

International Trade Administration—The International Trade Administration (ITA) is charged with the mission of strengthening the competitiveness of U.S. industry, of promoting trade and investment, and of ensuring fair trade and compliance with trade laws and agreements. ITA creates opportunities for U.S. workers and firms by promoting international trade opportunities and by fostering a level playing field for American business.

ITA's Manufacturing and Services (MAS) unit is dedicated to strengthening the global competitiveness of U.S. industry, expanding its market access, and increasing exports. MAS undertakes industry economic and trade policy analysis, shapes U.S. trade policy, participates in trade negotiations, organizes trade capacity building programs, and evaluates the impact of domestic and international economic and regulatory policies on U.S. manufacturers and service industries.

The U.S. Commercial Service is ITA's trade promotion unit. Commercial Service trade specialists in 107 U.S. cities and more than 80 countries work with U.S. companies to help them sell American goods and services in global markets.

National Institute of Standards and Technology/Manufacturers Extension Partnership

The National Institute of Standards and Technology (NIST) is a non-regulatory federal agency within the U.S. Department of Commerce. NIST's mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life. NIST's Manufacturing Extension Partnership (MEP) is a national network of specialists who provide American companies with services and access to public and private resources to enhance growth, improve productivity, and expand capacity.

The United Nations Framework Convention on Climate Change (UNFCC)—The UNFCCC was signed in 1992 in Rio de Janeiro, Brazil, and entered into force on March 21, 1994. Currently, 192 states have ratified the Convention, including the United States. The treaty requires national inventories of greenhouse gas emissions from developed countries and encourages national action to stem greenhouse gas emissions and slow climate change. Developed nations also pledge to share technology and resources with developing nations.

Negotiations under the UNFCCC are underway to formulate a successor agreement to the convention's Kyoto Protocol. The discussions have the goal of concluding an agreement in Copenhagen this December. Potential impacts on U.S. industrial competitiveness will be discussed during the upcoming conferences include technology transfer, intellectual property, financing, and related commercial opportunities.

FOR FURTHER INFORMATION CONTACT: Padraic Sweeney, in the Office of Transportation and Machinery, at 202–482–5024, or by e-mail: *Padraic.Sweeney@mail.doc.gov.*

Dated: August 27, 2009.

Thomas Sobotta,

Acting Director, Office of Transportation and Machinery, U.S. Department of Commerce.

[FR Doc. E9–21210 Filed 9–1–09; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Water and Energy Conservation: U.S. Department of Commerce Services for Agribusiness

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Commerce (DOC) will host a one-day conferences for participants in the agribusiness industry during which senior U.S. government officials will inform private sector stakeholders, particularly manufacturers of irrigation and agricultural equipment and relevant alternative energy technology, food processors, and specialized service providers, of Commerce Department programs, services, and data that may be of assistance to them in reducing their

consumption of water and energy. By lowering U.S. companies' costs associated with water and energy consumption, Commerce Department programs can assist American firms to be more competitive in domestic and international markets, as well as advance U.S. Government objectives with respect to sustainability and climate change. A secondary purpose is to inform attendees of preparations for the United Nations Framework Convention on Climate Change (UNFCCC) negotiations and for them to advise U.S. officials on the impact a new UNFCCC agreement could have on their respective operations and on associated commercial opportunities.

The conference will be held in Fresno, California at the Holiday Inn Downtown.

DATES: September 15, 2009.

ADDRESSES: To register for the conference, please visit the following Web site: *http://www.icwt.net/usdc.htm.*

SUPPLEMENTARY INFORMATION:

Selection Criteria

Participation is on a first-come-first served basis. A $30 fee will be charged.

National Oceanic and Atmospheric Administration—The Mission of the National Oceanic and Atmospheric Administration (NOAA) is to understand and predict changes in Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs.

A number of NOAA organizations offer data and services to assist agribusiness in responding to drought and the need to conserve water. These include the National Climatic Data Center (NCDC), which provides and ensures timely access to global environmental data from satellites and other sources, provides information services, and develops science products; the National Integrated Drought Information System (NIDIS), which provides authoritative, reliable information for farmers, forestry professionals, urban water managers, and other decision makers who need to prepare for and mitigate the effects of drought.; and the Western Regional Climate Center (WRCC), one of six such centers that produce and deliver useful climate data, information and knowledge in a timely manner for decision makers and other users at the local, state, regional and national levels.

International Trade Administration—The International Trade Administration (ITA) is charged with the mission of strengthening the competitiveness of U.S. industry, of promoting trade and investment, and of ensuring fair trade and compliance with trade laws and agreements. ITA creates opportunities for U.S. workers and firms by promoting international trade opportunities and by fostering a level playing field for American business.

ITA's Manufacturing and Services (MAS) unit is dedicated to strengthening the global competitiveness of U.S. industry, expanding its market access, and increasing exports. MAS undertakes industry economic and trade policy analysis, shapes U.S. trade policy, participates in trade negotiations, organizes trade capacity building programs, and evaluates the impact of domestic and international economic and regulatory policies on U.S. manufacturers and service industries.

The U.S. Commercial Service is ITA's trade promotion unit. Commercial Service trade specialists in 107 U.S. cities and more than 80 countries work with U.S. companies to help them sell American goods and services in global markets.

National Institute of Standards and Technology/Manufacturers Extension Partnership

The National Institute of Standards and Technology (NIST) is a non-regulatory Federal agency within the U.S. Department of Commerce. NIST's mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life. NIST's Manufacturing Extension Partnership (MEP) is a national network of specialists who provide American companies with services and access to public and private resources to enhance growth, improve productivity, and expand capacity.

The United Nations Framework Convention on Climate Change (UNFCC)—The UNFCCC was signed in 1992 in Rio de Janeiro, Brazil, and entered into force on March 21, 1994. Currently, 192 states have ratified the Convention, including the United States. The treaty requires national inventories of greenhouse gas emissions from developed countries and encourages national action to stem greenhouse gas emissions and slow climate change. Developed nations also pledge to share technology and resources with developing nations.

Negotiations under the UNFCCC are underway to formulate a successor agreement to the convention's Kyoto Protocol. The discussions have the goal of concluding an agreement in Copenhagen this December. Potential impacts on U.S. industrial competitiveness will be discussed during the upcoming conferences include technology transfer, intellectual property, financing, and related commercial opportunities.

FOR FURTHER INFORMATION, PLEASE CONTACT: Padraic Sweeney, in the Office of Transportation and Machinery, at 202–482–5024, or by e-mail: *Padraic.Sweeney@mail.doc.gov.*

Dated: August 27, 2009.

Thomas Sobotta,

Acting Director, Office of Transportation and Machinery, U.S. Department of Commerce.

[FR Doc. E9–21219 Filed 8–28–09; 4:15 pm]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; Public Telecommunications Facilities Program Application Form

ACTION: Notice.

SUMMARY: The U.S. Department of Commerce as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on continuing and proposed information collections, 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 November 2, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, U.S. Department of Commerce, Room 7845, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet *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 Clifton Beck, NTIA, Room H–4888, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet *cbeck@ntia.doc.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Under authority of 47 U.S.C. 390–394, 397–399, the National Telecommunications and Information Administration (NTIA) administers the

Public Telecommunications Facilities Program (PTFP). The purpose of PTFP is to assist, through matching funds, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

- Extend delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;
- Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and
- Strengthen the capability of existing public radio and television stations to provide public telecommunications services to the public.

The application is used to collect the required information for NTIA to evaluate eligibility of applicants, including but not limited to, project and financial resources information, population that the project will service, and type of equipment requested. NTIA conducts a competitive review process. The award decisions are made by the Assistant Secretary for Communications and Information and are announced prior to the end of the fiscal year (September 30).

II. Method of Collection

Collection allows grantees to make all submissions either over the Internet or by mail. The information collection is required of all applicants who request funding from the Public Telecommunications Facilities Program.

III. Data

OMB Control Number: 0660–0003.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions, state or local government agencies.
Estimated Number of Total Respondents: 300.
Estimated Time per Response: 4 to 84 hours, depending on the required information.
Estimated Total Annual Burden Hours: 23,830.
Estimated Total Annual Cost to the 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 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 and/or included in the request for OMB approval of the information collection; they also will become a matter of public record.

Dated: August 27, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–21121 Filed 9–1–09; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR35

Endangered Species; File No. 1556

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

ACTION: Notice; receipt of application for modification.

SUMMARY: Notice is hereby given that Commonwealth of the Northern Mariana Islands, USA (CNMI), Division of Fish and Wildlife, [Sylvan Igisomar, responsible official] P.O. Box 10007, Saipan, Mariana Islands, 96950, has requested a modification to scientific research Permit No.1556–01.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 2, 2009.

ADDRESSES: The modification request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/*, and then selecting File No. 1556–02 from the list of available applications. These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1556–02.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1556, issued on May 24, 2006 (71 FR 31164) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1556 authorizes the permit holder to perform sea turtle surveys in the waters of the Northern Mariana Islands, USA. The project consists of shoreline/cliff line assessments, in-water tow dive assessments, and the hand capture of sea turtles. Turtles are handled, measured, photographed, carapace painted, tissue-sampled, flipper tagged, passive integrated transponder tagged, and released. A subset of the turtles are satellite tagged. The applicant captures up to 100 green and 40 hawksbill sea turtles annually. The permit is issued for five years.

The permit holder requests authorization to change their field season from April-October to year round and add shell etching and oral examination to their list of procedures.

Dated: August 27, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–21182 Filed 9–1–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of Intent to Evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the North Carolina and Old Woman Creek (Ohio) National Estuarine Research Reserves.

The National Estuarine Research Reserve evaluations will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR Part 921, Subpart E and Part 923, Subpart L. Evaluation of National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

Each evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as part of the site visit. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings. Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

Dates and Times: The Old Woman Creek (Ohio) National Estuarine Research Reserve evaluation site visit will be held October 6–9, 2009. One public meeting will be held during the week. The public meeting will be held on Wednesday, October 7, 2009, at 6 p.m. at the Old Woman Creek National Estuarine Research Reserve, Visitor Center, 2514 Cleveland Road East, Huron, Ohio.

The North Carolina National Estuarine Research Reserve evaluation site visit will be held December 7–11, 2009. Two public meetings will be held during the week. The first public meeting will be held on Tuesday, December 8, 2009, at 7 p.m., at the University of North Carolina-Wilmington, Center for Marine Science Auditorium, 5600 Marvin K. Moss Lane, Wilmington, North Carolina. The second public meeting will be held on Wednesday, December 9, 2009, at 7 p.m., at the Center for Coastal Fisheries and Habitat Research, NOAA/NCNERR Administration Building Auditorium, 101 Pivers Island Road, Beaufort, North Carolina.

ADDRESSES: Copies of states' most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting held for a Program. Please direct written comments to Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–1182.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration.)

Dated: August 13, 2009.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–21128 Filed 9–1–09; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR34

Marine Mammals; File No. 14301

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the University of Alaska Museum of the North, 907 Yukon Drive, Fairbanks, AK 99775–6960 (Dr. Link E. Olson, Responsible Party), has applied in due form for a permit to collect, acquire, import and export various marine mammal and endangered species specimens, including partial and whole carcasses from species of marine mammals under the jurisdiction of NMFS for the purpose of curating samples for future scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 2, 2009.

ADDRESSES: The application and related documents are available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The University of Alaska Museum of the North functions as an archive for scientific specimens of marine mammals under the jurisdiction of the National Marine Fisheries and is a major repository of marine mammal material from the Arctic and North Pacific oceans. Under the proposed permit, the applicant would (1) import/export marine mammal parts (bones and organ tissue samples) from dead beach-cast carcasses, (2) receive/archive and export samples of marine mammals taken by

Alaskan Native subsistence hunters, and (3) receive, import/export specimens from scientists in academic, federal, and state institutions involved in marine mammal research under their own permits. Unlimited samples from up to 1240 pinnipeds (35 species; excluding walrus) and 1700 cetaceans (81 species) would be collected, received, imported, or exported annually. Import/export activities would occur world-wide. No live animals would be harassed or taken, lethally or otherwise, under the requested permit. The permit is requested for a five-year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 27, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–21183 Filed 9–1–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR31

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); First Fall Meeting

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

ACTION: Notice of meeting.

SUMMARY: In preparation for the 2009 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting, the Advisory Committee to the U.S. Section to ICCAT will convene the first of two fall meetings.

DATES: The meeting will be held September 17–18, 2009. There will be an open session on Thursday, September 17, 2009, from 9 a.m. thru 12:45 p.m. The remainder of the meeting will be closed to the public. Written comments can be presented during the open session. There will be no opportunity for oral public comments during the meeting. Written comments on issues being considered at the meeting should be received no later than September 14, 2009.

ADDRESSES: The meeting will be held at the Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910. Written comments should be sent to Melanie King at NOAA Fisheries, Office of International Affairs, Room 12641, 1315 East-West Highway, Silver Spring, MD 20910. Written comments can also be provided via fax (301–713–2313) or email (*melanie.king@noaa.gov*).

FOR FURTHER INFORMATION CONTACT: Melanie King, 301–713–9090.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive updates on domestic highly migratory fisheries management matters, issues related to the March 2010 meeting of the Convention on the International Trade of Endangered Species, and stock status and other scientific information regarding Atlantic highly migratory species, particularly, albacore, swordfish, sailfish, sharks, tropical tunas, and other species such as seabirds. There will be no opportunity for oral public comment during the open session, although written comments are welcome and may be submitted in person during the open session or in advance by mail, fax, or email. Written comments submitted in advance should be received by September 14, 2009 (see **ADDRESSES**).

During its first fall meeting, the Advisory Committee will also meet in two executive sessions to discuss sensitive information relating to upcoming international negotiations regarding the conservation and management of Atlantic highly migratory species, including compliance matters and issues related to recreational fishing and strengthening ICCAT. These sessions are closed to the public. The first executive session will be held from 2 p.m. to 8 p.m. on September 17, 2009, and a second executive session will be held from 8:30 pm to 12:30 p.m. on September 18, 2009.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Melanie King at (301) 713–9090 by at least 5 days prior to the meeting date.

Dated: August 27, 2009.

Christopher Rogers,

Acting Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E9–21184 Filed 9–1–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting September 23–24, 2009.

SUMMARY: The Hydrographic Services Review Panel (HSRP), a Federal Advisory Committee, will be holding a public meeting in Duluth, Minnesota, on September 23 and 24, 2009. The meeting is contingent on renewal of the HSRP charter.

Date and Time: The public meeting will be held September 23–24, 2009, from approximately 8:30 a.m. to 5 p.m. on September 23 and 8:30 a.m. to 3 p.m. on September 24. The times and agenda topics are subject to change. For the most current meeting agenda, refer to the HSRP Web site: *http://www.nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

Location: The meeting is open to the public and will be held in Duluth, Minnesota. For the location of the meeting facility, refer to the HSRP Web site for specific information (*http://www.nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm*) or contact Rebecca Arenson at *Hydroservices.panel@noaa.gov* or 301–713–2780 x158.

FOR FURTHER INFORMATION CONTACT: Rebecca Arenson, NOAA, Office of Coast Survey, National Ocean Service (NOS), NOAA (N/CS), 1315 East-West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2780 x158, e-mail: *Hydroservices.panel@noaa.gov* or visit the NOAA HSRP Web site at *http://www.nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

SUPPLEMENTARY INFORMATION: The Hydrographic Services Review Panel (HSRP) was established by the Secretary of Commerce to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other

appropriate matters that the Under Secretary refers to the Panel for review and advice.

The HSRP meeting is open to the public; seating is available on a first-come, first-served basis, and may be limited. Public comment periods will be scheduled at various times throughout the meeting. These public comment periods will be part of the final agenda that will be published before the meeting date on the HSRP Web site (*http://www.nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm*). Written public comments should be submitted to Rebecca Arenson no later than September 16, 2009. Those individuals planning to provide oral comments are requested to inform Rebecca Arenson no later than September 16, 2009. The time period for oral comments may be limited. Contact information for Rebecca Arenson is e-mail: *Hydroservices.panel@noaa.gov* or phone: 301–713–2780 x158.

Items on the meeting agenda include: (1) Panel discussion with regional stakeholders, (2) updates, (3) proposed revisions to the NOAA contracting policy for mapping and charting services, (4) public comment periods, and (5) other topics. Agenda topics and times are subject to change. For the most current meeting agenda, refer to the HSRP Web site: *http://www.nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

Dated: August 19, 2009.

Steven R. Barnum,

NOAA, Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–21129 Filed 9–1–09; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* September 2, 2009.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen or David Edmiston, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230, telephone: (202) 482–2769 or (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2005, the Department of Commerce (Department) published in the **Federal Register** the antidumping duty order on wooden bedroom furniture from the People's Republic of China (PRC) (furniture order). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China*, 70 FR 329 (January 4, 2005). On January 5, 2009, the Department published a notice of opportunity to request an administrative review of the furniture order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 74 FR 265 (January 5, 2009).

The Department received multiple timely requests for an administrative review of the furniture order and on February 26, 2009, in accordance with section 751(a) of Tariff Act of 1930, as amended (the Act), published in the **Federal Register** a notice of the initiation of an administrative review of that order. *See Initiation of Antidumping Duty Administrative Review*, 74 FR 8776 (February 26, 2009) (*Initiation Notice*). The review was initiated with respect to 200 companies or groups of companies, and covers the period from January 1, 2008, through December 31, 2008.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Because all requesting parties withdrew their respective requests for an administrative review of the following entities within 90 days of the date of publication of the notice of initiation, the Department is rescinding this review with respect to these entities, in accordance with 19 CFR 351.213(d)(1):

- Ace Furniture & Crafts Ltd. (a.k.a. Deqing Ace Furniture and Crafts Limited)
- Alexandre International Corp., Southern Art Development Limited,[1] Alexandre Furniture (Shenzhen) Co., Ltd., Southern Art Furniture Factory
- Art Heritage International, Ltd., Super Art Furniture Co., Ltd., Artwork Metal & Plastic Co., Ltd., Jibson Industries Ltd., Always Loyal International
- Asia Building Materials Limited
- Billy Wood Industrial (Dong Guan) Co., Ltd., Great Union Industrial (Dongguan) Co., Ltd., Time Faith Limited [1]
- C.F. Kent Co., Inc., C.F. Kent Hospitality, Inc., Shanghai Kent Furniture Co., Ltd., Shanghai Hospitality Product Mfg., Co., Ltd.
- Changshu HTC Import & Export Co., Ltd.
- Cheng Meng Furniture (PTE) Ltd., Cheng Meng Decoration & Furniture (Suzhou) Co., Ltd.
- Chuan Fa Furniture Factory
- Clearwise Company Limited [1]
- Contact Co., Ltd.
- Dalian Guangming Furniture Co., Ltd.
- Dalian Huafeng Furniture Co., Ltd.
- Denny's Furniture Associates Corp., Denny's International Co., Ltd.
- Der Cheng Wooden Works, Der Cheng Furniture Co., Ltd.
- Dongguan Bon Ten Furniture Co., Ltd.
- Dongguan Cambridge Furniture Co., Glory Oceanic Company [2] Limited [1]
- Dongguan Creation Furniture Co., Ltd., Creation Industries Co., Ltd.
- Dongguan Hero Way Woodwork Co., Ltd., Dongguan Da Zhong Woodwork Co., Ltd., Hero Way Enterprises Ltd., Well Earth International Ltd.
- Dongguan Grand Style Furniture Co. Ltd., Hong Kong Da Zhi Furniture Co., Ltd.
- Dongguan Great Reputation Furniture Co., Ltd.
- Dongguan Hung Sheng Artware Products Co., Ltd., Coronal Enterprise Co., Ltd.
- Dongguan Kin Feng Furniture Co., Ltd.
- Dongguan Kingstone Furniture Co., Ltd., Kingstone Furniture Co., Ltd.
- Dongguan Liaobushangdun Huada Furniture Factory, Great Rich (HK) Enterprise Company[2] Limited[1]
- Dongguan Lung Dong Furniture Co., Ltd., Dongguan Dong He Furniture Co., Ltd.
- Dongguan Qingxi Xinyi Craft Furniture Factory (Joyce Art Factory)

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[1] We have used ''Limited'', rather than the abbreviation ''Ltd.'' that was used in the *Initiation Notice*, because ''Limited'' is used in the Automated Commercial System Module (ACS Module) (*i.e.*, the Antidumping/Countervailing Duty Module).

[2] We have used ''Company'', rather than the abbreviation ''Co.'' that was used in the *Initiation Notice*, because ''Company'' is used in the ACS Module.

- Dongguan Singways Furniture Co., Ltd.
- Dongguan Sundart Timber Products Co., Ltd.
- Dongying Huanghekou Furniture Industry Co., Ltd.
- Dorbest Limited.,[1] Rui Feng Woodwork Co., Ltd., Rui Feng Lumber Development Co., Ltd., a.k.a. Dorbest Ltd.,[3] Rui Feng Woodwork (Dongguan) Co., Ltd., Rui Feng Lumber Development (Shenzen) Co., Ltd.
- Dream Rooms Furniture (Shanghai) Co., Ltd.
- Eurosa (Kunshan) Co., Ltd., Eurosa Furniture Co., (PTE) Ltd.
- Evershine Enterprise Co.
- Fine Furniture (Shanghai) Ltd.
- Gainwell Industries Limited, Zhongshan Yiming Furniture Co., Ltd., Zhongshan Fengheng Furniture Co., Ltd., Guangdong Gainwell Industrial Furniture Co., Ltd., Northeast Lumber Co., Ltd.
- Garri Furniture (Dong Guan) Co., Ltd., Molabile International, Inc., Weei Geo Enterprise Co., Ltd.
- Guangdong Yihua Timber Industry Co., Ltd.
- Guangzhou Maria Yee Furnishings Ltd., Pyla HK, Ltd., Maria Yee, Inc.
- Hainan Jong Bao Lumber Co., Ltd., Jibbon Enterprise Co., Ltd.
- Hang Hai Woodcraft's Art Factory
- Hong Kong Jingbi Group
- Hong Yu Furniture (Shenzhen) Co. Ltd.
- Hualing Furniture (China) Co., Ltd., Tony House Manufacture (China) Co., Ltd., Buysell Investments Ltd., Tony House Industries Co., Ltd.
- Jardine Enterprise, Ltd.
- Jiangmen Kinwai Furniture Decoration Co., Ltd.
- Jiangmen Kinwai International Furniture Co., Ltd.
- Jiangsu Weifu Group Fullhouse Furniture Mfg.[4] Corp.
- Jiangsu XiangSheng Bedtime Furniture Co., Ltd.
- Jiangsu Yuexing Furniture Group Co., Ltd.
- Jiedong Lehouse Furniture Co., Ltd.
- Kuan Lin Furniture (Dong Guan) Co., Ltd., Kuan Lin Furniture Factory, Kuan Lin Furniture Co., Ltd.
- Kunshan Lee Wood Product Co., Ltd.
- Kunshan Summit Furniture Co., Ltd.
- Kunwa Enterprise Company
- Leefu Wood (Dongguan) Co., Ltd., King Rich International, Ltd.
- Link Silver Ltd. (V.I.B.), Forward Win Enterprises Company [2] Limited,[1] Dongguan Haoshun Furniture Ltd.
- Locke Furniture Factory, Kai Chan Furniture Co., Ltd., Kai Chan (Hong Kong) Enterprise Limited,[1] Taiwan Kai Chan Co., Ltd.
- Meikangchi (Nantong) Furniture Company Ltd.
- MoonArt Furniture Group, MoonArt International Inc.
- Nanhai Baiyi Woodwork Co., Ltd.
- Nanhai Jiantai Woodwork Co., Ltd., Fortune Glory Industrial Ltd. (H.K. Ltd.)
- Nanjing Jardine Enterprise Ltd.
- Nantong Dongfang Orient Furniture Co., Ltd.
- Nantong Yushi Furniture Co., Ltd.
- Nathan International Ltd., Nathan Rattan Factory
- Ningbo Furniture Industries Company, Ltd.
- Ningbo Fubang Furniture Industries Limited
- Ningbo Techniwood Furniture Industries Limited
- Orient International Holding Shanghai Foreign Trade Co., Ltd.
- Perfect Line Furniture Co., Ltd.
- Passwell Wood Corporation
- Pleasant Wave Limited,[1] Passwell Corporation
- Prime Wood International Co., Ltd, Prime Best International Co., Ltd., Prime Best Factory, Liang Huang (Jiaxing) Enterprise Co., Limited [1]
- Putian JingGong Furniture Co., Ltd.[5]
- Qingdao Liangmu Co., Ltd.
- Restonic (Dongguan) Furniture Ltd., Restonic Far East (Samoa) Ltd.
- RiZhao SanMu Woodworking Co., Ltd.
- Season Furniture Manufacturing Co., Season Industrial Development Co.
- Sen Yeong International Co., Ltd., Sheh Hau International Trading Ltd.
- Shanghai Jian Pu Export & Import Co., Ltd.
- Shanghai Maoji Imp and Exp Co., Ltd.
- Shanghai Season Industry & Commerce Co., Ltd.
- Sheng Jing Wood Products (Beijing) Co., Ltd., Telstar Enterprises Ltd.
- Shenyang Shining Dongxing Furniture Co., Ltd.
- Shenzhen Forest Furniture Co., Ltd.
- Shenzhen Jiafa High Grade Furniture Co., Ltd., Golden Lion International Trading Ltd.
- Shenzhen New Fudu Furniture Co., Ltd.
- Shenzhen Tiancheng Furniture Co., Ltd., Winbuild Industrial Ltd., Red Apple Furniture Co., Ltd., Red Apple Trading Co., Ltd.
- Shenzhen Wonderful Furniture Co., Ltd.
- Shenzhen Xiande Furniture Factory
- Shenzhen Xingli Furniture Co., Ltd.
- Shing Mark Enterprise Co., Ltd., Carven Industries Limited (BVI), Carven Industries Limited (HK), Dongguan Zhenxin Furniture Co., Ltd., Dongguan Yongpeng Furniture Co., Ltd.
- Songgang Jasonwood Furniture Factory, Jasonwood Industrial Co., Ltd. S.A.
- Starcorp Furniture Co., Ltd., Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co. Ltd., Shanghai Star Furniture Co., Ltd., Shanghai XingDing Furniture Industrial Co., Ltd.
- Starwood Industries Ltd.
- Strongson Furniture (Shenzhen) Co., Ltd., Strongson Furniture Co., Ltd., Strongson (HK) Co.
- Sunforce Furniture (Hui–Yang) Co., Ltd., Sun Fung Wooden Factory, Sun Fung Company,[2] Shin Feng Furniture Co., Ltd., Stupendous International Co., Ltd.
- Superwood Co., Ltd., Lianjiang Zongyu Art Products Co., Ltd.
- T.J. Maxx International Co., Ltd.
- Tarzan Furniture Industries Ltd., Samso Industries Ltd.
- Teamway Furniture (Dong Guan) [6] Ltd., Brittomart Inc.
- Techniwood Industries Ltd., Ningbo Furniture Industries Limited, Ningbo Hengrun Furniture Company [2] Limited [1]
- Techniwood (Macao Commercial Offshore) Limited
- Tianjin Master Home Furniture
- Tianjin Phu Shing Woodwork Enterprise Co., Ltd.
- Tianjin Sande Fairwood Furniture Co., Ltd.
- Top Art Furniture Factory, Sanxiang Top Art Furniture, Ngai Kun Trading
- Tradewinds Furniture Ltd., Fortune

[3] We have used the abbreviation ''Ltd.'', rather than the word ''Limited'' that was used in the *Initiation Notice*, because ''Ltd.'' is used after ''a.k.a. Dorbest'' in the ACS Module.

[4] We have used the abbreviation ''Mfg.'', rather than the word ''Manufacturing'' that was used in the *Initiation Notice*, because ''Mfg.'' is used in the ACS Module.

[5] The *Initiation Notice* contained a capitalization error with respect to this company name, which we have corrected.

[6] The abbreviation ''Co.'' incorrectly appeared after ''(Dong Guan)'' in the *Initiation Notice*. We have removed this abbreviation from the name of the company.

Glory Industrial Ltd.[7] (H.K. Ltd.)[8]
- Tradewinds International Enterprise Ltd.
- Tube–Smith Enterprise (Zhangzhou) Co., Ltd., Tube–Smith Enterprise (Haimen) Co., Ltd., Billionworth Enterprises Ltd.
- U–Rich Furniture (Zhangzhou) Co., Ltd., U–Rich Furniture Ltd.
- Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd., Dongguan Wanengtong Industry Co., Ltd.
- Woodworth Wooden Industries (Dong Guan) Co., Ltd.
- World Design International Co., Ltd.
- Xiamen Yongquan Sci–Tech Development Co., Ltd.
- Xilinmen Group Co. Ltd.
- Yida Co., Ltd., Yitai Worldwide, Ltd., Yili Co., Ltd., Yetbuild Co., Ltd.
- Yihua Timber Industry Co., Ltd.
- Zhang Zhou Sanlong Wood Product Co., Ltd.
- Zhangjiagang Daye Hotel Furniture Co., Ltd.
- Zhangjiagang Zheng Yan Decoration Co., Ltd.
- Zhangjiang Sunwin Arts & Crafts Co., Ltd.
- Zhangzhou Guohui Industrial & Trade Co., Ltd.
- Zhong Shan Fullwin Furniture Co., Ltd.
- Zhongshan Fookyik Furniture Co., Ltd.
- Zhongshan Golden King Furniture Industrial Co., Ltd.
- Zhoushan For–Strong Wood Co., Ltd.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies listed above which had a separate rate granted in a previously completed segment of this proceeding that was in effect during the instant review period, antidumping duties shall be assessed on entries subject to the separate rate at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions for such companies directly to CBP 15 days after the publication of this notice in the **Federal Register**. For any of the companies listed above that were part of the PRC–wide entity during the instant review period, the Department will issue assessment instructions on entries subject to the PRC–wide rate upon the completion of this administrative review. The companies from the above list for which the Department will not issue assessment instructions until the completion of the instant review are as follows:

Ace Furniture & Crafts Ltd. (a.k.a. Deqing Ace Furniture and Crafts Limited)
Asia Building Materials Limited
C.F. Kent Co., Inc., C.F. Kent Hospitality, Inc., Shanghai Kent Furniture Co., Ltd., Shanghai Hospitality Product Mfg., Co., Ltd.
Contact Co., Ltd.
Denny's Furniture Associates Corp., Denny's International Co., Ltd.
Der Cheng Wooden Works, Der Cheng Furniture Co., Ltd.
Dongguan Bon Ten Furniture Co., Ltd.[9]
Dongguan Qingxi Xinyi Craft Furniture Factory (Joyce Art Factory)
Dongguan Sundart Timber Products Co., Ltd.
Evershine Enterprise Co.
Gainwell Industries Limited, Zhongshan Yiming Furniture Co., Ltd., Zhongshan Fengheng Furniture Co., Ltd., Guangdong Gainwell Industrial Furniture Co., Ltd., Northeast Lumber Co., Ltd.
Guangdong Yihua Timber Industry Co., Ltd.
Hong Kong Jingbi Group
Hong Yu Furniture (Shenzhen) Co. Ltd.
Kunwa Enterprise Company
MoonArt Furniture Group, MoonArt International Inc.
Nanjing Jardine Enterprise Ltd.
Ningbo Fubang Furniture Industries Limited
Ningbo Furniture Industries Company, Ltd.
Ningbo Techniwood Furniture Industries Limited
Passwell Wood Corporation
Shanghai Season Industry & Commerce Co., Ltd.
Starcorp Furniture Co., Ltd., Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co. Ltd., Shanghai Star Furniture Co., Ltd., Shanghai XingDing Furniture Industrial Co., Ltd.
T.J. Maxx International Co., Ltd.
Techniwood (Macao Commercial Offshore) Limited
Tianjin Sande Fairwood Furniture Co., Ltd.
Top Art Furniture Factory, Sanxiang Top Art Furniture, Ngai Kun Trading
Tradewinds International Enterprise Ltd.
World Design International Co., Ltd.
Xilinmen Group Co. Ltd.

In addition, pursuant to an injunction issued in *Dorbest Ltd. v. United States*, CIT No. 05–0003, on June 3, 2008, the Department must continue to suspend liquidation of entries made by Dorbest Limited., Rui Feng Woodwork (Dongguan) Co., Ltd., and Rui Feng Lumber Development (Shenzen) Co., Ltd. on or after January 1, 2008, pending a conclusive court decision.

The review will continue with respect to all other entities identified in the *Initiation Notice*.

Notification to Importers

This notice serves as a final reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders (APOs)

This notice also serves as a reminder to parties subject to APOs of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

[7] We have used the abbreviation ''Ltd.'', rather than the word ''Limited'' that was used in the *Initiation Notice*, because ''Ltd.'' is used in the ACS Module.

[8] The reference ''(H.K. Ltd.)'' was inadvertently omitted from the name in the *Initiation Notice*.

[9] Dongguan Bon Ten Furniture Co., Ltd. received a separate combination rate on October 31, 2008 (*See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Fourth New Shipper Reviews*, 73 FR 64916 (October 31, 2008). This rate only applied to entries on or after October 31, 2008, where Dongguan Bon Ten Furniture Co., Ltd. was both the exporter and the producer of the subject merchandise. All other entries of subject merchandise from Dongguan Bon Ten Furniture Co., Ltd. during 2008 are subject to the PRC-wide rate. Assessment instructions for 2008 entries to which the PRC-wide rate applies will not be issued until completion of the instant review.

Dated: August 26, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–21201 Filed 9–1–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics to Persons Who Weave Such Fabrics in the United States

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce (Department) is soliciting applications for an allocation of the 2010 tariff rate quotas on certain worsted wool fabric to persons who weave such fabrics in the United States.

SUMMARY: The Department hereby solicits applications from persons (including firms, corporations, or other legal entities) who weave worsted wool fabrics in the United States for an allocation of the 2010 tariff rate quotas on certain worsted wool fabric. Interested persons must submit an application on the form provided to the address listed below by October 2, 2009. The Department will cause to be published in the **Federal Register** its determination to allocate the 2010 tariff rate quotas and will notify applicants of their respective allocation as soon as possible after that date. Promptly thereafter, the Department will issue licenses to eligible applicants.

DATES: To be considered, applications must be received or postmarked by 5 p.m. on October 2, 2009.

ADDRESSES: Applications must be submitted to the Office of Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, DC 20230 (telephone: (202) 482–3400). Application forms may be obtained from that office (via facsimile or mail) or from the following Internet address: *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp/fabric.*

FOR FURTHER INFORMATION CONTACT: Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2573.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade and Development Act of 2000 (the Act) created two tariff rate quotas (TRQs), providing for temporary reductions in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12). On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act. On December 3, 2004, the Act was further amended pursuant to the Miscellaneous Trade Act of 2004, Public Law 108–429. The 2004 amendment included authority for the Department to allocate a TRQ for new HTS category, HTS 9902.51.16. This HTS category refers to worsted wool fabric with average fiber diameter of 18.5 microns or less. The amendment provided that HTS 9902.51.16 is for the benefit of persons (including firms, corporations, or other legal entities) who weave such worsted wool fabric in the United States that is suitable for making men's and boys' suits. The TRQ for HTS 9902.51.16 provided for temporary reductions in the import duties on 2,000,000 square meters annually for 2005 and 2006. The amendment requires that the TRQ be allocated to persons who weave worsted wool fabric with average fiber diameter of 18.5 microns or less, which is suitable for use in making men's and boys' suits, in the United States. On August 17, 2006, the Act was further amended pursuant to the Pension Protection Act of 2006, Public Law 109–280, which extended the TRQ for HTS 9902.51.16 through 2009. The Emergency Economic Stabilization Act of 2008 extended the TRQ for HTS 9902.51.16 through 2014.

On October 24, 2005, the Department adopted final regulations establishing procedures for allocating the TRQ. *See* 70 FR 61363; 19 CFR 335. In order to be eligible for an allocation, an applicant must submit an application on the form provided at *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp/fabric* to the address listed above by 5 p.m. on October 2, 2009 in compliance with the requirements of 15 CFR part 335. Any business confidential information that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

Dated: August 27, 2009.

Kim Glas,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E9–21205 Filed 9–1–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics to Persons Who Cut and Sew Men's and Boys' Worsted Wool Suits, Suit-Type Jackets and Trousers in the United States

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce (Department) is soliciting applications for an allocation of the 2010 tariff rate quotas on certain worsted wool fabric to persons who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States.

SUMMARY: The Department hereby solicits applications from persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States for an allocation of the 2010 tariff rate quotas on certain worsted wool fabric. Interested persons must submit an application on the form provided to the address listed below by October 2, 2009. The Department will cause to be published in the **Federal Register** its determination to allocate the 2010 tariff rate quotas and will notify applicants of their respective allocation as soon as possible after that date. Promptly thereafter, the Department will issue licenses to eligible applicants.

DATES: To be considered, applications must be received or postmarked by 5 p.m. on October 2, 2009.

ADDRESSES: Applications must be submitted to Office of Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, DC 20230 (telephone: (202) 482–3400). Application forms may be obtained from that office (via facsimile or mail) or from the following Internet address: *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp.*

FOR FURTHER INFORMATION CONTACT: Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2573.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade and Development Act of 2000 (the Act) created two tariff rate quotas (TRQs), providing for temporary reductions in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12). On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act. On December 3, 2004, the Act was further amended pursuant to the Miscellaneous Trade Act of 2004, Public Law 108–429, by increasing the TRQ for worsted wool fabric with average fiber diameters greater than 18.5 microns, HTS 9902.51.11, to an annual total level of 5.5 million square meters, and extending it through 2007, and increasing the TRQ for average fiber diameters of 18.5 microns or less, HTS 9902.51.15 (previously 9902.51.12), to an annual total level of 5 million square meters and extending it through 2006. On August 17, 2006 the Act was further amended pursuant to the Pension Protection Act of 2006, Public Law 109–280, which extended both TRQs, 9902.51.11 and 9902.51.15, through 2009. The Emergency Economic Stabilization Act of 2008 extended the TRQ for both HTS through 2014.

The Act requires that the TRQs be allocated to persons who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States. On October 24, 2005, the Department adopted final regulations establishing procedures for allocating the TRQ. *See* 70 FR 61363; 19 CFR 335. In order to be eligible for an allocation, an applicant must submit an application on the form provided at *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp* to the address listed above by 5 p.m. on October 2, 2009 in compliance with the requirements of 15 CFR 335. Any business confidential information that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

Dated: August 27, 2009.

Kim Glas,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E9–21198 Filed 9–1–09; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2009–0067]

Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With Parts 1203, 1510, 1512, and/or 1513 and Section 1500.86(a)(7) and/or (a)(8) of Title 16, Code of Federal Regulations

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of requirements.

SUMMARY: The Consumer Product Safety Commission (''CPSC'' or ''Commission'') is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to specific CPSC regulations relating to bicycle helmets, dive sticks and similar articles, rattles, bicycles, and bunk beds. The Commission is issuing this notice of requirements pursuant to section 14(a)(3)(B)(vi) of the Consumer Product Safety Act (15 U.S.C. 2063(a)(3)(B)(vi)).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies for testing to 16 CFR parts 1203, 1510, 1512, and/or 1513; and/or 16 CFR 1500.86(a)(7) and (a)(8) are effective upon publication of this notice in the **Federal Register**.

Comments in response to this notice of requirements should be submitted by October 2, 2009. Comments on this notice should be captioned ''Third Party Conformity Assessment Body Accreditation Process for 16 CFR parts 1203, 1510, 1512, and/or 1513; and/or 16 CFR 1500.86(a)(7) and (a)(8).''

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0067, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice of requirements. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

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

FOR FURTHER INFORMATION CONTACT: Robert ''Jay'' Howell, Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; e-mail *rhowell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Consumer Product Safety Act (''CPSA''), at section 14(a)(3)(B)(vi), as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA''), Public Law 110–314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies (also referred to as ''third party laboratories'') to assess children's products for conformity with ''other children's product safety rules.'' Section 14(f)(1) of the CPSA defines ''children's product safety rule'' as ''a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance.'' Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the **Federal Register** publication date of this notice tested by a third party conformity assessment body accredited to do so and must issue a certificate of compliance with the applicable regulations based on that testing. (The Commission notes, however, that in the **Federal Register** of February 9, 2009 (74 FR 6396), the Commission announced a stay of

enforcement of certain provisions of section 14(a) of the CPSA; the stay applies to the testing that would result from this notice of requirements.) Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product in question must comply with applicable CPSC requirements (*see, e.g.,* section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

The Commission also is recognizing limited circumstances in which it will accept certifications if the product was tested on or after May 16, 2008 (90 days before the CPSIA's enactment) by a third party conformity assessment body that the CPSC accepts as being accredited by December 31, 2009 or 30 days before the Commission terminates the stay of enforcement that was originally announced in the **Federal Register** on February 9, 2009 (74 FR 6396), whichever date is later. This policy will apply to prior testing by independent third party conformity assessment bodies and by government-owned or government-controlled conformity assessment bodies, but not to ''firewalled'' conformity assessment bodies.

This notice provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the following regulations:

- 16 CFR part 1203, Safety Standard for Bicycle Helmets (insofar as bicycle helmets that are ''children's products'' are concerned);
- 16 CFR 1500.86(a)(7) and (a)(8), Exemptions from Classification as a Banned Toy or other Banned Article for use by Children. (The cited provisions pertain to dive sticks and ''similar articles.'');
- 16 CFR part 1510, Requirements for Rattles;
- 16 CFR part 1512, Requirements for Bicycles (insofar as bicycles that are ''children's products'' are concerned); and/or
- 16 CFR part 1513, Requirements for Bunk Beds.

Although section 14(a)(3)(B)(vi) of the CPSA directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess conformity with ''all other children's product safety rules,'' this notice of requirements is limited to the regulations identified immediately above.

Section 14(a)(3)(B)(vi) of the CPSA is captioned as ''All Other Children's Product Safety Rules,'' but the body of the statutory requirement refers only to ''other children's product safety rules.'' Nevertheless, section 14(a)(3)(B)(vi) of the CPSA could be construed as requiring a notice of requirements for ''all'' other children's product safety rules, rather than a notice of requirements for ''some'' or ''certain'' children's product safety rules. However, whether a particular rule represents a ''children's product safety rule'' may be subject to interpretation, and the Commission staff is continuing to evaluate which rules, regulations, standards, or bans are ''children's product safety rules.'' The CPSC intends to issue additional notices of requirements for other rules which the Commission determines to be ''children's product safety rules.''

This notice of requirements applies to all third party conformity assessment bodies as described in section 14(f)(2) of the CPSA. Generally speaking, such third party conformity assessment bodies are: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes; (2) ''firewalled'' conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes and that seek accreditation under the additional statutory criteria for ''firewalled'' conformity assessment bodies); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government.

The Commission requires baseline accreditation of each category of third party conformity assessment body to the International Organization for Standardization (''ISO'') Standard ISO/IEC 17025:2005, ''General Requirements for the Competence of Testing and Calibration Laboratories.'' The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (''ILAC–MRA''), and the scope of the accreditation must include testing for any of the regulations identified earlier in part I of this document for which the third party conformity assessment body seeks to be accredited.

(A description of the history and content of the ILAC–MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum ''Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance with 16 CFR part 1501 (Small Parts Regulation),'' dated November 2008 and available on the CPSC's Web site at *http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf.*)

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site.

This notice of requirements is effective on September 2, 2009. However, the CPSC will stay its enforcement of this notice of requirements at least until February 10, 2010; the date reflects the stay of enforcement that the CPSC published in the **Federal Register** on February 9, 2009 (74 FR 6396). Nevertheless, the Commission invites comments on the accreditation procedures as they apply to that testing and on the accreditation approach in general.

This notice of requirements is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (*see* section 14(a)(3)(G) of the CPSA, as added by section 102(a)(2) of the CPSIA (15 U.S.C. 2063(a)(3)(G))).

II. Accreditation Requirements

A. Baseline Third Party Conformity Assessment Body Accreditation Requirements

For a third party conformity assessment body to be accredited to test children's products for conformity with the regulations identified earlier in part I of this document, it must be accredited by an ILAC–MRA signatory accrediting body, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC–MRA signatory accrediting bodies is available on the Internet at *http://ilac.org/membersbycategory.html.* The accreditation must be to ISO Standard ISO/IEC 17025:2005, ''General Requirements for the Competence of Testing and Calibration Laboratories,'' and the scope of the accreditation must expressly include testing to 16 CFR parts 1203, 1510, 1512, and/or 1513; and/or 16 CFR 1500.86(a)(7) and (a)(8). A true copy, in English, of the accreditation and scope documents demonstrating compliance with these requirements must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental conformity assessment

bodies are described in parts II.B and II.C of this document below.

The Commission will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation. Subject to the limited provisions for acceptance of ''retrospective'' testing performed by other than firewalled conformity assessment bodies noted in part IV below, once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing of children's products to support certification by the manufacturer or private labeler of compliance with the regulations identified earlier in part I of this document.

B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies

In addition to the baseline accreditation requirements in part II.A of this document above, firewalled conformity assessment bodies seeking accredited status must submit to the Commission copies, in English, of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body owns an interest of ten percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children's product manufacturer at this time, it will be vigilant to see if this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must formally accept, by order, the accreditation application of a third party conformity assessment body before the third party conformity assessment body can become an accredited firewalled conformity assessment body.

C. Additional Accreditation Requirements for Governmental Laboratories

In addition to the baseline accreditation requirements of part II.A of this document above, the CPSIA permits accreditation of a third party conformity assessment body owned or controlled, in whole or in part, by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
- The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;
- The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and
- The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

The Commission will accept the accreditation of a governmental third party conformity assessment body if it meets the baseline accreditation requirements of part II.A of this document above and meets the additional conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

III. How Does a Third Party Conformity Assessment Body Apply for Acceptance of Its Accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Internet site at *http://www.cpsc.gov/businfo/labaccred.html.* The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its ILAC–MRA accreditation certificate and scope statement, and firewalled third party conformity assessment body training document(s), if relevant.

Commission staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-operated conformity assessment bodies, when that review and any necessary discussions with the applicant are satisfactorily completed, the third party conformity assessment body in question is added to the CPSC's list of accredited third party conformity assessment bodies at *http://www.cpsc.gov/businfo/labaccred.html.* In the case of a firewalled conformity assessment body seeking accredited status, when the staff's review is complete, the staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that may ultimately seek acceptance as a firewalled third party conformity assessment body also can initially request acceptance as a third party conformity assessment body accredited for testing of children's products other than those of its owners.) If the Commission accepts a staff recommendation to accredit a firewalled conformity assessment body, the firewalled conformity assessment body will then be added to the CPSC's list of accredited third party conformity assessment bodies. In each case, the Commission will notify the third party conformity assessment body electronically of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Subject to the limited provisions for acceptance of ''retrospective'' testing performed by other than accredited firewalled conformity assessment bodies noted in part IV of this document below, once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body may then begin testing of children's products to support certification of compliance with the regulations identified earlier in part I of this document for which it has been accredited.

IV. Limited Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission's Acceptance of Accreditation

The Commission will accept a certificate of compliance with 16 CFR Parts 1203, 1510, 1512, and/or 1513; and/or 16 CFR 1500.86(a)(7) and (a)(8) based on testing performed by an accredited third party or governmental third party conformity assessment body:

- On or after May 16, 2008 (90 days before the CPSIA's enactment) and through the expiration of the stay of enforcement announced in the **Federal**

Register on February 9, 2009 (74 FR 6396), and

• Before the Commission's acceptance of the third party conformity assessment body's preexisting accreditation,

provided that accreditation is accepted by December 31, 2009 or 30 days before the Commission terminates the stay of enforcement that was originally announced in the **Federal Register** on February 9, 2009 (74 FR 6396), whichever date is later, if:

• The third party conformity assessment body was ISO/IEC 17025 accredited by an ILAC–MRA member at the time of the test;

• The accreditation scope in effect for the third party conformity assessment body at that time expressly included testing to the regulations identified earlier in part I of this document;

• The third party conformity assessment body's accreditation application is received by the Commission under the procedures of this notice by November 2, 2009; and

• The third party conformity assessment body's accreditation and inclusion of the regulations identified earlier in part I of this document in its scope remains in effect through the effective date for mandatory third party testing and manufacturer/private labeler certification for the relevant rule identified in this document.

Testing performed by a firewalled conformity assessment body before the Commission's acceptance of its accreditation cannot be used as the basis for certification by a manufacturer or private labeler having a ten percent or greater ownership interest in the third party conformity assessment body.

Dated: August 27, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–21134 Filed 9–1–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

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

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), due to an unanticipated event. Approval by the Office of Management and Budget (OMB) has been requested by September 30, 2009. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before November 2, 2009.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or e-mailed to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Service, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested; *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including the use of information technology.

Dated: August 28, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: Emergency.

Title: Study of School-Level Expenditures.

Frequency: One time.

Affected Public: SEAs and Local governments.

Reporting and Recordkeeping Hour Burden:

Responses: 13,158.

Burden Hours: 562,136.

Abstract: The purpose of this data collection is to meet the American Recovery and Reinvestment Act of 2009 requirement for States and school districts to submit a school-by-school listing of school-level expenditures from State and local funds for the 2008–09 school year. These data will be used to examine the extent to which school-level education resources are distributed equitably within and across school districts.

Additional Information: The Department is requesting approval on an emergency basis for this data collection by September 30, 2009. Approval is needed by September 30, 2009 so that States can inform LEAs of this reporting requirement, collect the required data from all LEAs that receive Title I funds, and compile and submit the data to the U.S. Department of Education by March 31, 2010.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4119. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–21191 Filed 9–1–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

National Petroleum Council

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Petroleum Council. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 17, 2009, 9 a.m.–12 noon.

ADDRESSES: St. Regis Hotel, 923 16th and K Streets, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Johnson, U.S. Department of Energy, Office of Oil and Natural Gas (FE–30), Washington, DC 20585. Phone: 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, or the oil and natural gas industry.

Tentative Agenda

- Call to Order and Introductory Remarks
- Remarks by the Honorable Steven Chu, Secretary of Energy (invited)
- Guest Speaker (to be determined)
- Administrative Matters
- Discussion of Any Other Business Properly Brought Before the Council
- Adjournment

Public Participation: The meeting is open to the public. The Chairman of the Council and the Designated Federal Officer will conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Nancy Johnson at the address or telephone number listed above. Request must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued at Washington, DC, on August 27, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–21177 Filed 9–1–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater Advisory Committee

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Ultra-Deepwater Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 14, 2009, 8 a.m.–5 p.m. (PDT).

ADDRESSES: Crowne Plaza Los Angeles Airport, 5985 West Century Boulevard, Los Angeles, CA 90045–5463.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Ultra-Deepwater Advisory Committee is to provide advice on development and implementation of programs related to ultra-deepwater architecture and technology to the Secretary of Energy and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, subtitle J, section 999D.

Tentative Agenda

7:30 a.m. Registration.

8 a.m.–4:45 p.m. Welcome & Introductions, Opening Remarks, Topical Presentations such as Legislative Update, Ocean Task Force Update. Presentation and Discussion of Subcommittee Reports, Findings, and Recommendations regarding the *Draft 2010 Annual Plan.*

4:45 p.m. Public Comments.

5 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 5 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 27, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–21178 Filed 9–1–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Unconventional Resources Technology Advisory Committee

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Unconventional Resources Technology Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 15, 2009, 8 a.m.–5 p.m. (PDT).

ADDRESSES: Crowne Plaza Los Angeles Airport, 5985 West Century Boulevard, Los Angeles, CA 90045–5463.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Unconventional Resources Technology Advisory Committee is to provide advice on development and implementation of programs related to onshore

unconventional natural gas and other petroleum resources to the Secretary of Energy; and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, subtitle J, section 999D.

Tentative Agenda

7:30 a.m. Registration.
8 a.m.–4:45 p.m. Welcome & Introductions, Opening Remarks, Topical Presentations such as Legislative Update if any, and Discussion of Subcommittee Reports, Findings and Recommendations regarding the *Draft 2010 Annual Plan.*
4:45 p.m. Public Comments, if any;
5 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 5 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 27, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–21179 Filed 9–1–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 30, 2009, 9 a.m.–5 p.m.

ADDRESSES: The Augusta Marriott Hotel and Suites, Two Tenth Street, Augusta, Georgia 30901.

FOR FURTHER INFORMATION CONTACT: Terri Lamb, Designated Federal Officer, EMAB (EM–13), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Phone (202) 586–9007; fax (202) 586–0293 or e-mail: *terri.lamb@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of EMAB is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the EM program. EMAB will contribute to the effective operation of the program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing EM and by helping to secure consensus recommendations on those issues.

Tentative Agenda Topics

- EM Program Update
- American Recovery and Reinvestment Act Update
- Energy Park Initiative Update
- Acquisition, Project Management, and Quality Assurance
- EM Human Capital Initiatives
- Board Business and Subcommittee Reports

Public Participation: The meeting is open to the public. EMAB welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Terri Lamb at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda should contact Terri Lamb at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Terri Lamb at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.em.doe.gov/stakepages/emabmeetings.aspx.*

Issued at Washington, DC on August 28, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–21180 Filed 9–1–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, September 28, 2009, 1 p.m.–5 p.m. Tuesday, September 29, 2009, 8:30 a.m.–4:30 p.m.

ADDRESSES: The Embassy Suites Convention Center, 5055 International Boulevard, North Charleston, SC 29418.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Monday, September 28, 2009

1 p.m. Combined Committee Session
5 p.m. Adjourn

Tuesday, September 29, 2009

8:30 a.m. Approval of Minutes, Agency Updates, Public Comment Session, Chair and Facilitator Updates, Strategic and Legacy Management Committee Report, Public Comment Session
12 p.m. Lunch Break
1 p.m. Waste Management Committee Report, Nuclear Materials Committee Report, Administrative

Committee Report, Facility Disposition and Site Remediation Committee Report, Public Comment Session

4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, September 28, 2009.

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.srs.gov/general/outreach/srs-cab/srs-cab.html*.

Issued at Washington, DC on August 28, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–21181 Filed 9–1–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–732–000]

Commission Information Collection Activities (FERC–732); Proposed Collection; Comment Request; Extension

August 26, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (FERC or Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due November 3, 2009.

ADDRESSES: Comments may be filed either electronically or in paper format, and should refer to Docket No. IC09–732–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.*

Comments may be eFiled. The eFiling option under the Documents & Filings tab on the Commission's home Web page (*http://www.ferc.gov*) directs users to the eFiling Web site. First-time users follow the eRegister instructions on the eFiling Web page to establish a user name and password before eFiling. Filers will receive an e-mailed confirmation of their eFiled comments. Commenters filing electronically should not make a paper filing. If unable to make a filing electronically, deliver an original and 14 paper copies of the filing to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Parties interested in receiving automatic notification of activity in this docket may do so through eSubscription. The eSubscription option under the Documents & Filings tab on the Commission's home Web page directs users to the eSubscription Web page. Users submit the docket numbers of the filings they wish to track and will subsequently receive an e-mail notification each time a filing is made under the submitted docket numbers. First-time users will need to establish a user name and password before eSubscribing.

Filed comments and FERC issuances may be viewed, printed and downloaded remotely from the Commission's Web site. The red eLibrary link found at the top of most of the Commission's Web pages directs users to FERC's eLibrary. From the eLibrary Web page, choose General Search, and in the Docket Number space provided, enter IC09–732; then click the Submit button at the bottom of the page.

For help with any of the Commission's electronic submission or retrieval systems, contact FERC Online Support (e-mail at *ferconlinesupport@ferc.gov,* or telephone toll-free (866) 208–3676 (TTY (202) 502–8659)).

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, or by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: To implement section 1233 of the Energy Policy Act of 2005 (EPAct 2005) (which added new section 217 to the Federal Power Act (FPA)), the Commission requires each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy each of the Commission's guidelines. The reporting requirements of FERC–732,[1] (''Electric Rate Schedules and Tariffs: Long-Term Firm Transmission Rights in Organized Electricity Markets,'' OMB Control Number 1902–0245) pertain to these long-term transmission rights and are described in 18 CFR part 42.

The FERC–732 regulations require that transmission organizations that are public utilities with one or more organized electricity markets either: (a) File tariff sheets making long-term firm transmission rights available that are consistent with each of the guidelines established by FERC, or (b) file an explanation describing how their existing tariffs already provide long-term firm transmission rights that are consistent with the guidelines. In addition, each transmission organization is required to make its transmission planning and expansion procedures and plans publicly available.

FERC–732 enables the Commission to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in

[1] This information collection has been labeled ''FERC–913'', ''FERC–913/516'', and ''FERC–913(Temporary)'' with a goal of incorporating it later into FERC–516 (OMB Control No. 1902–0096). In addition, in Order No. 681 (in Docket No. RM06–8, issued 7/20/06), the burden was listed as part of FERC–516. OMB approved the new reporting requirements on 1/24/07 and assigned OMB Control No. 1902–0236 (rather than including it in FERC–516).

On 9/28/07 (in ICR Nos. 200610–1902–002 and 200709–1902–008), OMB approved transfer from OMB Control No. 1902–0236 to OMB Control No. 1902–0245. However, OMB Control No. 1902–0245 does not indicate a FERC collection number. To eliminate some of the confusion, we have assigned these requirements a new FERC collection number, FERC–732. The new collection number does not affect the regulatory requirements or burden.

In the future, FERC plans to incorporate the FERC–732 reporting requirements and related burden into the FERC–516. However, FERC–516 is currently the subject of OMB review, so the Commission will track these requirements (and the related burden hours) separately under FERC–732. FERC–516 is not a subject of this Notice.

accordance with the FPA, the Department of Energy Organization Act (DOE Act), and EPAct 2005. Action: The Commission is requesting a three-year extension of the current expiration date, with no change to the reporting requirements.

Burden Statement: The public reporting burden for this collection is estimated to be as follows:

FERC–732 [1]	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
New Transmission Organizations with Organized Electricity Markets—filing requirement	1	1	1,180	1,180
Existing & New Transmission Organizations with Organized Markets—making plans & procedures available to public	6	1	2	12
Total Annual Estimate				1,192

Any transmission organization approved by the Commission for operation after January 29, 2007, that has one or more organized electricity markets (administered either by it or by another entity), will be required to comply with the FERC–732 reporting requirements. Although it is difficult to predict whether the Commission will receive an application for, and approve, a transmission organization in the foreseeable future, the regulations, reporting requirements, and burden of FERC–732 merit continued renewal of the OMB (Office of Management and Budget) clearance. As a result, we are including a 'placeholder' estimate of 1 respondent and 1 response annually for the filing requirement. In addition, each existing transmission organization subject to Part 42 must make its transmission planning and expansion procedures and plans publicly available (under 18 CFR 42.1(c)(4)) for an estimated burden of 2 hours per respondent.

The estimated total cost to respondents is $71,491.35 [1,192 hours divided by 2,080 hours [2] per year, times $124,750 [3] equals $71,491.35]. The estimated cost per respondent is $70,771.63 for new transmission organizations, and $119.95 for existing transmission organizations.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The respondent's cost estimate is based on salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's burden estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize respondent information collection burden.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–21114 Filed 9–1–09; 8:45 am]

BILLING CODE 6717–01–P

[2] Number of hours an employee works each year.

[3] The Bureau of Labor Statistics, Department of Labor Occupational Handbook ('May 2008 National Occupational Employment and Wage Estimates [United States],' at *http://www.bls.gov/oes/2008/may/oes_nat.htm#b23-0000*) shows the mean annual salary for a lawyer is $124,750, or $59.98 per hour.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP09–423–000; RP09–423–002]

Columbia Gulf Transmission Company; Notice of Technical Conference

August 26, 2009.

Take notice that the Commission Staff will convene a technical conference in the above-referenced proceeding on Thursday, September 24, 2009, at 10 a.m. (Eastern Standard Time), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

At the technical conference, the Commission Staff and the parties to the proceeding can discuss *all* of the issues raised by Columbia Gulf's proposal, including but not limited to: (1) The accuracy of Columbia Gulf's lost and unaccounted-for gas (LAUF) measurement based on receipt and delivery meters; (2) Columbia Gulf's unrecovered LAUF quantities; (3) the proposed rates; and (4) defining the recovery period for LAUF volumes.

Columbia Gulf is required to support and justify the recovery of any unrecovered quantities for the 2008 calendar year and explain why any unrecovered quantities should be recovered for future or periodic Transportation Retainage Adjustment (TRA) filings. Columbia Gulf is also required to be prepared to address all of the concerns raised in the protests and comments in these proceedings, and if necessary, to provide additional technical, engineering and operational support for its proposal. Any party proposing alternatives to Columbia Gulf's proposal is required to be prepared to similarly support its position. Issues concerning Columbia

Gulf's reservation of its right to recover the unrecovered Company Use Gas (CUG) and LAUF quantities for the 2008 calendar year deferral period, or any other unrecovered quantities, in a future annual or period TRA filing may also be discussed at the technical conference.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Lisa Long at (202) 502–8691 or e-mail *lisa.long@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–21111 Filed 9–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

August 26, 2009.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped bydocket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requestor
Prohibited:		
1. IN09–9–000	8–24–09	John H. Pound.
Exempt:		
1. CP08–431–000	07–28–09	Hon. Sherrod Brown.
2. P–400–051	08–05–09	Greg Stobb, Edwin Schlapfer.
3. P–405–087	08–03–09	Hon. Benjamin L. Cardin.
4. P–12569–001	08–06–09	Gregory Griffith.
5. P–12569–001	08–04–09	Dan Boettger.
6. P–12737–002	08–06–09	Brenda Winn.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–21113 Filed 9–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12492–001]

Ha-Best Inc.; Notice Soliciting Scoping Comments

August 26, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–12492–001.

c. *Date Filed:* July 31, 2008.

d. *Applicant:* Ha-Best Inc.

e. *Name of Project:* Miner Shoal Waterpower Project.

f. *Location:* The proposed project is located on the Soque River, near the Town of Demorest, Habersham County, Georgia. The proposed project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Don Ferguson, 34 West Jarrard Street, Cleveland, GA 30528; Telephone (706) 865–3999.

i. *FERC Contact:* Janet Hutzel, Telephone (202) 502–8675, or by e-mail at *janet.hutzel@ferc.gov.*

j. *Deadline for Filing Scoping Comments:* September 25, 2009.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The proposed Minor Shoal Project would consists of the following: (1) An existing 5-foot-high, 80-foot-long diversion dam; (2) an existing 92-foot-long, 7-foot-diameter steel penstock; (3) a new 160-foot-long, 7-foot-diameter steel penstock from the diversion dam tying in to the existing penstock at elevation 1,228 feet mean sea level; (4) two existing powerhouses containing a total of three turbines with a total installed capacity of 1,260 kilowatts; (5) an existing 446-foot-long, 230-kilovolt transmission line and (6) appurtenant facilities. The project would have an annual generation of 2,175,000 kilowatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to address the document. For assistance, contact FERC Online Support. A copy is available for inspection and reproduction at the address in Item H above.

n. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process.

The Commission staff intends to prepare a single Environmental Assessment (EA) for the Miner Shoal Waterpower Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document (SD) issued on August 26, 2007.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–21112 Filed 9–1–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0605; FRL–8951–7]

Notice of Availability of the External Peer Review Draft of Recommended Toxicity Equivalency Factors (TEFs) for Human Health Risk Assessments of Dioxin and Dioxin-Like Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 30-day public comment period for the external peer review draft of ''Recommended Toxicity Equivalency Factors (TEFs) for Human Health Risk Assessments of Dioxin and Dioxin-Like Compounds,'' a draft guidance document. An EPA contractor for external peer review will convene a panel of experts and will organize and conduct an independent expert external peer review meeting to review the draft document. All comments received by the closing date of October 2, 2009 will be shared with the external peer review panel for their consideration. Comments received after the close of the comment period may be considered by EPA when it finalizes the document. This draft guidance document does not represent and should not be construed to represent any EPA policy, viewpoint, or determination. Members of the public may obtain the draft document from *http://www.regulations.gov*; or *http://www.epa.gov/raf/hhtefguidance;* or from Seema Schappelle via the contact information below. The public comment period and external peer review are separate processes that provide opportunities for all interested parties to comment on the document.

The external expert peer review will be conducted by letter and open teleconference in the fall 2009 time frame. The panel may consider public comments received in the official public docket for this activity under docket ID number EPA–HQ–ORD–2009–0605. The draft document is available at *http://www.epa.gov/raf/hhtefguidance.* In preparing a final document, EPA intends to consider the public comments submitted to EPA's docket during the public comment period and the comments and recommendations from the external peer reviewers.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by the EPA. It does not represent and should not be construed to represent any Agency policy or determination.

DATES: All comments received by October 2, 2009 will be shared with the external peer review panel for their consideration. Comments received beyond that time may be considered by EPA when it finalizes the documents.

ADDRESSES: The draft document is available electronically through the EPA Office of the Science Advisor's Web site at: *http://www.epa.gov/raf/hhtefguidance.*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0605, by one of the following methods:

- *Online at: http://www.regulations.gov*; Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Mail:* ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2009–

0605. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0605. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late'' and may only be considered if time permits. EPA's policy is that all comments received will be included in the public docket without change. These 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 by statute 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's 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 EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Seema Schappelle, Risk Assessment Forum, Mail Code 8105R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–3372; fax number: (202) 564–2070, E-mail: *schappelle.seema@epa.gov.*

SUPPLEMENTARY INFORMATION: Dioxin and dioxin like compounds (DLCs), including polychlorinated dibenzo-dioxins (PCDDs), polychlorinated dibenzofurans (PCDFs), and polychlorinated biphenyls (PCBs), are structurally and toxicologically related halogenated dicyclic aromatic hydrocarbons. Dioxins and DLCs are released into the environment from several industrial sources, including chemical manufacturing, combustion, and metal processing. There is global contamination of air, soil and water with trace levels of these compounds that typically occur in the environment as chemical mixtures. Dioxins and DLCs do not readily degrade; therefore, levels persist in the environment, build up in the food chain and accumulate in the tissues of animals. Human exposures to these compounds occur primarily through eating contaminated foods. The health effects from exposures to dioxins and DLCs have been documented extensively in toxicological and epidemiological studies.

Risk assessments have relied on the dioxin toxicity equivalence factors (TEFs) approach. Various stakeholders, inside and outside the Agency, have called for a more comprehensive characterization of risks; therefore, EPA's Risk Assessment Forum (RAF), located in the Office of the Science Advisor, identified a need to examine the recommended approach for application of the toxicity equivalence methodology in human health risk assessments. An RAF Technical Panel developed the draft guidance document, ''Recommended Toxicity Equivalency Factors (TEFs) for Human Health Risk Assessments of Dioxin and Dioxin-Like Compounds,'' to assist EPA scientists in using this methodology to assess health risks from dioxins and dioxin-like compounds, as well as inform EPA decision makers, other agencies, and the public about this methodology. EPA is currently addressing several issues related to dioxins and dioxin-like chemicals in the environment. More information on these activities is located at: *http://cfpub.epa.gov/ncea/CFM/nceaQFind.cfm?keyword=Dioxin.*

Dated: August 26, 2009.

Kevin Teichman,

Acting EPA Science Advisor.

[FR Doc. E9–21194 Filed 9–1–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8951–1]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Utah Division of Wildlife Resources (UDWR)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States of a satisfactory quality] to the UDWR for the purchase of coconut fiber (coir) woven mats. This is a project-specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project-specific circumstances. These coconut fiber woven mats, which are supplied by Geo Dynamics in Ogden, UT, are manufactured in India and Sri Lanka, and meet the UDWR's performance specifications and requirements. The Acting Regional Administrator is making this determination based on the review and recommendations of EPA Region 8's Technical & Financial Services Unit. The UDWR has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of coconut fiber woven mats for the Strawberry River Restoration Project being implemented by the UDWR that may otherwise be prohibited under Section 1605(a) of the ARRA.

DATES: *Effective Date:* July 25, 2009.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, ARRA Coordinator, (303) 312–7814, or Brian Friel, SRF Coordinator, (303) 312–6277, Technical & Financial Services Unit, Water Program, Office of Partnerships & Regulatory Assistance, U.S. EPA Region 8, 1595 Wynkoop St., Denver, CO 80202.

SUPPLEMENTARY INFORMATION:

In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111–5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to the UDWR for the acquisition of coconut fiber woven mats which are manufactured in India and Sri Lanka.

Section 1605 of the ARRA requires that none of the appropriated funds may be used 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, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

This manufactured good will be used as part of the ''Strawberry River Restoration Project,'' a stream stabilization project in Utah. The UDWR states that only coconut fiber woven mats meet the specific needs of this project, which are durability, mat size and biodegradability. They indicate that the key characteristics that set coconut fiber woven mats apart from other alternatives are a 4–5 year in-stream life expectancy followed by 100% biodegradation, and visually unobtrusive properties. UDWR states that coconut fibers are more durable than straw and other materials used in alternative mat products, and they do not require the incorporation of polypropylene and/or other synthetic products that are not 100% biodegradable.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009,' '' defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.''

The OMB ARRA Buy American Guidance cites the Federal Acquisition Regulation (FAR) as an appropriate reference for availability waiver inquiries. Specifically, the OMB Guidance at section 176.80(a)(1) states (at 77 FR 18452) that ''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. The FAR's list of nonavailable articles includes ''Fibers of the following types: * * * coir,'' thereby establishing a presumption of lack of U.S. availability. The FAR procedures at 48 CFR 25.103(b)(1) specified as required in the OMB Guidance state that:

> (1)(i) A nonavailability determination has been made for the articles listed in 25.104. This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. government and nongovernment demand. (ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources.

The applicant met the procedures specified for the availability inquiry as appropriate to the circumstances by conducting on-line research and contacting suppliers, and all sources indicated that coconut fiber woven mats are only manufactured outside of the U.S. Therefore, based on the information provided to EPA and to the best of our knowledge at this time, coconut fiber woven mats are not manufactured in the United States, and no other U.S. manufactured product can meet UDWR's performance specifications and requirements.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring agencies such as UDWR to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for ARRA State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay project implementation is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

EPA's national contractor prepared a technical assessment report dated July 21, 2009 based on the submitted waiver request. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. The report confirmed the waiver applicant's claim that there are no comparable domestic products that can meet the specific durability, size and biodegradation needs of this project.

The Technical & Financial Services Unit has reviewed this waiver request and has determined that the supporting documentation provided by the UDWR is sufficient to meet the criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum'': Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2) of the ARRA. Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the UDWR's performance specifications and requirements, a waiver from the Buy American requirement is justified.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the UDWR is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of coconut fiber woven mats using ARRA funds as specified in the UDWR's request of July 8, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Public Law 111–5, section 1605.

Dated: August 20, 2009.

Andrew M. Gaydosh,

Acting Regional Administrator, Region 8.

[FR Doc. E9–20801 Filed 9–1–09; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

Date and Time: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 10, 2009, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- August 13, 2009.

B. New Business

- Fall 2009 Abstract of the Unified Agenda of Federal Regulatory and Deregulatory Actions and Fall 2009 Regulatory Performance Plan.

Closed Session*

A. Reports

- Office of Secondary Market Oversight Quarterly Report.

B. New Business

- Supervisory Actions.

Dated: August 28, 2009.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

[FR Doc. E9–21291 Filed 8–31–09; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–AD47

Final Statement of Policy on Qualifications for Failed Bank Acquisitions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final statement of policy.

SUMMARY: The FDIC is issuing a Final Statement of Policy on Qualifications for Failed Bank Acquisitions (Final Statement). This Final Statement provides guidance to private capital investors interested in acquiring or investing in failed insured depository institutions regarding the terms and conditions for such investments or acquisitions.

DATES: *Effective Date:* August 26, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine Topping, Counsel, Legal Division, (202) 898–3975 or *ctopping@fdic.gov,* Charles A. Fulton, Counsel, Legal Division, (703) 562–2424 or *chfulton@fdic.gov,* Lisa Arquette, Associate Director, (202) 898–8633 or *larquette@fdic.gov,* or Mindy West, Chief, Policy and Program Development, Division of Supervision and Consumer Protection, (202) 898–7221 or *miwest@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2009, the FDIC published for comment a Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions (Proposed Policy Statement) with a 30-day comment period to provide guidance to private capital investors interested in acquiring the deposit liabilities, or both such liabilities and assets, of failed insured depository institutions regarding the terms and conditions for such investments or acquisitions.[1] After carefully reviewing and considering all comments, the FDIC has adopted certain revisions and clarifications to the Proposed Policy Statement (as discussed in Part III) in the Final Statement.

The FDIC is aware of the need for additional capital in the banking system and the contribution that private equity capital could make to meeting this need provided this contribution is consistent with basic concepts applicable to the ownership of insured depository institutions that are contained in the established banking laws and regulations. The preamble to the Proposed Policy Statement explained that in view of the increased number of bank and thrift failures and the increase in interest by private capital investors in acquiring insured depository institutions in receivership, the FDIC determined to issue, in proposed form, guidance to potential acquirers. In developing the Proposed Policy Statement, the FDIC sought to establish the proper balance in a number of important areas including the level of capital required for these de novo institutions and whether these owners would be a source of strength to the banks and thrifts in which they have invested. The FDIC also considered the important policy issues raised by the structure of investments in insured depository institutions, particularly with respect to their compliance with the requirements applied by the FDIC in its decision on the granting of deposit insurance and with the statutes and regulations aimed at assuring the safety and soundness of insured depository institutions and protecting the Deposit Insurance Fund (''DIF'').

In the Introduction to the Proposed Policy Statement, the FDIC set forth its reasons for adopting a policy on private capital participating in the acquisition of or investment in failed insured depository institutions. In part, the Introduction stated:

> Capital investments by individuals and limited liability companies acting through holding companies operating within a well developed prudential framework has long been the dominant form of ownership of insured depository institutions. From the perspective of the FDIC's interest as insurer and supervisor of insured depository institutions, this framework has included, in particular, measures aimed at maintaining well capitalized bank and thrift institutions, support for these banks when they face difficulties, and protections against insider transactions. The ability of the owners to provide financial support to depository institutions with adequate capital and management expertise are essential safeguards. These safeguards are particularly appropriate for owners of insured depository institutions given the important benefits conferred on depository institutions by deposit insurance.
>
> * * * The FDIC is also aware that new banks, regardless of their investor composition, pose an elevated risk to the deposit insurance fund since they generally lack a core base of business, a proven track record in the banking industry, and are vulnerable to significant losses in the early years of incorporation.
>
> The FDIC is of the view that private capital participation in the acquisition of the deposit liabilities, or both such liabilities and assets, from a failed depository institution in receivership should be consistent with the foregoing basic elements of insured depository institution ownership. * * *

[1] 74 FR 32931 (Jul. 9, 2009)

* * * The FDIC is particularly concerned that owners of banks and thrifts, whether they are individuals, partnerships, limited liability companies, or corporations, accept the responsibility to serve as responsible custodians of the public interest that is inherent in insured depository institutions and will devote the efforts to assuring that banks or thrifts acquired with assistance from the deposit insurance fund do not return to the category of troubled institutions.

These same reasons underlie the need to adopt the Final Statement described below.

The Proposed Policy Statement described the terms and conditions that private capital investors would be expected to satisfy to obtain bidding eligibility for a proposed acquisition structure. These standards would apply to (1) private capital investors in certain companies that sought to assume deposit liabilities or both such deposit liabilities and assets from a failed insured depository institution and (2) private capital investors involved in applications for deposit insurance in conjunction with de novo charters issued in connection with the resolution of failed insured depository institutions (hereinafter ''Investors''). As more fully summarized below, the Proposed Policy Statement provided, among other measures, standards for capital support of an acquired depository institution; an agreement to a cross guarantee over substantially commonly-owned depository institutions; limits on transactions with affiliates; maintenance of continuity of ownership; and avoidance of secrecy law jurisdictions as investment channels, absent consolidated home country supervision.

Capital Commitment

The Proposed Policy Statement required private investors to agree to cause an insured depository institution acquiring a failed bank's deposit liabilities, or both such deposit liabilities and assets, to have a Tier 1 leverage ratio of 15 percent for the first three years of operation, subject to further extensions by the FDIC. Thereafter, such investors would be required to cause the insured depository institution's capital to remain at ''well capitalized'' levels for the duration of their ownership. The FDIC explained that failing to meet those standards could cause the insured depository institution to be considered ''undercapitalized'' for purposes of Prompt Corrective Action and other supervisory measures.

Source of Strength

The FDIC would require Investors covered by its Proposed Policy Statement to agree to serve as a source of strength for subsidiary depository institutions. As necessary, the Proposed Policy Statement required depository institution holding companies in which such Investors held interests to sell equity or to engage in capital qualifying borrowing.

Cross Guarantees

If Investors had an individual or collective investment that constituted a majority interest in more than one insured depository institution, the Proposed Policy Statement required them to pledge to the FDIC their interest in each institution to cover losses to the Deposit Insurance Fund caused by the failure of such insured depository institution(s) or by the FDIC's provision of assistance to such institutions.

Transactions With Affiliates

The Proposed Policy Statement prohibited extensions of credit to an Investor by an insured depository institution acquired or controlled by the Investor. According to the Proposed Policy Statement, this prohibition also applied to related investment funds, any affiliates (that is, any company in which an Investor owns 10 percent or more), and to any companies in which the Investor or its affiliates invested.

Secrecy Law Jurisdictions

The Proposed Policy Statement prohibited investors in entities domiciled in bank secrecy jurisdictions from making a direct or indirect investment in an insured depository institution unless the investors are subsidiaries of companies subject to comprehensive consolidated supervision, as recognized by the Board of Governors of the Federal Reserve System. Among other things, such investors also would be required to agree to provide information to their primary Federal regulator, abide by statutes and regulations administered by U.S. banking agencies, consent to U.S. jurisdiction, and cooperate with the FDIC.

Continuity of Ownership

Absent the FDIC's prior approval, the Proposed Policy Statement would prohibit covered Investors from selling or transferring securities of their holding company or insured depository institution for three years following acquisition. The FDIC indicated that it did not expect to approve such transfers within the initial three-year period unless the buyer agreed to be bound by the same conditions of the Proposed Policy Statement that were applicable to the Investor.

Disclosures

The Proposed Policy Statement provided for disclosures of certain specified information (and other non specified information deemed necessary by the FDIC) from Investors and other entities in their ownership chains.

II. Overview of the Comments

The FDIC requested public comment on all aspects of the Proposed Policy Statement and set forth nine specific questions for consideration by commenters. The issues presented by the specific questions included the definition of the ''investors'' to whom the policies would apply; the bidding eligibility of so-called ''silo'' structures; the appropriate capital levels for failed insured depository institutions acquired by private capital investors; whether source of strength commitments should be required and the scope of such commitments; whether cross guarantee commitments should be required and the scope of such commitments; the bidding eligibility of entities established in bank secrecy jurisdictions; whether a three-year continuity of ownership rule is the appropriate period of time; the bidding eligibility of investors that directly or indirectly hold 10 percent or more of the equity of a bank or thrift in receivership; and whether the proposed limitations should be lifted after a certain number of years of successful operation of a bank or thrift holding company.

The FDIC received 61 individual comment letters.[2] The comment letters were sent by private investment firms, investment advisory firms, law firms, insured depository institutions, advocacy organizations, financial services trade associations, 4 United States Senators, a labor union, research organizations, academics, and 6 individuals. Most of the commenters were private capital firms or their representatives that would be affected by the Proposed Policy Statement. The FDIC also received 3,190 form letter comments in support of the Proposed Policy Statement.

Many commenters expressed the general view that limitations and restrictions contained in the Proposed Policy Statement would deter many private capital investors and inhibit the flow of capital into failed banks, resulting in greater costs to the DIF. On the other hand, some commenters stated that they did not have confidence in the motives of private equity investors because of their short-term investment objectives and limited regulatory

[2] *See http://www.fdic.gov/regulations/laws/federal/2009/09comAD47.html.*

oversight. These commenters argued that private capital firms should be subject to strict regulation or excluded altogether from participating in the ownership of insured depository institutions. The form letter comments strongly supported the FDIC's Proposed Policy Statement on grounds that private equity firms engage in inherently risky behavior in order to extract large profits in short periods of time.

Three specific areas of the Proposed Policy Statement—the 15 percent Tier 1 leverage ratio, the source of strength commitment, and the cross guarantee provision—generated considerable comment. Commenters opposed to the 15 percent Tier 1 leverage ratio argued that setting the required initial capitalization level at such a high level would place private capital investors at a competitive disadvantage relative to strategic acquirers, make it difficult for private capital investors to realize a reasonable return on investment, and encourage risky post-acquisition investments and business strategies. These commenters noted that the 15 percent Tier 1 leverage level was three times the high-end range for ''well-capitalized'' depository institutions and double the industry average. With respect to source of strength commitments and cross guarantees, these commenters were opposed to any direct financial commitment or support obligations beyond an investor's initial contribution. The commenters argued that the imposition of source of strength commitments would introduce substantial uncertainty for investors and potentially expose them to unlimited liability. Commenters also stated that the cross guarantee requirement would deter private capital investment in failed insured depository institutions because private capital investors in unrelated banks would not agree to a cross guarantee commitment that places their legally separate investments at risk. Lastly, the commenters contended that source of strength and cross guarantee commitments were generally prohibited by private equity fund agreements. A summary of the comments by issue follows.

Summary of the Comments by Issue

1. Bidding Eligibility of ''Silo'' Structures

In the Proposed Policy Statement, the FDIC noted that, because of their often complex and opaque organizational arrangements, so-called ''silo'' ownership structures would be considered inappropriate vehicles for acquiring insured depository institutions. Some commenters, including a few private equity firms, endorsed the proposed prohibition of ''silo'' structures, citing the FDIC's need to ascertain beneficial ownership, clearly identify the parties responsible for making management decisions, and ensure that ownership and control are not separated.

Other commenters stated that they recognized the FDIC's need for transparency, but opposed a blanket prohibition of ''silo'' structures as acquisition vehicles. These commenters believe that the FDIC would eliminate many otherwise suitable investors who would be willing to provide full disclosures with respect to beneficial ownership, decision making responsibility, and ownership and control issues, and to provide additional disclosures as necessary—even submitting to regulation as a bank holding company under the Bank Holding Company Act—in order to be eligible to bid on failed insured depository institutions. They did not view an absolute prohibition of ''silo'' structures as necessary for the advancement of the FDIC's important interest in transparency. Some private investors involved in ''silo'' organizations indicated that they had been part of acquisitions approved pursuant to existing legal standards through the application processes of the Office of Thrift Supervision and the Board of Governors of the Federal Reserve System.

One group of private equity investors noted that separation of ownership and control is characteristic of many categories of institutional investors, including mutual funds, pension plans, and endowments, and argued that bifurcated ownership and control is not a reason to disqualify a potential bidder for a failed bank or thrift. Other commenters, including several law firms, argued against the categorical prohibition in part because ''there is no agreed-upon definition in the private equity industry or elsewhere on what constitutes a 'silo' structure.''

2. Definition of ''Investors''/ Applicability of Standards

The limitations and restrictions contained in the Proposed Policy Statement would apply to more than *de minimis* investments by: ''(a) private capital investors in a company (other than a bank or thrift holding company that has come into existence or has been acquired by an Investor at least 3 years prior to the date of this policy statement), that is proposing to directly or indirectly assume deposit liabilities, or such liabilities and assets, from a failed insured depository institution in receivership, and to (b) applicants for insurance in the case of de novo charters issued in connection with the resolution of failed insured depository institutions.'' The FDIC asked commenters whether some other definition of applicability was more appropriate.

Many of the comments received from representatives of private investment firms indicated that the limitations and restrictions contained in the Proposed Policy Statement should be imposed only when an investor or group of investors would exercise control over the failed institution. Some proposed that investors owning 9.9 percent or less of a failed institution should not be subject to the limitations contained in the Proposed Policy Statement. Other private equity firms argued that private investment funds should not be treated differently from other passive investors.

Some commenters argued that the proposed definition of ''investor'' is ambiguous and that a clearer definition of applicability is needed. These commenters, which include both law firms and representatives of private equity firms, believed that the scope of the definition was unclear because the term ''private capital investor'' does not have any generally understood meaning and the Proposed Policy Statement fails to define it. They noted that if the Proposed Policy Statement primarily is concerned with private equity funds, the FDIC should clarify that fact.

Several private investment firm commenters disagreed with that part of the definition that would make the Proposed Policy Statement applicable to private investors in bank or thrift holding companies that came into existence or were acquired by the investor within the three years prior to the date of the Proposed Policy Statement. Some of these commenters proposed that the three-year period be measured prior to the date of the bid for a failed depository institution rather than from the date of issuance of the Proposed Policy Statement. A number of commenters mistakenly asserted that this provision is retroactive in nature and viewed it as arbitrary.

One commenter looked to the definition of control contained in the Bank Holding Company Act and Regulation Y to determine to whom the Proposed Policy Statement might apply. Using that definition, the commenter suggested that the Proposed Policy Statement should apply to private capital investors and applicants for insurance in cases of de novo charters who seek to act as a controlling company or influence over a failed

insured depository institution in receivership.

3. Capital Commitment

Several commenters supported a Tier 1 leverage ratio requirement of at least 15 percent (as provided in the Proposed Policy Statement) because of the higher risk profile of the failed institutions investors would be buying, the higher risk appetite of private equity investors, and the financial challenges facing banking institutions today. Another commenter encouraged the FDIC to maintain a Tier 1 leverage ratio requirement of at least 12 percent.

A majority of the commenters objected to the proposed capital requirements, arguing that such requirements would; disadvantage private capital firms relative to other bidders and publicly-owned institutions; discourage private capital investment in failed institutions; result in less competitive bids for failing institutions from private equity investors; and create a separate Prompt Corrective Action framework for institutions acquired by private capital investors.

Several commenters in opposition to the proposal expressed concern that the capital requirement would result in excessive risk-taking to realize a sufficient return on the investment, with one commenter noting that the proposed capital requirement also could hinder an institution's ability to lend. A number of commenters opposed the proposed capital requirement because they believe it disregards other factors that are determinative of an institution's financial condition, such as the proposed business plan, the risk of on-balance sheet assets, and the qualifications of the management team.

Comments varied with respect to recommendations on an appropriate capital requirement. One commenter was of the view that a 7.5 percent Tier 1 leverage ratio is appropriate because the assets of a resolved bank are marked-to-market and the riskiest assets are subject to loss-sharing agreements with the FDIC. Another commenter supported an 8 percent Tier 1 leverage ratio requirement, as well as a 15 percent total risk-based capital ratio or a lower capital requirement for assets covered in loss-sharing agreements. Another commenter proposed a 10 percent Tier 1 leverage ratio or, alternatively, an incremental reduction in the 15 percent requirement to between 7 and 8 percent over the first three years following the acquisition, while other commenters suggested various ranges between 5 and 10 percent, with 8 percent being the most frequently suggested level. Several other commenters supported a case-by-case approach based on the risk profile of the institution.

One commenter took the position that the capital requirement should be based on the Tier 1 risk-based capital ratio rather than the Tier 1 leverage ratio to avoid penalizing institutions holding low-risk, highly-liquid assets. Under this proposal, private investment firms would have to meet a ''common'' Tier 1 risk-based capital ratio requirement of 8 percent. Two commenters recommended moving to a tangible common equity measure, with a minimum requirement of 6 percent.

4. Source of Strength

Four commenters generally supported the proposed source of strength requirement, with one supporting an enhanced source of strength requirement that explicitly requires individual private capital investors or beneficial fund managers to ensure the financial strength of the depository institution through direct capital injections. Another commenter expressed limited support for the source of strength requirement to the extent that it would require investors to serve as a source of managerial strength for the institution.

Many commenters expressed general opposition to the proposed source of strength requirement. Specifically, seven commenters criticized the proposal as potentially creating unlimited liability for private capital investors. Although the Proposed Policy Statement limited the source of strength requirement to raising new capital by selling new shares or engaging in capital qualifying borrowing by the bank's or thrift's holding company, several commenters indicated that the proposed source of strength requirement is not feasible because, as a practical matter, many private capital investors are limited by the terms of their fund documents from providing capital support or making follow-on investments in their portfolio companies. Several other commenters indicated that the proposed source of strength requirement would likely discourage investments by private capital investors in failing institutions, with a number of them viewing the requirement as unnecessary given the FRB and OTS holding company requirements. Two commenters viewed the source of strength requirement as altogether unnecessary because the interests of private capital investors are aligned with those of the insured depository institutions in their investment portfolios, and that sufficient financial incentives exist for investors to protect such investments. Other commenters noted that the source of strength requirement for bank and savings and loan holding companies was not effective in preventing bank failures, and another commenter objected to making individual investors responsible for the actions of the institution, absent the ability to influence policies or decision-making.

At least ten commenters supported the imposition of a ''control'' threshold for purposes of the source of strength requirement, and another commenter suggested that parties with ''substantial ownership stakes'' and board representation should either be required to provide capital under source of strength commitments or not use their limited corporate governance rights to block capital from other sources. One commenter expressed concern that the imposition of a source of strength requirement on a non-controlling investor could be perceived by the FRB and OTS as an indication of control, potentially making the investor subject to holding company supervision.

A number of these commenters presented alternatives to the source of strength requirement. These commenters suggested that a more appropriate alternative would be for regulators to obtain commitments from investors that, under certain circumstances, they will not use whatever limited corporate governance rights they have to block capital raising efforts. One commenter suggested an alternative under which the investor is required to hold as a reserve at the partnership level a percentage of the transaction value for future capital investment in the bank. Still another commenter proposed making private equity investors capitalize failed insured depository institutions with all common stock equity, leaving available the option of issuing hybrid securities and thereby providing financial flexibility. One more commenter supported applying the source of strength requirement selectively, and only to the banking silo of a private fund.

5. Cross Guarantees

Ten commenters supported the cross guarantee provision as a means of limiting risk to the DIF, noting that, without it, private capital investors would have no exposure beyond their initial investment in the failed bank or thrift if the institution later experienced difficulties and the investors owned another bank or thrift.

In contrast, a majority of the commenters opposed the proposed cross

guarantee provision in that it would deter private capital investment in failed insured depository institutions; place the other investments of private capital investors at risk; result in less competitive bids for failing institutions; and inhibit a private equity manager from investing in two different depository institutions through two different funds with two distinct groups of private capital investors.

Other commenters objected to imposing a cross guarantee requirement on non-controlling investors. Specifically, a number of law firms argued that the Federal Deposit Insurance Act does not authorize the FDIC to impose cross-guarantee liability on institutions that are not commonly controlled, as their owners are not in a position to control the management or policies of both institutions and should not be held responsible, directly or indirectly, if a non-controlled depository institution fails. Other commenters expressed similar concerns that the proposal goes beyond long-standing principles of corporate law and existing federal statutes by imposing obligations on a class of shareholder, without regard to whether they actually control the underlying institution. Two commenters requested clarification that a non-controlling investor would not be subject to the cross guarantee requirement.

Several commenters contended that the cross guarantee requirement is inconsistent with the realities of private equity investments, which are generally passive in nature, and will only complicate club investments in failed institutions. Other commenters noted that this provision would limit diversification of private equity portfolios and questioned the FDIC's intentions with respect to its pledged ownership interest in the event it acquired a majority interest in an institution, and what effect this would have on minority investors. Other commenters took the position that an investor would not make an investment where they have all the risks that come with accountability but neither the ability to affect nor control those risks.

A number of commenters suggested providing an 80 percent ownership threshold for purposes of the cross guarantee provision. To encourage capital investments in failed institutions, one commenter proposed a ''special dispensation'' approach for private capital investors holding only one bank investment in which the ownership limit would be increased from 24.9 percent to a level of controlling interest, encouraging the investor to strengthen the bank for future growth. For investors holding multiple bank investments, however, the commenter proposed adhering to existing regulations.

6. Transactions With Affiliates

The Proposed Policy Statement proposed a prohibition of certain extensions of credit by an insured depository institution to certain related parties. Several private investment firms, a few law professors, some legislators, and a banking trade association supported the proposed prohibition on all extensions of credit to affiliates. The professors suggested that the FDIC strengthen its stance by prohibiting an insured depository institution from engaging with an affiliate in any ''covered transaction'' as defined in the Federal Reserve Act and its implementing regulations.

Most of the commenters who registered opinions about this section offered alternatives for dealing with transactions with affiliates. Some commenters noted that the absolute prohibition went farther than the limitations contained in Sections 23A and 23B of the Federal Reserve Act and their implementing regulations. Rather than proposing a new standard, many of the commenters recommended that the Proposed Policy Statement instead rely on the current restrictions on transactions with affiliates contained in sections 23A and 23B of the Federal Reserve Act and the FRB's Regulation W.

Some suggested other alternatives. For example, one group of private investors suggested that all extensions of credit by an insured depository institution to related parties be subject to regulatory approval for a period of three years concurrent with that of the capital requirement under the Proposed Policy Statement. After that period, the investor group suggested, the restrictions in sections 23A and 23B of the Federal Reserve Act would apply.

One commenter suggested that the FDIC implement a de minimis exception for an ownership threshold of at least 10 percent before an investor's affiliates would be covered by the prohibition and that the prohibition on transactions with affiliates should exclude existing extensions of credit. One commenter requested guidance as to how the new test would apply to the lower tier holdings of a 10 percent owned portfolio company. Finally, one commenter urged the FDIC to prohibit or strictly limit the ability of private capital investors to effect dividend recapitalizations—that is, transactions in which a private capital investor borrows money on behalf of a company under its management and uses the proceeds to pay dividends to investors and investment managers.

7. Secrecy Law Jurisdictions

The FDIC received 15 comments addressing secrecy law jurisdictions. A majority of those comments opposed the ban on offshore investment vehicles in secrecy law jurisdictions in the Proposed Policy Statement. A number of comments expressed the belief that the FDIC's concerns in the area of secrecy law jurisdictions can be addressed through the information requests and other aspects of the ''Disclosure'' provisions of the Proposed Policy Statement. Similarly, one commenter expressed the belief that verifiable regulatory standards could be developed to assure compliance of offshore entities with basic anti-money laundering policies and practices and to ensure jurisdictional certainty with regard to U.S. enforcement interests. A small number of commenters suggested that the FDIC adopt a review of secrecy law jurisdiction cases on a case-by-case approach.

Other commenters expressed concerns that the Proposed Policy Statement will result in a practical bar on investment by many fund organizations with non-U.S. investors. These commenters suggested that the Proposed Policy Statement would restrict private capital investors bidding on depository institutions from using traditional funding structures that provide tax and other efficiencies.

A number of commenters noted that by prohibiting offshore vehicles from making investments, the Proposed Policy Statement would unintentionally prohibit a parallel domestic vehicle from investing. Commenters also pointed out that the comprehensive consolidated supervision exception would likely not be applicable to fund investors because that concept applies only to regulated banking organizations in other countries. Additionally, the FDIC also received a number of comments requesting clarification of the Proposed Policy Statement on what is meant by ''bank secrecy jurisdiction'' and what types of specific situations are covered by the Proposed Policy Statement. One comment recommended that offshore funds established prior to the date of the Proposed Policy Statement be exempt from the restrictions.

The FDIC also received comments, including one from 3 Senators, supporting the treatment of secrecy jurisdictions in the Proposed Policy Statement. The Senators' comments urged the FDIC to eliminate the ability

of investors domiciled in secrecy jurisdictions to invest in failed U.S. banks and thrifts based on the history of association offshore structures have with financial fraud, money laundering, tax evasion, and other misconduct.

8. Continuity of Ownership

The FDIC received a number of comments supporting the proposed three-year continuity of ownership rule. One commenter pointed out that it would take management at least three years to resolve problem assets and restore the failed insured depository institution to health. Commenters also expressed the belief that a three-year continuity of ownership rule was necessary to prevent speculative investors from ''flipping'' banks for short-term profits. One commenter opined that the holding period should be longer than three years to protect against private investors focused on short term profits at the expense of long term financial stability.

In contrast, the FDIC also received comments expressing concern that a three-year period is too long. A number of these commenters proposed an 18-month period as an alternative. Commenters opposing the required holding period also pointed out that such a requirement could chill the interest of private equity investors in failed institutions. One commenter expressed concern that the three-year holding period might prevent a private equity investor from conducting a public offering of the stock of a depository institution. Two commenters noted that a three-year time period overstates the time required to stabilize the operations of a failed institution. Another commenter argued that the sale or transfer of ownership can, in some instances, enhance the overall safety and soundness of an insured depository institution. One commenter recommended that the holding period requirement only pertain to the first acquisition of a failed institution.

Other commenters suggested that the continuity of ownership requirement is not necessary because most private capital investors considering a failed bank acquisition have a long-term investment horizon. One such commenter suggested a de minimis exception to the holding period requirement. Two commenters recommended eliminating the holding period requirement and imposing, in its place, a requirement that investors obtain prior approval of acquisitions from the Federal Reserve Board. Another commenter recommended applying the holding period requirement to only ''controlling'' private equity investors.

The FDIC also received comments expressing concern about the justification of the holding period requirement. Two commenters argued that the three-year continuity period could be viewed as arbitrary and/or ambiguous. Another commenter added that new regulatory burdens and requirements for bank acquisitions were being imposed through the holding period requirement without formal or informal processing timeframes. A number of commenters noted that the required holding period could chill the interest of private equity investors in failed institutions.

Many commenters stated that precluding an initial public offering during the holding period, even where the proceeds of the offering go the bank itself, is counter to the objective of increasing capital of banks. Other commenters suggested that holding companies in which investors invest, or their subsidiaries, should be able to conduct initial public offerings and follow-on offerings of their own securities without FDIC approval.

9. Special Owner Bid Limitation

The FDIC received a number of comments expressing the opinion that investors that owned 10 percent or more of a failed insured depository institution should not be eligible to bid on the liabilities, or both such liabilities and assets, of that failed institution in receivership. One commenter urged the FDIC to go farther, suggesting that any private capital investor that held a 10 percent or greater equity interest in three or more failed depository institutions be permanently banned from bidding on the deposits, or both such deposits and liabilities, of any failed insured depository institution.

One private equity firm expressed concern about the general ban and instead proposed that such investors be evaluated on a case-by-case basis. A national industry advocacy organization agreed with the case-by-case approach, and suggested that a blanket limitation on 10 percent investors may deprive the FDIC of the ability to effect a least-cost resolution. Similarly, another commenter suggested that investors owning 10 percent or more of a failed insured depository institution should be eligible to bid ''in exceptional circumstances.''

10. Disclosure

The FDIC received 4 comments addressing the Proposed Policy Statement's disclosure requirements. One comment supporting the disclosure requirement stated that transparency is essential to ensure effective and prudent oversight and regulation by U.S. regulators. Another commenter requested clarification of whether information submitted by private capital investors to the agency as part of a bidding process would be kept confidential. Two law firms commented that the disclosure requirement is overly broad. These commenters noted that any entity formed for the purpose of acquiring control of a bank or savings association would be required to submit detailed information to the FRB or the OTS. They also sought clarification on whether this requirement would apply to all private capital investors without regard to their percentage ownership.

11. Lifting of Restrictions After a Certain Time Period of Successful Operation of a Bank

The FDIC received 10 comments addressing this issue. Commenters generally suggested a three-year period as an appropriate time frame. One commenter noted that the limitations should be removed after three years of successful operation, similar to the practice for de novo institutions. Another commenter recommended that the limitations in the Proposed Policy Statement should be lifted ''as the FDIC and the primary regulator increasingly gain comfort with a bank's risks and business plan.'' Two commenters requested that the FDIC abandon the initiative entirely, but recommended that such a time period not extend beyond three years if adopted. Another commenter defined the term ''successful operation'' as involving the same criteria as those that are applied to qualification for and maintenance of financial holding company status under 12 CFR Section 225.81. One law firm recommended lifting the restrictions after 18 months, noting that a shorter holding period would prevent a situation where private equity investors in a failed depository institution are operating at a competitive disadvantage.

One individual commenter suggested that the effective period of the Proposed Policy Statement should be the earlier of either the completion of two examinations that result in satisfactory ratings or three years. Similarly, an insured depository institution suggested that a two-year period would provide the FDIC with the opportunity to evaluate the competency of the management team in place at the acquired institution. One private equity firm supported the notion that an institution, once it has been recapitalized with new management installed, should not be distinguished

from any other institution with respect to risk management.

One comment the FDIC received recommended extending the restrictions of the Policy Statement to a four-or-five-year period, with the source of strength, cross guarantee, and bank secrecy restrictions continuing for perpetuity.

III. Final Statement

After consideration of the comments described above the FDIC has made various amendments in the text of the Final Statement. These changes are summarized below with the explanation organized around each of the basic elements of the Final Statement.

Definition of ''Investors''/Applicability of Standards

Many investors asked for greater precision in the definition of the types of firms to be covered by this policy statement. The FDIC notes that the policy statement is just that—a policy statement and not a statutory provision imposing civil or criminal penalties and that the requirements it imposes on investors only apply to investors that agree to its terms. Moreover, the FDIC finds it exceedingly difficult to use precisely defined terms to deal with the relatively new phenomenon of private capital funds joining together to purchase the assets and liabilities of failed banks and thrifts where the investors all are less than 24.9 percent owners but supply almost all of the capital to capitalize the new depository institution. The FDIC, in only a short period of time, has seen multiple variations in the structures that have been employed by private capital firms to own banks and thrifts. The FDIC also notes that under some structures the investors are not subject to the Bank Holding Company Act, are not subject to the Change in Bank Control Act, not subject to Prompt Corrective Action, are not institution affiliated parties, are not subject to cross guarantees, and are not subject to Section 23A or Section 23B of the Federal Reserve Act. The FDIC Board will review the operation and impact of this Final Statement within 6 months of its approval date and shall make adjustments as it deems necessary.

In the Final Statement, the exclusion for private capital investors in bank or thrift holding companies that were created or acquired by the investor at least three years prior to the date of the Policy Statement has been deleted. In response to comments that the Policy Statement should specify a date after which it would no longer apply, the FDIC has added a provision that that upon application and approval by the FDIC's Board of Directors the Final Statement will no longer apply to an Investor in a bank or thrift, or bank or thrift holding company of an insured institution that was covered by the Final Statement if the bank or thrift has maintained a CAMELS 1 or 2 rating continuously for seven years. The Final Statement also makes clear that the Final Statement would not apply to Investors in partnerships or similar ventures with depository institution holding companies (excluding shell holding companies) where the latter have a strong majority interest in the acquired bank or thrift and an established record for successful operation of insured banks or thrifts. Such partnerships are strongly encouraged by the FDIC. In response to comments that the Policy Statement should define ''*de minimis* investments'', a provision has been added that provides that the Final Statement shall not apply to Investors with 5 percent or less of the total voting power of an acquired depository institution or its bank or thrift holding company provided there is no evidence of concerted action by these Investors. Finally, a provision has been added to make clear that the FDIC Board of Directors may waive one or more provisions of the Final Statement if such exemption is in the best interests of the Deposit Insurance Fund and the goals and objectives of the Final Statement can be accomplished by other means.

Capital

After consideration of the comments presented, the Final Statement revises the capital commitment to provide for a level of initial capitalization sufficient to establish a ratio of Tier 1 common equity to total assets of at least 10 percent throughout the first 3 years. Some commenters suggested that capital requirements should be adjusted based on the facts of individual cases. The FDIC adopted this suggestion in so far as it provides that capital requirements may be increased above 10 percent Tier 1 common equity to total assets ratio if warranted. The specific language in the proposed text authorizing an extension of the 3-year period has been eliminated. After 3 years, as in the proposed text, the depository institution must remain ''well capitalized'', as that term is defined in Section 325.103(b)(1) of the FDIC Rules and Regulations, as long as the Investors' ownership continues. In response to comments that a source of strength provision would be difficult for private investors to apply as a practical matter, the FDIC decided to delete the provision. Further, as in the proposed text, if at any time the depository institution fails to meet this standard, immediate action would have to be taken to restore the institution to the at least 10 percent Tier 1 common equity ratio or the ''well capitalized'' standard, as applicable.

The FDIC believes that heightened capital levels are necessary in view of the higher risk profile of what are de novo institutions being acquired and for the protection of the DIF from losses. Depository institutions insured less than 7 years are overrepresented in the list of institutions that have failed in 2008 and 2009 with most of the failures occurring between the fourth and seventh years of operation, particularly where they have pursued early changes in business plans and inadequate controls and risk management practices.

Regarding the appropriate method for measuring capital in the Final Statement, staff considered the strong concerns that have been raised about the quality of bank capital (for example, whether banks have sufficient common equity as compared to debt-like or other instruments that qualify as regulatory capital), and the adequacy of the risk-based capital rules. Therefore, in the Final Statement, the FDIC has adopted Tier 1 common equity in the capital ratio because it provides a stronger measure of the capital available to absorb losses than alternative measures.

The FDIC also asked in the Proposed Policy Statement whether there should be a further requirement that if capital declines below the required capital level, the institution would be treated as ''undercapitalized'' for purposes of Prompt Corrective Action. Commenters argued that depository institutions in which private capital investors have invested should not be subject to the higher capital standards of the Proposed Policy Statement but to the same Prompt Corrective Action standards as other institutions. They argue that a separate and unequal Prompt Corrective Action regime for a bank that is backed directly or indirectly by private capital investors provides no supervisory benefits. As noted above, de novo depository institutions are subject to a considerably higher rate of failure. Accordingly, the FDIC is of the view that the higher capital standards applicable under the Proposed Policy Statement are extremely important in order to preserve the safety and soundness of these de novo institutions and to protect the Deposit Insurance Fund. Therefore, the special prompt corrective action requirements have been retained in the Final Statement.

Cross Support

The Proposed Policy Statement provided that Investors that owned two

or more depository institutions, including one covered by this policy statement, would have an obligation to commit their bank or thrift investments to support one or more of these institutions if they failed, provided there was sufficient common ownership as provided in the Proposed Policy Statement. Commenters stated that the cross guarantee requirement would deter private capital investment in failed insured depository institutions because private capital investors in unrelated banks would not agree to a cross guarantee commitment that places their legally separate investments at risk.

The Final Statement scales back the circumstances in which what is now referred to as ''cross support'' would be required. A cross support obligation would apply if two or more depository institutions are owned by a group of Investors covered by the Final Statement if both depository institutions are at least 80 percent owned by common investors. Further, the FDIC may waive the cross support obligation if enforcing the obligation would not reduce the cost of the bank or thrift failure to the DIF.

Transactions With Affiliates

A number of commenters argued that the restrictions under sections 23A and 23B of the Federal Reserve Act and the Federal Reserve's Regulation W and Regulation O are sufficient to prevent inappropriate affiliate and insider transactions. Under some common private capital investment structures for investments in banks and thrifts, the investors would not meet the standards that trigger the applicability of sections 23A and 23B. The FDIC is of the view that a special situation is presented with respect to transactions with affiliates by private capital investors who are not subject to the activities restrictions of the Bank Holding Company Act with a resultant temptation to cause the de novo bank they have purchased to lend to companies in which they have invested. Moreover, the FDIC notes that the prohibitions on insider lending are among the most crucial requirements for maintaining a safe and sound banking system and for protecting the Deposit Insurance Fund. Accordingly, limited changes were made to the scope of this provision in the Final Statement.

The Final Statement modifies the definition of the term ''affiliate'' to mean ''any company in which the Investor owns, directly or indirectly, at least 10 percent of the equity of such company and has maintained such ownership for at least 30 days.'' This change is designed to make compliance easier and is based on the assumption that very short term investments do not provide a reason for extensions of credit. Also added is an expectation that Investors will provide regular reports to the insured depository institution identifying all affiliates. Lastly, a provision has been added that exempts from the prohibition existing extensions of credit.

Bidding Eligibility of ''Silo'' Structures

Commenters acknowledged the FDIC's need to ascertain beneficial ownership, clearly identify the parties responsible for making management decisions, and ensure that ownership and control are not separated but objected to the blanket prohibition on ''silo'' structures, arguing that such a prohibition would eliminate many investors who would be willing to meet the FDIC's disclosure and transparency requirements. In the Final Statement, the FDIC has clarified that it would not approve ownership structures that typically involve a private equity firm (or its sponsor) that create multiple investment vehicles funded and apparently controlled by the private equity firm (or its sponsor) to acquire ownership of an insured depository institution. The FDIC is concerned that the purpose of these structures is to artificially separate the non-financial activities of the firm from its banking activities so that the private equity firm is not required to become a bank or savings and loan holding company. This type of structure also raises serious concerns about the sufficiency of the financial and managerial support to the acquired institution, even in those instances where the investing fund(s) agrees to be regulated as a bank or savings and loan holding company.

Secrecy Law Jurisdictions

Many commenters stated that a prohibition on having any offshore entities in an ownership structure could restrict private capital investors from using traditional funding structures that provide tax and other efficiencies, thereby hampering their ability to bid for failed depository institutions.

In evaluating a proposal involving an investment in an insured depository institution, it is important that the FDIC have adequate assurances that it will have access to reliable information on the operations or activities of the investor and its affiliates. Entities organized in secrecy law jurisdictions can make it difficult for the FDIC as a regulator to obtain information about a company's owners and its affiliates. Therefore, the FDIC believes that the Final Statement's provisions requiring transparent ownership and full disclosure are reasonable and prudent and that investors can organize efficient and functional ownership structures in the U.S.

In response to commenters' request that the FDIC clarify the meaning of ''bank secrecy jurisdiction'' in the Final Statement, the FDIC provides a definition of bank secrecy jurisdiction as ''a country that applies a bank secrecy law that limits U.S. bank regulators from determining compliance with U.S. laws or prevents them from obtaining information on the competence, experience and financial condition of applicants and related parties, lacks authorization for exchange of information with U.S. regulatory authorities, does not provide for a minimum standard of transparency for financial activities, or permits off shore companies to operate shell companies without substantial activities within the host country.''

Continuity of Ownership

The FDIC received comments questioning the justification for the proposed three-year holding period. The FDIC also received comments that indicated the three-year period was an appropriate amount of time required to stabilize the operations of a failed bank or thrift. The FDIC continues to take the position that it is important to encourage long term investment to promote the stability of a de novo previously failed bank or thrift. In particular, the FDIC has a direct interest in stability of management on which it depends for appropriate management of any agreements it may have with a bank or thrift concerning losses at that bank or thrift. Therefore, the Final Statement has largely left unchanged this prohibition absent prior FDIC approval, but has added a statement that in the case of transfers to affiliates FDIC approval shall not be unreasonably withheld provided the affiliate agrees to be subject to the same requirements that are applicable under this policy statement to the transferring Investor. In the Final Statement, the three-year holding period does not apply to mutual funds defined as an open-ended investment company registered under the Investment Company Act of 1940 that issues redeemable securities that allow investors to redeem on demand.

Disclosures

The FDIC believes that this feature could likely be implemented without significantly deterring private capital investments. In an effort to address commenters' concerns about confidentiality, in the Final Statement

the FDIC provides that confidential business information will be treated as such and not disclosed except in accordance with applicable law.

V. Regulatory Analysis and Procedure

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. Ch. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Final Policy contains reporting and recordkeeping requirements that constitute a collection of information as contemplated by the PRA. Specifically, the Final Policy sets forth the expectation that investors subject to the policy will provide regular reports that identify all affiliates (as that term is defined in the Final Policy) of the investor; that investors that own an interest in an insured depository institution and that employ ownership structures utilizing entities that are domiciled in bank secrecy jurisdictions (as that term is defined in the Final Policy) will maintain business books and records (or duplicates thereof) in the U.S.; and that investor will submit information to the FDIC regarding the investors and all entities in the ownership chain, including information on the size of capital funds, diversification, return profile, marketing documents, the management team, business model, and such other information required by the FDIC. The FDIC has submitted to OMB a request for approval, by August 28, 2009, of the information collection under emergency clearance procedures. The estimated burden is as follows:

Title: Qualifications for Failed Bank Acquisitions.

OMB Number: 3064–[new].

Estimated Number of Respondents:

Investor Reports on Affiliates: 20.

Maintenance of Business Records: 5.

Disclosures Regarding Investors and Entities in Ownership Chain: 20.

Frequency of Response:

Investor Reports on Affiliates: 12.

Maintenance of Business Records: 4.

Disclosures Regarding Investors and Entities in Ownership Chain: 4.

A*verage hours per response:*

Investor Reports on Affiliates: 2.

Maintenance of Business Records: 2.

Disclosures Regarding Investors and Entities in Ownership Chain: 4.

Total annual burden—840 hours

If approved by OMB under emergency authority, the FDIC will proceed with a request for approval under normal clearance procedures, including an initial 60-day request, and subsequent 30-day request, for comments on: (1) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (2) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Pending publication of the initial 60-day notice, interested parties are invited to submit written comments on the estimated burden herein by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.*
- *Mail:* Leneta Gregorie (202–898–3719), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comment may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. All comments should refer to the name of the collection.

The text of the Final Statement of Policy on Qualifications for Failed Bank Acquisitions follows:

Final Statement of Policy on Qualifications for Failed Bank Acquisitions

In order to provide guidance about the standards for more than *de minimis* investments in acquirers of deposit liabilities and the operations of failed insured depository institutions, the FDIC has adopted this Statement of Policy (''SOP''). It is the intent of the FDIC Board of Directors that this Statement of Policy applies to investors and is not intended to interfere with or supplant the preexisting regulation of holding companies. The Board of Directors will review the operation and impact of this SOP within 6 months of its approval date and shall make adjustments, as it deems necessary.

Applicability. Except as provided below, this SOP will apply prospectively to:

(a) private investors in a company, including any company acquired to facilitate bidding on failed banks or thrifts that is proposing to, directly or indirectly, (including through a shelf charter) assume deposit liabilities, or such liabilities and assets, from the resolution of a failed insured depository institution; and

(b) applicants for insurance in the case of de novo charters issued in connection with the resolution of failed insured depository institutions (hereinafter ''Investors'').

This SOP shall not apply to acquisitions of failed depository institutions completed prior to its approval date.

Following application to and approval by the FDIC Board of Directors, taking into consideration whether the ownership structure of such bank, thrift or holding company is consistent with the objectives of this SOP, this SOP shall not apply to an Investor in a bank or thrift, or bank or thrift holding company where the bank or thrift has maintained a composite CAMELS 1 or 2 rating continuously for seven (7) years.

This SOP shall not apply to:

(a) investors in partnerships or similar ventures with bank or thrift holding companies or in such holding companies (excluding shell holding companies) where the holding company has a strong majority interest in the resulting bank or thrift and an established record for successful operation of insured banks or thrifts. Such partnerships are strongly encouraged; or

(b) investors with 5 percent or less of the total voting power of an acquired depository institution or its bank or thrift holding company provided there is no evidence of concerted action by these Investors.

Under expedited procedures established by the Chairman, the FDIC Board of Directors may waive one or more provisions of this SOP if such exemption is in the best interests of the Deposit Insurance Fund and the goals and objectives of this SOP can be accomplished by other means.

B. *Capital Commitment:* The resulting depository institution shall maintain a ratio of Tier 1 common equity to total assets of at least 10 percent for a period of 3 years from the time of acquisition. Thereafter, the depository institution shall maintain no lower level of capital adequacy than ''well capitalized'' during the remaining period of ownership of the Investors.

If at any time the depository institution fails to meet this standard, the institution would have to immediately take action to restore capital to the 10 percent Tier 1 common equity ratio or the ''well capitalized'' standards, as applicable. Failure to maintain the required capital level will result in the institution being treated as ''undercapitalized'' for purposes of Prompt Corrective Action triggering all of the measures that would be available to the institution's regulator in such a situation.

Tier 1 common equity is defined as Tier 1 capital minus non-common equity elements. Non-common equity elements are defined as qualifying perpetual preferred stock, plus minority interests and restricted core capital elements not already included.

C. *Cross Support:* If one or more Investors own 80 percent or more of two or more banks or thrifts, the stock of the banks or thrifts commonly owned by these Investors shall be pledged to the FDIC, and if any one of those owned depository institutions fails, the FDIC

may exercise such pledges to the extent necessary to recoup any losses incurred by the FDIC as a result of the bank or thrift failure. The FDIC may waive this pledge requirement where the exercise of the pledge would not result in a decrease in the cost of the bank or thrift failure to the Deposit Insurance Fund.

D. *Transactions With Affiliates:* All extensions of credit to Investors, their investment funds if any, and any affiliates of either, by an insured depository institution acquired by such Investors under this SOP would be prohibited. Existing extensions of credit by an insured depository institution acquired by such Investors would not be covered by the foregoing prohibitions.

For purposes of this SOP the terms (a) ''extension of credit'' is as defined in 12 CFR 223.3(o) and (b) ''affiliate'' is any company in which the Investor owns, directly or indirectly, at least 10 percent of the equity of such company and has maintained such ownership for at least 30 days. Investor(s) are to provide regular reports to the insured depository institution identifying all affiliates of such Investor(s).

E. *Secrecy Law Jurisdictions:* Investors employing ownership structures utilizing entities that are domiciled in bank secrecy jurisdictions would not be eligible to own a direct or indirect interest in an insured depository institution unless the Investors are subsidiaries of companies that are subject to comprehensive consolidated supervision (''CCS'') as recognized by the Federal Reserve Board and they execute agreements on the provision of information to the primary federal regulator about the non-domestic Investors' operations and activities; maintain their business books and records (or a duplicate) in the U.S.; consent to the disclosure of information that might be covered by confidentiality or privacy laws and agree to cooperate with the FDIC, if necessary, in obtaining information maintained by foreign government entities; consent to jurisdiction and designation of an agent for service of process; and consent to be bound by the statutes and regulations administered by the appropriate U.S. federal banking agencies.

For the purposes of this paragraph E, a ''Secrecy Law Jurisdiction'' is defined as a country that applies a bank secrecy law that limits U.S. bank regulators from determining compliance with U.S. laws or prevents them from obtaining information on the competence, experience and financial condition of applicants and related parties, lacks authorization for exchange of information with U.S. regulatory authorities, does not provide for a minimum standard of transparency for financial activities, or permits off shore companies to operate shell companies without substantial activities within the host country.

F. *Continuity of Ownership:* Investors subject to this policy statement are prohibited from selling or otherwise transferring their securities for a 3 year period of time following the acquisition absent the FDIC's prior approval. Such approval shall not be unreasonably withheld for transfers to affiliates provided the affiliate agrees to be subject to the conditions applicable under this policy statement to the transferring Investor. These provisions shall not apply to mutual funds defined as an open-ended investment company registered under the Investment Company Act of 1940 that issues redeemable securities that allow investors to redeem on demand.

G. *Prohibited Structures:* Complex and functionally opaque ownership structures in which the beneficial ownership is difficult to ascertain with certainty, the responsible parties for making decisions are not clearly identified, and ownership and control are separated, would be so substantially inconsistent with the principles outlined above as not to be considered as appropriate for approval for ownership of insured depository institutions. Structures of this type that have been proposed for approval have been typified by organizational arrangements involving a single private equity fund that seeks to acquire ownership of a depository institution through creation of multiple investment vehicles, funded and apparently controlled by the parent fund.

H. *Special Owner Bid Limitation:* Investors that directly or indirectly hold 10 percent or more of the equity of a bank or thrift in receivership will not under any circumstances be considered eligible to be a bidder to become an investor in the deposit liabilities, or both such liabilities and assets, of that failed depository institution.

I. *Disclosure:* Investors subject to this policy statement would be expected to submit to the FDIC information about the Investors and all entities in the ownership chain including such information as the size of the capital fund or funds, its diversification, the return profile, the marketing documents, the management team and the business model. In addition, Investors and all entities in the ownership chain will be required to provide to the FDIC such other information as is determined to be necessary to assure compliance with this policy statement. Confidential business information submitted by Investors to the FDIC in compliance with this paragraph I shall be treated as confidential business information and shall not be disclosed except in accordance with law.

J. *Limitations:* Nothing in this policy statement is intended to replace or substitute for any determination required by a relevant depository institution's primary federal regulator or a federal bank or thrift holding company regulator under any applicable regulation or statute, including, in particular, bank or thrift holding company statutes, or with respect to determinations made and requirements that may be imposed in connection with the general character, fitness and expertise of the management being proposed by the Investors, the need for a thorough and reasonable business plan that addresses business lines and strategic initiatives and includes appropriate contingency planning elements, satisfactory corporate governance structure and representation, and any other supervisory matter.

By order of the Board of Directors.

Dated at Washington, DC, this 26th day of August 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–21146 Filed 9–1–09; 8:45 am]

BILLING CODE 6714–01–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 acquire control of 21.51 percent of Community FirstBancshares, Inc., Union City, Tennessee (''Bancshares''), and the Kirkland family control group will acquire controlof 25.82 percent of Bancshares.of the Board of Governors. Comments must be received not later than September 15, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Gary Shiffman, West Bloomfield, Michigan; Arthur Weiss, Farmington Hills, Michigan; Ronald Klein, Bloomfield Hills, Michigan; Paul Hodges, Orchard Lake, Michigan; Roman Ferber, West Bloomfield, Michigan; David Freidman, West Bloomfield, Michigan; Steven Freidman, West Bloomfield, Michigan; Brian Wenzel, Howell, Michigan; Sheldon Yellen, Bloomfield Hills, Michigan; Gary Torgow, Oak Park, Michigan; Dov Loketch, Oak Park, Michigan; Joseph Nusbaum, Oak Park, Michigan; David Provost, Birmingham, Michigan; Max Berlin, Southfield, Michigan; Donald Coleman, Bonita Springs, Florida; Albert Papa, Birmingham, Michigan; Robert Naftaly, West Bloomfield, Michigan; Thomas Schellenberg, Cross Village, Michigan; Thomas Brown, Farmington Hills, Michigan; Christine Otto, Oxford, Michigan; James Dunn, Livonia, Michigan; Gary Sakwa, Bloomfield Hills, Michigan; Frank Hennessey, Ocala, Florida; Christine Provost, Birmingham, Michigan; Scott

Steigerwald, Bloomfield Hills, Michigan; Stephen Eick, Birmingham, Michigan; Jeffrey Grabiel, Birmingham, Michigan; David Lau, Bloomfield Hills, Michigan; Jeffrey Peck, Orchard Lake, Michigan; Lawrence Wolfe, Bloomfield Hills, Michigan; Patrick Ervin, Ortonville, Michigan; Thomas Ervin, Bloomfield Hills, Michigan; Nancy Ervin, Bloomfield Hills, Michigan; Mark Thompson, Grosse Point Farms, Michigan; JoAnne Thompson, Grosse Pointe Farms, Michigan; and Daniel Samson, Huntington Woods, Michigan, to acquire over 25 percent of the outstanding voting shares of First Michigan Bancorp, Inc., Troy, Michigan, and thereby to indirectly acquire control of First Michigan Bank, Troy, Michigan.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Robert E. Kirkland, Union City, Tennessee, individually and as member of the Kirkland family control group, which consists of himself; REK, LP, Union City, Tennessee; the Christopher R. Kirkland Revocable Trust (Christopher R. Kirkland as trustee), Brentwood, Tennessee; Bedford F. Kirkland, Lebanon, Tennessee; and Macy Darnell Swensson, Cincinnatti, Ohio. Robert E. Kirkland will individually, acquire control of 21.51 percent of Community First Bancshares, Inc., Union City, Tennessee (''Bancshares''), and the Kirkland family control group will acquire control of 25.82 percent of Bancshares.

Board of Governors of the Federal Reserve System, August 27, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–21095 Filed 9–1–09; 8:45 am]

BILLING CODE 6210–01–S

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 acquire control of 21.51 percent of Community FirstBancshares, Inc., Union City, Tennessee (''Bancshares''), and the Kirkland family control group will acquire controlof 25.82 percent of Bancshares.of the Board of Governors. Comments must be received not later than September 15, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Gary Shiffman, West Bloomfield, Michigan; Arthur Weiss, Farmington Hills, Michigan; Ronald Klein, Bloomfield Hills, Michigan; Paul Hodges, Orchard Lake, Michigan; Roman Ferber, West Bloomfield, Michigan; David Freidman, West Bloomfield, Michigan; Steven Freidman, West Bloomfield, Michigan; Brian Wenzel, Howell, Michigan; Sheldon Yellen, Bloomfield Hills, Michigan; Gary Torgow, Oak Park, Michigan; Dov Loketch, Oak Park, Michigan; Joseph Nusbaum, Oak Park, Michigan; David Provost, Birmingham, Michigan; Max Berlin, Southfield, Michigan; Donald Coleman, Bonita Springs, Florida; Albert Papa, Birmingham, Michigan; Robert Naftaly, West Bloomfield, Michigan; Thomas Schellenberg, Cross Village, Michigan; Thomas Brown, Farmington Hills, Michigan; Christine Otto, Oxford, Michigan; James Dunn, Livonia, Michigan; Gary Sakwa, Bloomfield Hills, Michigan; Frank Hennessey, Ocala, Florida; Christine Provost, Birmingham, Michigan; Scott Steigerwald, Bloomfield Hills, Michigan; Stephen Eick, Birmingham, Michigan; Jeffrey Grabiel, Birmingham, Michigan; David Lau, Bloomfield Hills, Michigan; Jeffrey Peck, Orchard Lake, Michigan; Lawrence Wolfe, Bloomfield Hills, Michigan; Patrick Ervin, Ortonville, Michigan; Thomas Ervin, Bloomfield Hills, Michigan; Nancy Ervin, Bloomfield Hills, Michigan; Mark Thompson, Grosse Point Farms, Michigan; JoAnne Thompson, Grosse Pointe Farms, Michigan; and Daniel Samson, Huntington Woods, Michigan, to acquire over 25 percent of the outstanding voting shares of First Michigan Bancorp, Inc., Troy, Michigan, and thereby to indirectly acquire control of First Michigan Bank, Troy, Michigan.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Robert E. Kirkland, Union City, Tennessee, individually and as member of the Kirkland family control group, which consists of himself; REK, LP, Union City, Tennessee; the Christopher R. Kirkland Revocable Trust (Christopher R. Kirkland as trustee), Brentwood, Tennessee; Bedford F. Kirkland, Lebanon, Tennessee; and Macy Darnell Swensson, Cincinnatti, Ohio. Robert E. Kirkland will individually, acquire control of 21.51 percent of Community First Bancshares, Inc., Union City, Tennessee (''Bancshares''), and the Kirkland family control group will acquire control of 25.82 percent of Bancshares.

Board of Governors of the Federal Reserve System, August 27, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–21090 Filed 9–1–09; 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 application 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 September 25, 2009.

A. Federal Reserve Bank of San Francisco ((Tracy Basinger, Director,

Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Private Bancorp of America, Inc., to become a bank holding company by, acquiring 100 percent of San Diego Private Bank, both of La Jolla, California.

Board of Governors of the Federal Reserve System, August 27, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–21096 Filed 9–1–09; 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 application 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 September 25, 2009.

A. Federal Reserve Bank of San Francisco ((Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Private Bancorp of America, Inc., to become a bank holding company by, acquiring 100 percent of San Diego Private Bank, both of La Jolla, California.

Board of Governors of the Federal Reserve System, August 27, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–21091 Filed 9–1–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Tuesday, September 8, 2009.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 28, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–21231 Filed 8–31–09; 11:15 am]

BILLING CODE 6210–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010979–048.

Title: Caribbean Shipowners Association.

Parties: Bernuth Lines, Ltd.; CMA CGM, S.A.; Crowley Caribbean Services, LLC/Crowley Liner Services, Inc.; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; Sea Star Line Caribbean, LLC; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher and Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment removes Tropical Shipping & Construction Co., Ltd. as a party to the agreement.

Agreement No.: 010982–046.

Title: Florida-Bahamas Shipowners and Operators Association.

Parties: Atlantic Caribbean Line, Inc.; Bernuth Lines, Ltd.; Crowley Caribbean Services LLC/Crowley Liner Services, Inc.; Seaboard Marine, Ltd.; and Seafreight Line, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment removes Tropical Shipping and Construction Co., Ltd. as a party to the agreement.

Agreement No.: 011953–008.

Title: Florida Shipowners Group Agreement.

Parties: The member lines of the Caribbean Shipowners Association and the Florida-Bahamas Shipowners and Operators Association.

Filing Party: Wayne R. Rhode, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment reflects Tropical Shipping & Construction Company's withdrawal from the underlying agreements.

Agreement No.: 012067–001.

Title: U.S. Supplemental Agreement to HLC Agreement.

Parties: BBC Chartering & Logistics GmbH & Co. KG; Beluga Chartering GmbH; Clipper Projects Ltd.; Industrial Maritime Carriers, L.L.C.; Rickmers-Linie GmbH & Cie. KG; and Universal Africa Lines Ltd.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment would reduce the minimum vessel capacity for membership and add Chipolbrok,

Hyundai Merchant Marine Co., Ltd. and Nordana Line A/S as parties to the agreement. The amendment also updates the membership of the International Council of Heavy Lift and Project Cargo Carriers Agreement (the ''HLC Agreement'') to add as parties, in addition to the foregoing, AAL/Schoeller Holdings Ltd., Conti Lines N.V., Scanscot Shipping Services, and Scan-Trans Chartering ApS.

Agreement No.: 012076.

Title: ELJSA/CKYH Vessel Sharing Agreement—Trans-Atlantic Express Service.

Parties: Evergreen Line Joint Service Agreement, including Evergreen Marine Corp. (Taiwan) Ltd., Evergreen Marine (UK) Ltd., Italia Marittima S.p.A., Evergreen Marine (Hong Kong) Ltd., and Evergreen Marine (Singapore) Pte Ltd.; COSCO Container Lines Company Limited; Kawasaki Kisen Kaisha, Ltd.; YangMing (UK) Ltd.; and Hanjin Shipping Co., Ltd.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor LLP; 61 Broadway, Suite 3000; New York, NY 10006–2802.

Synopsis: The agreement authorizes the parties to share vessel space in the trade between U.S. East Coast ports and ports in Northern Europe.

By Order of the Federal Maritime Commission.

Dated: August 28, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–21189 Filed 9–1–09; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0285]

Agency Information Collection Activities; Proposed Collection; Comment Request; USASpending/IT Dashboard Feedback Mechanisms Information Collection; OMB Control No. 3090–0285

AGENCY: Interagency Policy and Management Division, Office of Governmentwide Policy, U.S. General Services Administration (GSA).

ACTION: Notice of request for comments regarding a new OMB clearance.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that GSA is planning to submit a request to replace an emergency Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting this ICR to OMB for review and approval, GSA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 2, 2009.

ADDRESSES: Submit your comments regarding this collection of information to Lalit Bajaj at the information provided below. Please cite OMB Control No. 3090–0285, USASpending/IT Dashboard Feedback Mechanisms Information Collection, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Lalit Bajaj, Interagency Policy and Management Division, Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW., Room 2227, Washington, DC 20405–0001; *telephone number:* 202–208–7887; *fax number:* 202–501–3136; *e-mail address: lalit.bajaj@gsa.gov.*

SUPPLEMENTARY INFORMATION:

What Information Is GSA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, GSA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, GSA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that GSA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for GSA?

You may find the following suggestions helpful for preparing your comments.

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by GSA, be sure to identify the ICR title on the first page of your response. You may also provide the **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Title: USASpending/IT Dashboard Feedback Mechanisms Information Collection.

OMB Control Number: 3090–0285.

The *USAspending.gov* Web site, which is a re-launch of the *www.fedspending.org* Web site, provides information, as collected from federal agencies, to the public in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Transparency Act).

USAspending.gov is a public-friendly Web site that provides details regarding each Federal award, such as: The name and location of the entity receiving the award, the amount of the award, funding agency for the award, etc. Additionally, the IT dashboard Web site, which is a part of *USAspending.gov,* provides details of Federal Information Technology (IT) investments and is based on data received from agency reports to the Office of Management and Budget (OMB). The ability to look at contracts, grants, loans, Information Technology investments, and other types of spending across many agencies, in greater detail, is a key ingredient to building public trust in government and credibility in the professionals who use these agreements. *USAspending.gov* visitors will be provided opportunities to provide feedback in the spirit of the President's open government and transparency initiative. Examples of feedback mechanisms are:

(1) A ''Contact Us'' entry page with an optional contact e-mail address for those visitors wishing to identify themselves on the *USAspending.gov* web-page,

(2) A ''Contact Us'' entry page with a contact e-mail address on the IT dashboard web-page; and

(3) A Collaborative Work Environment using wiki web pages, e-mail discussion forum, message archive, shared file workspace, full text search capability, etc.

Additional feedback mechanisms may be placed in the future but additional details have not yet been defined regarding them. This information collection request for a generic clearance is a replacement of the emergency ICR approved by OMB. It is being submitted in order to fulfill the public feedback aspects of this important initiative.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average up to 500 hours per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The estimated annual burden request is summarized here:

Affected entities: Anyone that chooses to visit *USASpending.gov,* including the IT Dashboard Web site.

Estimated total number of potential responses: 5,000.

Frequency of response: Occasionally.

Estimated total annual burden hours: 500 hours.

Estimated total annual costs: 0.

What is the Next Step in the Process for This ICR?

GSA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, GSA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: August 26, 2009.

Casey Coleman,

Chief Information Officer, General Services Administration.

[FR Doc. E9–21175 Filed 9–1–09; 8:45 am]

BILLING CODE 6820–WY–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

Time and Date:

September 22, 2009, 9 a.m.–3 p.m.

September 23, 2009, 10 a.m.–4 p.m.

Place: Marriott Washington Hotel, 1221 22nd Street, NW., Washington, DC 20037.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates from the Department, the Center for Medicare and Medicaid Services, and the Office of the National Coordinator. A discussion of the letter to the HHS Secretary with recommendations on privacy for Personal Health Records (PHR) will also take place. There will also be a briefing on health statistics for children. In the afternoon there will be a review and discussion regarding the updating of the Health Statistics for the 21st Century Report.

On the morning of the second day there will be a review of the final letter on privacy for PHRs and a final discussion on a compendium of principles and best practices for stewardship of personally identifiable health data. The Committee will discuss plans for a 60th Anniversary Symposium to be held next June. There will also be an update from NCHS Board of Scientific Counselors. The final agenda item will consist of reports from the Subcommittees.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions can be scheduled for late in the afternoon of the first day and second day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: August 21, 2009.

James Scanlon,

Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. E9–21148 Filed 9–1–09; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on September 18, 2009, from 8:30 a.m. to 3 p.m./Eastern Time.

Location: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC. The hotel telephone number is 202–234–0700.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear testimony from invited experts in the field of privacy and security of health information technology. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posed on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 8, 2009. Oral comments from the pubic will be scheduled between approximately 2:30 p.m. to 3 p.m. Time allotted for each presentation is limited to two minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: August 27, 2009.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–21149 Filed 9–1–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020

AGENCY: Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, as amended (5 U.S.C. App.), the U.S. Department of Health and Human Services is hereby giving notice that the Secretary's Committee on National Health Promotion and Disease Prevention Objectives for 2020 will hold a meeting. The meeting will be open to the public.

DATES: The Committee is scheduled to meet for two days, on September 17 and 18, 2009. The meeting will be held from 9 a.m. to 5 p.m. Eastern Daylight Time (EDT) on September 17, and from 9 a.m. to 3 p.m. EDT on September 18.

ADDRESSES: Department of Health and Human Services, Room 800 Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Emmeline Ochiai, Executive Secretary, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020, Department of Health and Human Services, Office of Public Health and Science, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852; Telephone: (240) 453–8259; Fax (240) 453–8281. Additional information is available on the Internet at *http://www.healthypeople.gov.*

SUPPLEMENTARY INFORMATION: Every ten years, through the Healthy People initiative, the U.S. Department of Health and Human Services (HHS) leverages scientific insights and lessons from the past decade, along with the new knowledge of current data, trends, and innovations to develop the next iteration of the national health promotion and disease prevention objectives. Healthy People provides science-based, ten-year national objectives for promotion of health and preventing disease. Since 1980, Healthy People has set and monitored national health objectives to meet a broad range of health needs, encourage collaborations across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. *Healthy People 2020* will reflect assessment of major risks to health and wellness, changing public health priorities, and emerging technologies related to our nation's health preparedness and prevention.

The Committee will provide advice and consultation to the Secretary of Health and Human Services for developing and implementing the next iteration of the national health promotion and disease prevention goals and objectives and provide recommendations for initiatives to occur during the implementation phase of the goals and objectives. HHS will use the recommendations to inform the development of the national health promotion and disease prevention objectives for 2020 and the process for implementing the objectives. The intent is to develop and launch objectives designed to improve the health status and reduce health risks for Americans by the year 2020.

Purpose of Meeting: This meeting is being held for the Committee to develop recommendations regarding implementation, evidence-based actions, data, priorities, and the application of the social determinants of health. The Committee will address issues regarding the development and implementation of the nation's health promotion and disease prevention objectives for 2020 and approaches for improving the health status of and reducing the health risks for Americans by the year 2020.

Public Participation: Members of the public are invited to observe this advisory committee meeting. Please note that there will be no opportunity for oral public comments during the Committee meeting. Written comments are welcome throughout the development process of the national health promotion and disease prevention objectives for 2020. Comments may be submitted through the Healthy People Web site at *http://www.healthypeople.gov/hp2020/comments/* or they can be e-mailed to *HP2020@hhs.gov.* Please note that the public comment Web site will be updated throughout the Healthy People development process, so people should return to the Web site frequently and provide their input.

To observe the Committee meeting, individuals must pre-register to attend at the Healthy People Web site, *http://www.healthypeople.gov.* Registrations must be completed by 5 p.m. EDT on September 14, 2009. Space for the meeting is limited. Registrations will be accepted until maximum room capacity is reached. A waiting list will be

maintained should registrations exceed room capacity. Individuals on the waiting list will be contacted as additional space for the meeting becomes available. On September 17 and 18, 2009, registered meeting attendees should arrive 45 minutes prior to the start of the meeting for the necessary security procedures to be conducted. Security procedures require that all registered public attendees must present a valid photo identification (*i.e.,* driver's license) and be escorted by appropriate Federal staff to the designated meeting site.

Registration questions may be directed to Hillary Scherer at the following e-mail address: *HP2020@norc.org,* by phone on (301) 634–9374 or by fax at (301) 634–9301.

Dated: August 28, 2009.

Penelope Slade-Sawyer,

P.T., M.S.W., RADM, USPHS, Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Office of Disease Prevention and Health Promotion.

[FR Doc. E9–21217 Filed 9–1–09; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on September 15, 2009, from 9:00 a.m. to 3 p.m./Eastern Time.

Location: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC. The hotel telephone number is 202–234–0700.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The Committee will discuss a report from its Privacy and Security Workgroup, and a discussion on implementation guidance. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 4, 2009. Oral comments from the public will be scheduled between approximately 2:30 p.m. to 3 p.m. Time allotted for each presentation may be limited. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App. 2).

Dated: August 28, 2009.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–21204 Filed 9–1–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Collection of Information for Agency for Healthcare Research and Quality's (AHRQ) Hospital Survey on Patient Safety Culture Comparative Database.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by November 2, 2009.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@ahrg.hhs.gov.*

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

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.1efkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Collection of Information for Agency for Healthcare Research and Quality's (AHRQ) Hospital Survey on Patient Safety Culture Comparative Database

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, AHRQ's collection of information for the AHRQ Hospital Survey on Patient Safety Culture (Hospital SOPS) Comparative

Database. The Hospital SOPS Comparative Database consists of data from the AHRQ Hospital Survey on Patient Safety Culture. Hospitals in the U.S. are asked to voluntarily submit data from the survey to AHRQ, through its contractor, Westat. The database was developed by AHRQ in 2006 in response to requests from hospitals interested in knowing how their patient safety culture survey results compare to those of other hospitals in their efforts to improve patient safety.

In 1999, the Institute of Medicine called for health care organizations to develop a ''culture of safety'' in which their workforces and processes focus on improving the reliability and safety of care for patients (IOM, 1999; To Err is Human: Building a Safer Health System). To respond to the need for tools to assess patient safety culture in health care, AHRQ developed and pilot tested the Hospital Survey on Patient Safety Culture with OMB approval (OMB No. 0935–01 15; Approved 2/4/2003). The survey was designed to enable hospitals to assess staff opinions about patient safety issues, medical error, and error reporting and includes 42 items that measure 12 dimensions of patient safety culture. AHRQ released the survey in the public domain along with a Survey User's Guide and other toolkit materials in November 2004 on the AHRQ Web site. Since its release, the survey has been voluntarily used by hundreds of hospitals in the U.S.

The Hospital SOPS survey and the Hospital SOPS Comparative Database are supported by AHRQ to meet its goals of promoting improvements in the quality and safety of health care in hospital settings. This project is conducted pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to health statistics, surveys, and database development. See 42 U.S.C. 299a(a)(l) and (8). The surveys, toolkit materials, and comparative database results are all made available in the public domain along with technical assistance, provided by AHRQ through its contractor at no charge to hospitals, to facilitate the use of these materials for hospital patient safety and quality improvement.

Method of Collection

Information for the Hospital SOPS database has been collected by AHRQ on an annual basis since 2006. Hospitals are asked to voluntarily submit their Hospital SOPS survey data to the comparative database between May 1 and June 30. The data are then cleaned and aggregated and used to produce a comparative Database Report that displays averages, standard deviations, and percentile scores on the survey's 42 items and 12 patient safety culture dimensions, as well as displaying these results by hospital characteristics (bed size, teaching status, ownership) and respondent characteristics (hospital work area, staff position, and those with direct interaction with patients). In addition, trend data, showing changes in scores over time, are presented from hospitals that have submitted to the database more than once.

Estimated Annual Respondent Burden

Hospitals administer the AHRQ Hospital Survey on Patient Safety Culture every 16 months on average. Therefore, the number of hospital submissions to the database varies each year because hospitals do not submit data every year. The 250 respondents/point-of-contacts (POCs) shown in Exhibit 1 are based on an estimated increase in the number of submissions in 2010 and 2011 (above the 180 respondents from 2009). Data submission is typically handled by one POC who is either a hospital patient safety manager or a survey vendor. The POC completes a number of data submission steps and forms, beginning with completion of an online Eligibility and Registration Form. The POCs typically submit data on behalf of 3 hospitals, on average, because many hospitals are part of a multi-hospital system that is submitting data, or the POC is a vendor that is submitting data for multiple hospitals. In 2009, 180 POCs submitted data on behalf of a total of 535 hospitals (an average of 3 hospital submissions per POC). Exhibits 1 and 2 are based on the estimated number of individual POCs who will complete the database submission steps and forms in the coming years, not based on the number of hospitals.

The Patient Safety Improvement Initiatives Form is completed only by POCs from trending hospitals that have submitted data more than once, so only about half of the POCs each year will be asked to complete the form for each of the 3 hospitals (on average) they are submitting data for. The Hospital Information Form is completed by all POCs for each of their hospitals. The total annual burden hours are estimated to be 1,508.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to submit their data. The cost burden is estimated to be $69,438 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/POCs	Number of responses per POC	Hours per response	Total burden hours
Eligibility/Registration Form and Data Submission*	250	1	5.6	1,400
Data Use Agreement	250	1	3/60	13
Patient Safety Improvement Initiatives Form (for trending hospitals only)	125	3	5/60	32
Hospital Information Form	250	3	5/60	63
Total	875	NA	NA	1,508

*The Eligibility and Registration Form requires 3 minutes to complete; however, about 5.5 hours is required to prepare/plan for the data submission. This includes the amount of time POCs and other hospital staff (CEO, lawyer, database administrator) typically spend deciding whether to participate in the database and preparing their materials and data set for submission to the database, and performing the submission.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents/POCs	Total burden hours	Average hourly wage rate*	Total cost burden
Eligibility/Registration Form and Data Submission	250	1,400	$46.11	$64,554

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Form name	Number of respondents/ POCs	Total burden hours	Average hourly wage rate*	Total cost burden
Data Use Agreement	250	13	45.22	588
Patient Safety Improvement Initiatives Form (for trending hospitals only)	125	32	45.22	1,447
Hospital Information Form	250	63	45.22	2,849
Total	875	1,508	NA	69,438

*Wage rates were calculated using the mean hourly wage based on occupational employment and wage estimates from the Dept of Labor, Bureau of Labor Statistics' May 2008 National Industry-Specific Occupational Employment and Wage Estimates NAICS 622000—Hospitals, located at *http://www.bls.gov/oes/2008/may/naics3_622000.htm.* Wage rate of $46.22 is based on the mean hourly wages for Medical and Health Services Managers. Wage rate of $46.11 is the weighted mean hourly wage for: Medical and Health Services Managers ($45.22 × 2.6 hours = $117.57), Lawyers ($62.95 × .5 hours = $31.48), Chief Executives ($89.16 × .5 hours = $44.58), and Database Administrators ($32.30 × 2 hours = $64.60) [Weighted mean ($117.57 + 31.48 + 44.58 + 64.60)/5.6 hours = $258.23/5.6 hours = $46.11/hour].

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated annualized cost to the government for developing, maintaining, and managing the database and analyzing the data and producing reports. The cost is estimated to be $250,000 annually.

EXHIBIT 3—ESTIMATED ANNUALIZED COST

Cost component	Annualized cost
Database Development and Maintenance	$50,000
Data Submission	75,000
Data Analysis & Reports	125,000
Total	250,000

Request for Comments

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

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

Dated: August 26, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–21079 Filed 9–1–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Common Formats for Patient Safety Data Collection and Event Reporting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Availability—Common Formats Version 1.0.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26 (Patient Safety Act), provides for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare delivery. The Patient Safety Act (at 42 U.S.C. 299b–23) authorizes the collection of this information in a standardized manner, as explained in the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008: 73 FR 70731–70814. As authorized by the Secretary of HHS, AHRQ coordinates the development of a set of common definitions and reporting formats (Common Formats) that allow healthcare providers to voluntarily collect and submit standardized information regarding patient safety events. The initial release of the formats, Version 0.1 Beta, was announced in the **Federal Register** on August 29, 2008: 73 FR 50974–50976. The purpose of this notice is to announce the availability of the expanded and enhanced Common Formats Version 1.0 and the process for their continued development and refinement.

DATES: Ongoing public input.

ADDRESSES: The Common Formats can be accessed electronically at the following HHS Web site: *http://www.pso.ahrq.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Susan Grinder, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; E-mail: *pso@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act and Patient Safety Rule establish a framework by which doctors, hospitals, and other healthcare providers may voluntarily report information regarding patient safety events and quality of care. Information that is assembled and developed by providers for reporting to PSOs and the information received and analyzed by PSOs—called ''patient safety work product''—is privileged and confidential. Patient safety work product is used to identify events, patterns of care, and unsafe conditions that increase risks and hazards to patients. Definitions and other details about PSOs and patient safety work product are included in the Patient Safety Rule.

The Patient Safety Act and Patient Safety Rule require PSOs, to the extent practical and appropriate, to collect patient safety work product from providers in a standardized manner in order to permit valid comparisons of similar cases among similar providers. The collection of patient safety work product allows the aggregation of sufficient data to identify and address

underlying causal factors of patient safety problems. In order to facilitate standardized data collection, the Secretary of HHS authorized AHRQ to develop and maintain the Common Formats to improve the safety and quality of healthcare delivery.

Definition of Common Formats

The term ''Common Formats'' is used to describe clinical definitions and technical requirements developed for the uniform collection and reporting of patient safety data, including all supporting material. AHRQ's Common Formats include:

- Descriptions of patient safety events and unsafe conditions to be reported,
- Delineation of data elements to be collected for specific types of events,
- Specifications for patient safety population reports,
- Technical specifications for electronic data collection and reporting, and
- A user's guide.

The Common Formats are not intended to replace any current mandatory reporting system, collaborative/voluntary reporting system, research-related reporting system, or other reporting/recording system.

Score of Common Formats

The scope of Common Formats applies to all patient safety concerns including:

- *Incidents*—patient safety events that reached the patient, whether or not there was harm,
- *Near misses or close calls*—patient safety events that did not reach the patient, and
- *Unsafe conditions*—circumstances that increase the probability of a patient safety event.

Version 1.0 includes two general types of formats, generic and event-specific. The generic Common Formats pertain to all patient safety concerns. The three generic formats are: Healthcare Event Reporting Form, Patient Information Form, and Summary of Initial Report. The event-specific Common Formats pertain to frequently-occurring and/or serious patient safety events. The eight event-specific formats are: Blood or Blood Product, Device or Medical/Surgical Supply, Fall, Healthcare-Associated Infection, Medication or Other Substance, Perinatal, Pressure Ulcer, and Surgery or Anesthesia.

The Common Formats Version 1.0 has a defined focus on patient safety reporting for acute care hospitals. It should be noted, however, that the Patient Safety Act and Patient Safety Rule confer both privilege and confidentiality on all patient safety work product developed under the aegis of a PSO with respect to healthcare in any setting. AHRQ anticipates expanding future versions of the Common Formats to include other settings such as: Nursing homes and other bedded facilities; ambulatory surgery centers; other ambulatory care settings, including community health centers, rehabilitation centers, and hemodialysis centers; physician and practitioner offices; and retail establishments such as pharmacies.

Common Formats Development

AHRQ established a process to develop Common Formats that: (1) Is evidence based; (2) harmonizes across governmental health agencies; (3) incorporates feedback from the private sector, including professional associations/organizations, those who use the formats, and the public; and (4) permits timely updating of these clinically-sensitive formats.

In anticipation of the need for Common Formats, AHRQ began their development in 2005 by creating an inventory of functioning private and public sector patient safety reporting systems. This inventory provides an evidence base that informs construction of the Common Formats. The inventory now numbers 66 and includes many systems from the private sector, including prominent academic settings, hospital systems, and international reporting systems (*e.g.,* from the United Kingdom and the Commonwealth of Australia). In addition, virtually all major Federal patient safety reporting systems are included, such as those from the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), the Department of Defense (DoD), and the Department of Veterans Affairs (VA).

In addition, AHRQ convened an interagency Federal Patient Safety Work Group (PSWG) to assist AHRQ with developing and maintaining the Common Formats. The PSWG includes major health agencies within the Department—CDC, Centers for Medicare and Medicaid Services, FDA, Health Resources and Services Administration, the Indian Health Service, the National Institutes of Health, the National Library of Medicine, the Office of the National Coordinator for Health Information Technology, the Office of Public Health and Science, the Substance Abuse and Mental Health Services Administration—as well as the DoD and the VA.

Subsequently, AHRQ, in conjunction with the PSWG, developed and released Common Formats Version 0.1 Beta. To the extent practicable, the Common Formats were aligned with World Health Organization (WHO) concepts, framework, and definitions contained in their draft International Classification for Patient Safety (ICPS). The PSWG assists AHRQ with assuring the consistency of definitions/formats with those of relevant government agencies as refinement of the Common Formats continues.

To allow for greater participation by the private sector in the subsequent development of the Common Formats, AHRQ engaged the National Quality Forum (NQF), a non-profit organization focused on healthcare quality, to solicit comments and advice to guide the further refinement of the Common Formats. The NQF convened an expert panel to review the comments received on Version 0.1 Beta and provide feedback to AHRQ. Based upon the expert panel's feedback, AHRQ, in conjunction with the PSWG, further revised and refined the Common Formats that are now available as Version 1.0.

Commenting on Common Formats Version 1.0

AHRQ is committed to continuing refinement of the Common Formats. The Agency is specifically interested in obtaining feedback from both the private and public sectors—particularly from those who use the Common Formats—to guide their improvement. Although AHRQ's Version 1.0 has been developed based on evidence, consensus of the PSWG, public comments and input, and feedback from the NQF expert panel, the formats do not yet reflect the refinement that will come from large-scale use and repeated revision. The process for updating and refining the formats will be an iterative one. AHRQ anticipates that it will receive helpful guidance from early users of the Common Formats.

The NQF will continue to assist AHRQ in updating future versions of the formats by soliciting public comments from providers, professional organizations, the general public, PSOs, and other users of Common Formats. More information on the Common Formats Version 1.0, including the feedback process, can be obtained through AHRQ's PSO Web site: *http://www.pso.ahrq.gov/index.html.*

Dated: August 26, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–21080 Filed 9–1–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Recombinant DNA Advisory Committee, September 9, 2009, 1:15 p.m. to September 10, 2009, 11 a.m., Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on August 19, 2009, 74 FR 41914.

The meeting will be held only on September 9 from 8:30 a.m. to 5 p.m. at the Hilton Rockville Hotel and Executive Center. The meeting is open to the public.

Dated: August 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21218 Filed 9–1–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: September 17, 2009.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Open: 10:30 a.m. to 4 p.m.

Agenda: Among topics to be discussed are the research opportunities surrounding the elevating burden of mental health disorders in low- and middle-income countries and U.S.-based and overseas activities under the FIC Framework program, a network to create curricula and career pathways in global health research.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Robert Eiss, Public Health Advisor, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892. (301) 496–1415. *EISSR@MAIL.NIH.GOV.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/fic/about/advisory.html,* where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: August 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21058 Filed 9–1–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–698, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–698, Application to Adjust Status from Temporary to Permanent Resident; OMB Control No. 1615–0035.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 9, 2009, at 74 FR 27339, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 2, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and OMB USCIS Desk Officer via facsimile at 202–395–5806 or via *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0035 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–698. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* The data collected on this form is used by the USCIS to determine eligibility to adjust an applicant's residence status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,179 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,179 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: August 27, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–21131 Filed 9–1–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5288–N–08]

Notice of Proposed Information Collection for Public Comment; Public Housing Operating Subsidy—Stop-Loss and Appeals

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, 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:* November 2, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Lillian L. Deitzer, Department Reports Management Officer, ODAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000; telephone: 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: 202–708–0713, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit 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 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: Public Housing Operating Subsidy—Stop-Loss and Appeals.

OMB Control Number: 2577–0246.

Description of the need for the information and proposed use: PHAs that will experience a reduction in subsidy will have their subsidy reduction phased in over a five-year period. PHAs that elect to stop the phase in of the decrease in their subsidy are required to demonstrate to HUD a successful conversion to asset management, as provided in the operating fund final rule. A PHA with a reduction in subsidy may make this demonstration to HUD in order to ''stop its losses'' during any one of the five years over which HUD phases in the reduction. Under the operating fund final rule, PHAs that elect to file an appeal of their subsidy amounts are required to meet the appeal requirements set forth in subpart G of the operating fund final rule. The final rule establishes five grounds for appeals in 24 CFR § 990.245 and they are the: (a) Streamlined appeal; (b) appeal of formula income for economic hardship; (c) appeal for specific local conditions; (d) appeal for changing market conditions; and (e) appeal to substitute actual project cost data. To stop the phase-in of the reduction in the amount of subsidy a PHA receives under the new operating fund formula, PHAs submit a ''stop-loss'' package to HUD demonstrating conversion to asset management. To appeal the amount of subsidy on any one of the permitted bases of appeal, PHAs submit an appeal request to HUD.

Agency form number, if applicable: N/A.

Members of affected public: PHAs, state or local government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is an annual average of 146 PHAs that submit one request for stop-loss and an annual average of 176 PHAs that submit an appeal of the amount of operating subsidy, for a total 322 PHAs that submit annually. The average number for each PHA response varies by size of the PHA, with a total reporting burden of 5,168 hours: An average of 21.7 hours per respondent for stop-loss;

and an average of 11.5 hours per respondent for appeals.

Status of the proposed information collection: Extension of an existing collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 28, 2009.

Bessy Kong,

Deputy Assistant Secretary, Policy, Program and Legislative Initiatives.

[FR Doc. E9–21206 Filed 9–1–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5327–N–01]

Notice of Fiscal Year (FY) 2009 Opportunity To Register and Other Important Information for Electronic Application Submission for Continuum of Care Homeless Assistance Programs

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice provides instructions to potential Continuums of Care (CoCs) applying for the approximately $1.43 billion of funding under HUD's Continuum of Care Homeless Assistance Competition in FY 2009. The CoC competition uses an electronic system outside of Grants.gov for CoC registration, as well as for submission of the CoC application, called e-snaps. Notification of the availability of the 2009 CoC application will be released via HUD's Homeless Assistance listserv. To join HUD's listserv, go to *http://www.hud.gov/subscribe/mailinglist.cfm* and click on ''Homeless Assistance Program.''

This notice provides information to help applicants better understand the CoC registration and electronic application submission process through e-snaps, which is located at *http://www.hud.gov/esnaps.* Applicants for project funding are also required to register with Dun and Bradstreet, if they have not already done so, and complete or renew their registration in the Central Contractor Registration (CCR). More information on this can be found in the General Section to HUD's FY 2009 NOFAs for Discretionary Programs published in the **Federal Register** December 29, 2008 (73 FR 79548), as amended April 16, 2009 (73 FR 17685). In an effort to streamline the renewal award process in 2009, HUD has modified the selection process. Eligible Supportive Housing Program (SHP) and Shelter Plus Care (S+C) renewal projects will be conditionally awarded as quickly as possible. New projects will be awarded after the project threshold review and the scoring of the CoC application have been completed. A project application must be submitted for each project that is eligible for renewal in the 2009 competition, in order for it to be considered for funding,

Projects are considered eligible for renewal in the 2009 competition if they expire in Calendar Year 2010 and have met all of the performance and capacity requirements that will be outlined in the 2009 CoC Notice of Funding Availability (NOFA). HUD reserves the right to not renew grants where the grantee has exhibited serious capacity issues in prior grants, including performance and financial problems, or unresolved monitoring findings for which there is no evidence that the grantee is working toward appropriate resolution. CoCs and project applicants should read all sections of this notice, as well as the upcoming 2009 NOFA, to help identify these types of issues and work with their local field office to resolve the issues prior to the 2009 CoC Application due date. Grantees and project sponsors are responsible for keeping grant files and for knowing the beginning and ending dates of their grants. If a grantee fails to apply for a renewal project in the appropriate year, the project will not be eligible for renewal in the next funding competition. **Please Note:** Under the 2002 and 2003 Appropriation Acts, funds for all grants awarded in those years will be available for use until September 30, 2009, and September 30, 2010, respectively. Projects that were awarded in 2002 and expire in 2009 were required to apply for renewal in the 2008 competition and, therefore, will not be eligible for renewal in the 2009 competition. Although the terms of all grants awarded in 2002 and 2003 should have expired before September 30, 2009, and September 30, 2010, respectively, HUD has discovered that, due to delays in signing the grant agreements or extensions, some grants have an expiration date in 2010 or later. Funds will not be available for expenditure after September 30, 2009, and September 30, 2010, respectively, for these grants. Recipients may not accelerate their spending rate. Field offices will monitor draws for affected grants, to ensure that funds will be drawn only to reimburse the affected recipients for actual costs incurred in accordance with the project budget on, or before, funds are no longer available. Notwithstanding the expiration date of your SHP or S+C grant, if the grant was awarded in 2002 or 2003, but has an expiration date of 2010 or later, the applicant must apply for renewal in 2009.

As stated previously, HUD will rate new project applications separately from renewal project submissions. The determination of leveraging and housing emphasis scores in Exhibit 1 will be calculated only with data from new project applications. For more information on this and other significant changes to the 2009 CoC competition, please see Section III of this notice. HUD advises potential applicants to read this notice in its entirety and complete the training offered at *http://www.hudhre.info.*

FOR FURTHER INFORMATION CONTACT: CoCs may contact the HUD Field Office serving their area, at the telephone number shown in the General Section. In addition, applicants are strongly encouraged to send questions regarding this notice to the e-snaps Virtual Help Desk at *http://www.hudhre.info/helpdesk.*

Full Text of Announcement

This notice is divided into three sections. Section I describes important information that CoCs and project applicants should be familiar with prior to applying for 2009 Homeless Assistance funding. This includes pertinent definitions and an overview of the necessary CoC planning process. Section II provides detailed information on completing the CoC registration process in e-snaps. Finally, Section III provides information about the major changes that HUD will make to the 2009 CoC Homeless Assistance competition. HUD hopes that this will assist CoCs in better planning their 2009 CoC application.

I. Overview Information

A. Program Description

Approximately $1.43 billion is available for funding through the FY2009 CoC Homeless Assistance Competition. Carried over or recaptured funds from previous fiscal years, if available, may be added to this amount.

The purpose of the CoC Homeless Assistance Program is to reduce the incidence of homelessness in CoC communities by assisting homeless individuals and families move to self-sufficiency and permanent housing.

The 2009 CoC NOFA will be published separately in the **Federal Register** no earlier than August 15, 2009.

B. Definitions

The definitions contained in this notice are only those that are necessary for CoCs to understand in order complete the 2009 CoC registration process. A complete list of definitions will be provided in the 2009 CoC NOFA.

1. *Annual Renewal Amount.* This is the maximum amount that an SHP grant can receive on an annual basis when renewed. It includes funds for only those eligible activities (operating, supportive services, leasing, Homeless Management Information System (HMIS), and administration) that were funded in the original grant (or the original grant as amended), less the nonrenewable activities (acquisition, new construction, and rehabilitation). It is used to calculate a CoC's ''hold harmless'' need amount.

To calculate the Annual Renewal Amount (ARA) for SHP grants, add up the amount of the renewable budget line items (i.e., operating, supportive services, leasing, HMIS, and administration) for all the years of the most recent grant, and divide by the number of years in the grant term. Any funding for acquisition, rehabilitation, new construction—and any administration costs related to those activities—is not renewable and, therefore, should not be calculated in ARA. If the initial grant included these activities, administrative costs must be recalculated and must not exceed 5 percent of the total of leasing, operating, HMIS, and supportive services costs contained in the initial grant.

For example, if the initial 3-year grant was for $472,500 ($150,000 for new construction, $150,000 for operating costs, $150,000 for supportive services, and $22,500 for administration), the new construction costs, and any administration costs associated with it, would not be eligible for renewal. Thus, the total renewable amount would be $315,000 ($150,000 for operating costs, $150,000 for supportive services, and $15,000 for administration) and the ARA is $105,000 ($315,000 divided by the 3-year grant term).

If the initial 3-year grant was $315,000 and did not include acquisition, rehabilitation, or new construction costs, ($150,000 for operating costs, $150,000 for supportive services, and $15,000 for administration), the ARA would be $105,000 ($315,000 divided by the 3-year grant term).

2. *Continuum of Care.* This is a collaborative funding and planning approach that helps communities plan for and provide, as necessary, a full range of emergency, transitional, and permanent housing and other service resources to address the various needs of homeless persons. HUD also refers to the group of service providers involved in the decision-making processes as the ''Continuum of Care.''

3. *Continuum of Care Lead Agency.* This is the agency or organization designated by the CoC primary decision-making body to be the entity that submits the CoC application. The CoC lead agency should be responsible for the coordination and oversight of the CoC planning efforts, and has the authority to certify and submit the CoC homeless assistance funding application. A state governmental entity is the only acceptable organization that may serve as the Lead Agency for multiple CoCs, due to the level of involvement and possible conflict of interest that comes with serving multiple CoCs. Under no other circumstance should one entity be identified as the Lead Agency for multiple CoCs.

4. *Continuum of Care Lead Agency Contact.* This is the person(s) with the authority to submit the Continuum of Care Homeless Assistance Grants Competition application on behalf of the CoC, usually the Executive Director or Chief Executive Officer (CEO) of the CoC Lead Agency.

5. *Continuum of Care Need Amounts.*

a. *Continuum of Care Preliminary Pro Rata Need (PPRN).* This is the amount of funds a CoC could receive based upon the geography that HUD approves as belonging to that CoC. To determine the homeless assistance need of a particular jurisdiction, HUD will use nationally available data, including the following factors as used in the Emergency Shelter Grants (ESG) program formula: Data on poverty, housing overcrowding, population, age of housing, and growth lag. Applying those factors to a particular jurisdiction provides an estimate of the relative need index for that jurisdiction compared to other jurisdictions applying for assistance under the 2009 CoC NOFA. Each year, HUD publishes the PPRN for each jurisdiction. A CoC's PPRN is determined by adding the published PPRN of each jurisdiction within the HUD-approved CoC.

b. *Continuum of Care Hold Harmless Need (HHN).* This is the amount of funds a CoC is eligible to receive where the total ARA of all SHP grants expiring in that CoC during the period beginning January 1, 2010, and ending December 31, 2010, exceeds the PPRN for that CoC. The HHN is the amount needed to fund the expiring renewal grants for one year.

c. *Continuum of Care Final Pro Rata Need (FPRN).* This is the higher amount of: (1) The PPRN or (2) the HHN. In the case of CoCs that are eligible and approved by HUD for CoC Hold Harmless Merger, the FPRN will be based on the summation of the FPRN of each merging CoC. For more information, see Section I.B.5.d.

d. *Continuum of Care Hold Harmless Merger.* This is a process where two or more CoCs that registered separately in the 2008 competition, at least one of which has a 2009 FPRN based on the HHN and another of which has a 2009 FPRN based on the PPRN, register together in the 2009 competition. Under this process, HUD will calculate the newly merged CoC's FPRN based on the higher FPRN for each CoC. This calculation is completed during CoC registration. The newly merged CoC may use this process for calculating FPRN for the 2009 competition only.

6. *Continuum of Care Primary Decision-Making Group.* This group manages the overall planning effort for the CoC, including, but not limited to, the following types of activities: Setting agendas for full Continuum of Care meetings, project monitoring, determining project priorities, and providing final approval for the CoC application submission. This body is also responsible for the implementation of the CoC's HMIS, either through direct oversight or through the designation of an HMIS-implementing agency. This group may be the CoC Lead Agency or may authorize another entity to be the CoC Lead Agency under its direction.

7. *Continuum of Care Registration.* The initial step in the electronic application process requires a CoC to claim geography and appoint a CoC Lead Agency that will be responsible for the submission of the electronic application to HUD. This process establishes the CoC's FPRN amount, as well as the bonus amounts that CoCs are eligible to request.

8. *Funding Category.* A funding category is a project submission category subject to NOFA selection priorities. There are four funding categories in the 2009 competition:

(1) The Shelter Plus Care Renewal Funding Category includes eligible S+C renewal projects.

(2) The Supportive Housing Program Renewal Funding Category includes eligible SHP renewals approved by the CoC.

(3) The Permanent Housing Bonus Funding Category covers one or more new SHP, S+C, and Section 8 SRO projects that, in total, may be no more than 15 percent of a CoC's Preliminary Pro Rata Need.

(4) The FPRN Funding Category covers new SHP, Section 8 SRO, and S+C projects submitted by CoCs that are in PPRN status and that have funds available in their FPRN. A CoC in PPRN status will only be able to submit new projects equal to the difference between the renewal amounts claimed in the SHP renewal funding category (2) above and these CoCs' FPRN.

Projects that are submitted in the Permanent Housing Bonus and FPRN Funding Categories that exceed the limits of the funding category in part will be reduced by HUD and projects that are totally outside the funding category limit will be automatically rejected.

9. *Grant Inventory Worksheet.* This is an inventory of all grants that are eligible for renewal in a particular year. In 2009, CoCs will be responsible for attaching the SHP and S+C grant inventory worksheets into e-snaps during the CoC registration process. HUD will use the grant inventories to determine the renewal projects that are eligible for award and the funding amount that they are eligible to receive. Therefore, CoCs must work with their local HUD field office to ensure that all eligible projects are included on these lists. For SHP projects, the correct annual renewal amounts must be recorded. For S+C, the correct total number of units must be included. CoCs will be asked to provide, at a minimum, the following information for each of its renewal projects:

- Name of Project
- Project Number
- Grant Term
- Expiration Date
- Component Type
- Previously approved budget amounts by activity/Unit Distribution (S+C)
- Annual Renewal Amount (SHP)/Total Number of Units (S+C)

C. CoC Planning Process

HUD will evaluate CoCs on the following criteria:

- CoC Housing, Services, and Structure;
- Homeless Needs and Data Collection;
- CoC Strategic Planning;
- CoC Performance; and
- Housing Emphasis.

There are several significant changes to these evaluation criteria from prior years. These changes are outlined in this Notice and will be discussed in detail in the 2009 NOFA. CoCs are encouraged to continue planning for the 2009 CoC Homeless Assistance competition in the same manner that they have in past years. This includes:

1. A CoC planning system is developed through a community-wide or region-wide process involving the coordination of nonprofit organizations (including those representing persons with disabilities), state and local government agencies, public housing agencies, community and faith-based organizations, other homeless providers, service providers, housing developers, private health care associations, law enforcement and corrections agencies, school systems, private funding providers, and homeless or formerly homeless persons, to successfully address the complex and interrelated problems related to homelessness. As in the past, this year HUD emphasizes its determination to integrate and align plans, including jurisdictional, state, and city 10-year plans (jurisdictional 10-year plans) encouraged by the U.S. Interagency Council on Homelessness, as well as, Consolidated Plans, into the CoC plans. These plans serve as a vehicle for a community to comprehensively identify all of its needs and to coordinate a plan for addressing them.

A CoC should address the specific needs of each homeless subpopulation: Those experiencing chronic homelessness, veterans, persons with serious mental illnesses, persons with substance abuse issues, persons with HIV/AIDS, persons with co-occurring diagnoses (these may include diagnoses of multiple physical disabilities or multiple mental disabilities or a combination of these two types), victims of domestic violence, youth, and any others. To ensure that the CoC system addresses the needs of homeless veterans, it is particularly important that CoCs involve veteran service organizations with specific experience in serving homeless veterans.

Through the American Recovery and Reinvestment Act, Congress designated $1.5 billion for HUD's Homelessness Prevention and Rapid Re-housing Program (HPRP). Through this new program, funds for prevention activities and rapid re-housing of individuals and families have been made available to eligible grantees, including states, territories, metropolitan cities, and urban counties. HPRP Grantees are required to coordinate with CoCs in the development of HPRP program and activities, including HMIS. CoCs will be required to describe the level of coordination between HPRP grantees and CoC leadership and/or members.

2. *CoC Geographic Area.* In deciding what geographic area a CoC will cover as part of its CoC strategy, CoCs should be aware that a key factor in being awarded funding will be the strength of a CoC process, when measured against the CoC rating factors described in the 2009 CoC NOFA. When a CoC determines what jurisdictions to include in its CoC strategy area, it should include only those jurisdictions that are fully involved in the development and implementation of the CoC strategy.

The more jurisdictions a CoC includes in the CoC, the larger the pro-rata need share that will be allocated to the strategy area. If a CoC is located in a rural county, it may wish to consider working with larger groups of contiguous counties to develop a regional or multi-county CoC strategy covering the combined service areas of these counties. The boundaries of identified CoC areas may not overlap.

HUD has determined that the merger of one or more existing CoCs into a new larger CoC can result in improved coordination of services, effective HMIS implementation, more efficient resource allocation and planning, and improved competitiveness for new resources. Merging smaller CoCs into a larger CoC also reduces the administrative burden of applying for funding at the local level and reviewing funding applications at the national level. HUD strongly encourages CoCs to merge where it is appropriate.

In recognition of these advantages, HUD has adopted a new CoC Hold Harmless Merger policy for calculating Final Pro Rata Need (FPRN) that ensures CoCs will not lose FPRN by merging. Please note, where two or more CoCs that are in the same need status (i.e., both in Hold Harmless Need status or both in Preliminary Pro Rata Need status) decide to merge, their FPRN will be calculated on the sum of the FPRN for all.

The new CoC Hold Harmless Merger procedure is applicable only when two or more CoCs registered in 2008 and whose 2009 FPRN separate calculation results in at least one CoC's FPRN being based upon Preliminary Pro Rata Need (PPRN) and at least one CoCs FPRN being based upon Hold Harmless Need (HHN). The following tables illustrate how FPRN would be calculated for four CoCs merging before and after the introduction of the new CoC Hold Harmless Merger policy. The new calculation method would provide the newly merged CoCs with additional funds in their FPRN to create new projects.

TABLE A—COC CONSOLIDATION WITHOUT HOLD HARMLESS MERGER CONCEPT

[FPRN = the greater of: (1) the CoC's combined PPRN or (2) the CoC's combined HHN]

Individual continuums	2009 Hold harmless need amount	2009 Preliminary program rata need amount
I	$100,000	$150,000
II	50,000	200,000
III	350,000	150,000
IV	750,000	250,000
Merged CoC Total (I–II–III–IV)	1,250,000	750,000

Step 1: Total all of the original CoC's 2009 HHN Amounts.
Step 2: Total all of the original CoC's 2009 PPRN Amounts.
Step 3: The higher amount from Step 1 and Step 2 becomes the FPRN for the Merged CoC.

TABLE B—COC CONSOLIDATION WITH HOLD HARMLESS MERGER CONCEPT

[FPRN = the combined CoC's FPRN amounts]

Individual continuums	2009 Hold harmless need amount	2009 Preliminary pro rata need amount	2009 Final pro rata need amount
I	$100,000	$150,000	$150,000
II	50,000	200,000	200,000
III	350,000	150,000	350,000
IV	750,000	250,000	750,000
Merged CoC Total	1,250,000	750,000	1,450,000

Step 1: Identify the original CoC's FPRN (the greater of PPRN or HHN).
Step 2: Total the original CoC's FPRNs.
Step 3: The total of the original CoC's FPRNs becomes the FPRN for the Merged CoC.

To determine whether CoCs may benefit from merging under this option, HUD will make available a Worksheet and Guidance on CoC Hold Harmless Merger eligibility and procedures. This guidance will be posted at *http://www.hudhre.info.*

3. *CoC Components.* A CoC system typically consists of five basic elements, as follows:

a. A system of outreach, engagement, and assessment for determining the needs and conditions of individuals or families who are homeless, and necessary support to identify, prioritize, and respond to persons who are chronically homeless;

b. Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing search counselors;

c. Transitional housing with appropriate supportive services to help homeless individuals and families prepare to make the transition to permanent housing and independent living;

d. Permanent housing, or permanent supportive housing, to help meet the long-term needs of homeless individuals and families; and,

e. Prevention strategies, which play an integral role in a community's plan to eliminate homelessness by effectively intervening for persons at risk of homelessness or those being discharged from public systems—e.g., corrections, foster care, mental health, and other institutions—so that they do not enter the homeless system. By law, prevention activities are ineligible activities in the three programs included in this notice, but are eligible for funding under the Emergency Shelter Grants (ESG) program, the new Homelessness Prevention and Rapid Re-Housing Program, and other programs.

4. *CoC Lead Person.* Regardless of the CoC structure and planning process, the 2009 electronic registration/application process will require that each CoC select two persons from the CoC Lead Agency who are authorized to submit the CoC application and the project applications to HUD.

5. *CoC Award.* In recognition of the need to announce and process renewal awards as quickly as possible to avoid hardship to grantees, HUD will implement a modified selection process. Under the modified selection process, the CoC will receive its renewal funding for all eligible renewal projects shortly after the CoC application has been submitted to HUD in a two-step process. CoC scores will determine the new project applications to be selected for award. The sum of funds awarded to a CoC renewal and new projects is the total amount of monies awarded to a CoC's eligible projects.

II. Completing the Registration Process for CoCS

In order to be eligible to submit an application in the FY 2009 Homeless Assistance competition, CoCs must register in the electronic database, *e-snaps,* prior to the beginning of the 2009 CoC competition. CoCs that applied for funds in 2008 will merely have to update registration information in *e-snaps.* The CoC registration process will begin no earlier than July 21, 2009, and close no earlier than August 31, 2009, at 4 p.m. ET. HUD will notify potential applicants of the exact registration opening and closing dates via the HUD Homeless Assistance listserv and through its websites located at *http://www.hud.gov* and *http://www.hudhre.info.* During the registration phase, CoCs will be asked to identify the CoC lead agency, contact information for lead agency staff, and the geography that the CoC is claiming. CoCs will also be required to attach

their SHP and S+C grant inventory worksheets. This process will not be part of *www.Grants.gov.* CoCs will receive confirmation from HUD concerning claimed geography, and PPRN and HHN amounts.

Through the CoC Registration process, CoCs will use the SHP and S+C grant inventory worksheets to establish those projects that are eligible for renewal in 2009. Projects will be considered eligible for renewal in the 2009 CoC competition if they expire in Calendar Year 2010 and if they meet all other HUD requirements regarding performance and capacity. It will be at HUD's discretion to award or not award any renewal project that has any significant capacity issues related to performance and/or financial problems or has unresolved monitoring findings.

In 2009, CoCs will be required to verify that all renewals are correctly included on the grant inventory worksheet, and will be required to add missing projects as needed. In 2009, it will be critical for CoCs to pay close attention to any grants that were originally awarded in 2002 or 2003 that have not yet been renewed. As stated previously, the funds associated with these grants will be available only for use through the end of Federal Fiscal Years (FFY) 2009 and 2010, respectively. After that date, these funds will automatically be returned to the U.S. Treasury and will no longer be available for expenditure, even if the end date established in the grant agreement is later. More specific instructions will be provided to local HUD field offices for the following situations:

• *2002 grant expires in 2009 but did not renew in 2008 competition and did not extend into 2010 or later*—The grant will not be renewed.

• *2002 grant expires in, or has been extended to, 2010 or beyond*–Renewal must be requested in 2009. To be eligible for renewal in this year's competition, recipient must operate the grant into 2010 using their own funds, until the renewal grant agreement is signed. Renewal grant agreements must be signed no later than March 31, 2010, or the renewal award will be deselected. The renewal grant will authorize reimbursement of the recipient's expenditures for eligible costs incurred between September 30, 2009, and the date the renewal grant agreement is signed. The Operating Start Date in LOCCS for each of these renewal grant agreements will be adjusted to October 1, 2009.

• *2003 grant expires in, or has been extended to, 2010 or beyond*–Renewal must be requested in 2009. Renewal grant agreements must be signed no later than September 30, 2010 or the renewal award will be deselected. The Operating Start Date in LOCCS for each of these renewal grant agreements will be adjusted to October 1, 2010.

It is imperative that grantees adhere to the time limitation on the funds contained in the law. No extensions will be approved beyond the statutory availability of the funds for the grant.

In 2009, CoCs that are in PPRN status will be permitted to request one, 2, or 3 years of funding for SHP renewal projects, up to the maximum amount of available pro rata need. HUD reserves the right to not allow multi-year grant term requests for renewal projects in future competitions; therefore, CoCs may want to consider moving to one-year renewals, to maximize funding.

HUD will hold a satellite broadcast regarding the CoC registration process on July 15, 2009, from 2 p.m. to 4 p.m. Eastern Time. This broadcast may be viewed at *http://www.hud.gov/webcasts.* This broadcast will also be archived on this website. On-line training for CoC Registration may be accessed at *http://www.hudhre.info.*

HUD will post the HUD-defined CoC names and numbers as well as a list of each geographical area with its Preliminary Pro-Rata Need amount on *http://www.hud.gov* and *http://www.hudhre.info/index.cfm?do=viewCoCGrantMaterials.* Existing and proposed CoCs must register their HUD-defined CoC and claimed geography with HUD through e-snaps. If a CoC does not have a HUD-defined name, it should contact the HUD Field Office serving its area.

In the instance that one or more CoC planning bodies claim one or more of the same geographies, HUD shall determine which CoC has the best claim for the geography, based upon past experience, as well as the participation and desires of the predominant number of homeless service providers in the disputed geography. The HUD decision on allocating geography is final, and competing CoCs shall be notified of HUD's determination. If a CoC omits geography, HUD will not add it back in.

III. Changes for 2009 CoC NOFA

The following is a list of major changes to the 2009 CoC NOFA:

1. In an effort to streamline the renewal award process in 2009, HUD has modified the selection process so that eligible SHP and S+C renewal projects will be awarded as quickly as possible. New projects will be awarded, after the completion of project threshold review and the scoring of the project and the CoC applications. A project application will be required for new and renewal projects. However, for renewal projects, applicants will only be verifying basic project and budget information, selecting grant term request, and certifying request of renewal.

2. In 2009, CoCs in HHN status will not be able to reallocate funds to new projects. New project applications to be submitted must be either new projects within FPRN for CoCs in PPRN status or projects that will be funded with permanent housing bonus funds. HUD reserves the right to allow HHN Reallocation in future competitions (see Section I.B.5.d of this notice for a detailed explanation).

3. HUD has determined that the merger of one or more existing CoCs into a new merged, larger CoC can result in effective and efficient planning, program delivery, HMIS implementation, and CoC competitiveness. In recognition of these advantages, HUD has adopted a new CoC Hold Harmless Merger policy for calculating FPRN that ensures CoCs will not lose FPRN by merging (see Section I.B.5.d of this notice).

4. The Certification of Consistency with the Consolidated Plan is a statutory form that must be submitted as part of the application. Previously, project applicants were responsible for submitting the associated Consolidated Plan certification along with their project application. New this year, CoCs will be responsible for attaching the certification for all projects, new and renewal, that are requesting funding to the CoC portion of the application. CoCs will attach a signed form for each jurisdiction that includes the list of all associated new and renewal projects.

5. HUD encourages all projects to utilize Neighborhood Stabilization Program (NSP) and any HUD-managed American Recovery and Reinvestment Act (ARRA) programs, i.e., Community Development Block Grant-Recovery (CDBG–R), Tax Credit Assistance Program (TCAP), NSP1, NSP2, etc., as a source of leveraging. CoCs that identify coordination with NSP and any HUD-managed ARRA programs may receive extra points during the CoC application review process.

6. As part of the CoC application, CoCs will be required to address how they are participating in the new HPRP, as indicated in the substantial amendment to the Consolidated Plan.

7. As a reminder, HUD will assess, as part of the project review process, applicant eligibility, capacity, and quality. This review also considers an applicant's spending history on current homeless assistance grants, if

applicable. HUD expects that grantees should be making draw-downs at least quarterly. HUD will be looking at this for both new project applications and as a condition of renewal awards.

8. Also as a reminder, up to 8 percent of an S+C grant may be used for eligible incurred administrative costs associated with administration of housing assistance. These funds must be drawn down at least quarterly. Draws must be for eligible expenses already incurred in the period immediately preceding the draw or to be incurred during the period immediately following the draw. HUD will recapture all unspent funds at the end of the grant term. If administrative costs exceed 8 percent, recipients must pay for these costs from another source.

9. Beginning in 2009, applicants for the S+C program will be permitted to apply only for 100 percent of the Fair Market Rent (FMR) and will no longer be permitted to request any amount that is greater or less than the local FMR.

10. The calculation of housing emphasis and leveraging for the CoC score will be calculated using only new project requests.

11. For 2009, the Samaritan Bonus Initiative will be replaced with a Permanent Housing Bonus. CoCs will be able to use funds for homeless disabled individuals and families or for chronically homeless individuals. As creating new permanent housing beds for chronically homeless individuals is still a HUD priority, HUD strongly encourages CoCs to use at least a portion of available bonus funds to create a project that will exclusively serve the chronically homeless.

Dated: August 20, 2009.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. E9–21211 Filed 9–1–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5200–FA–04]

Announcement of Funding Awards for the Rural Housing and Economic Development Program Fiscal Year 2008

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Rural Housing and Economic Development Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Jackie L. Williams, PhD, Director, Office of Rural Housing and Economic Development, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7137, Washington, DC 20410–7000; telephone (202) 708–2290 (this is not a toll free number). Hearing- and- speech impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The Rural Housing and Economic Development program was authorized by the Department of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act of 1999. The competition was announced in the NOFA published April 28, 2008 (73 FR 23052). Applications were rated and selected for funding on the basis of selection criteria contained in that notice.

The Catalog of Federal Domestic Assistance number for this program is 14.250.

The Rural Housing and Economic Development Program is designed to build capacity at the State and local level for rural housing and economic development and to support innovative housing and economic development activities in rural areas. Eligible applicants are local rural non-profit organizations, community development corporations, federally recognized Indian tribes, State housing finance agencies, and State community and/or economic development agencies. The funds made available under this program were awarded competitively, through a selection process conducted by HUD. Prior to the rating and ranking of this year's applications, Southern Financial Partners in Arkadelphia, Arkansas, for the Fiscal year 2008 competition, was awarded a total of $149,683 as a result of funding errors during the previous year's funding. For the Fiscal year 2008 competition, a total of $16,889,633 was awarded to 60 projects nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A to this document.

Dated: August 10, 2009.

Mercedes Márquez,

Assistant Secretary for Community Planning Development.

FY 2008 RURAL HOUSING AND ECONOMIC DEVELOPMENT PROGRAM GRANTEES

Tribal Government of St. Paul Island	AK	$300,000.00
Organized Village of Kasaan	AK	300,000.00
Hale Empowerment and Revitalization Organization, Inc	AL	300,000.00
Collaborative Solutions, Inc.	AL	300,000.00
Crawford-Sebastian Community Development Council, Inc.	AR	250,344.00
Moenkopi Developers Corporation, Inc.	AZ	298,626.00
Comite de Bien Estar, Inc.	AZ	300,000.00
Hopi Tribe	AZ	296,800.00
International Sonoran Desert Alliance	AZ	300,000.00
White Mountain Apache Housing Authority	AZ	300,000.00
Nogales Community Development Corporation (NCD)	AZ	300,000.00
Bear River Band of Rohnerville Rancheria	CA	300,000.00
Timbisha Shoshone Tribe	CA	124,000.00
Karuk Tribe of California	CA	300,000.00
Bishop Paiute Tribe	CA	296,410.00
The Relational Culture Institute	CA	300,000.00
Big Pine Paiute Tribe	CA	284,968.00

FY 2008 RURAL HOUSING AND ECONOMIC DEVELOPMENT PROGRAM GRANTEES—Continued

Tule River Tribal Council	CA	300,000.00
Empowerment Alliance of SW Florida, CDC	FL	300,000.00
Young Adult Development in Action, Inc.	KY	300,000.00
People's Self-Help Housing, Inc.	KY	300,000.00
Low Income Housing Coalition of East Kentucky, Inc.	KY	300,000.00
McCreary County Community Housing Development Corporation	KY	300,000.00
Frontier Housing, Inc.	KY	300,000.00
Southeast Kentucky Economic Development Corporation	KY	300,000.00
Louisiana Technical College Tallulah Foundation	LA	300,000.00
START Corporation	LA	300,000.00
SEVENTH DISTRICT PAVILION, INC.	LA	300,000.00
Four Directions Development Corporation	ME	299,367.00
Midwest Minnesota Community Development Corporation	MN	200,000.00
Fond du Lac Band of Lake Superior Chippewa	MN	300,000.00
Northcountry Cooperative Foundation	MN	250,000.00
Community Developers of Beaufort-Hyde, Inc.	NC	210,400.00
Hollister R.E.A.C.H., Inc.	NC	299,850.00
Dawson County Area Economic Development Council	NE	287,724.00
Ohkay Owingeh Housing Authority	NM	300,000.00
New Mexico Mortgage Finance Authority	NM	300,000.00
TIERRA DEL SOL HOUSING CORPORATION	NM	300,000.00
Community Area Resource Enterprise	NM	300,000.00
Picuris Pueblo	NM	300,000.00
Habitat for Humanity of Taos, Inc.	NM	300,000.00
Center of Southwest Culture, Inc.	NM	65,714.00
Little Dixie Community Action Agency, INC	OK	300,000.00
Confederated Tribes of Siletz Indians	OR	299,871.00
Umatilla Reservation Housing Authority	OR	300,000.00
Community And Shelter Assistance Corp.	OR	300,000.00
Ceiba Housing and Economic Development Corporation	PR	300,000.00
Woonsocket Neighborhood Development Corporation d/b/a NWBRV	RI	300,000.00
The Lakota Funds	SD	300,000.00
Thunder Valley CDC	SD	299,775.00
Oglala Sioux Tribe Partnership for Housing, Inc.	SD	136,000.00
Volunteer Housing Development Corporation	TN	289,864.00
Community Development Corporation of Brownsville	TX	300,000.00
La Fe Community Development Corporation	TX	300,000.00
Community Development Corporation of Utah	UT	300,000.00
Aneth Community Development Corporation	UT	299,920.00
Makah Indian Tribe	WA	300,000.00
Southern Puget Sound Inter-tribal Housing Authority	WA	300,000.00
NiiJii Small Business Loan Fund, Inc.	WI	300,000.00
St. Croix Chippewa Indians of Wisconsin	WI	100,000.00
		16,889,633.00

[FR Doc. E9–21207 Filed 9–1–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan/ Wilderness Management Plan/Draft Environmental Impact Statement, Apostle Islands National Lakeshore, WI

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of availability of the Draft General Management Plan/ Wilderness Management Plan/Draft Environmental Impact Statement, Apostle Islands National Lakeshore, WI.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), the National Park Service (NPS) announces the availability of the Draft General Management Plan (GMP)/Wilderness Management Plan (WMP)/ Environmental Impact Statement (EIS) for Apostle Islands National Lakeshore, Wisconsin.

This document provides a framework for management of Apostle Islands National Lakeshore and the Gaylord Nelson Wilderness, including its resources, visitors, and facilities, for the next 15–20 years. The document describes four alternatives for management of the park, including a no-action alternative, and analyzes the environmental impacts of those alternatives.

The NPS preferred alternative would focus on providing opportunities for more people to have an island experience. Additional transportation opportunities would be sought to encourage visitors to come to Sand, Basswood, and Oak Islands. Some additional visitor facilities would be developed on these islands. There would be no change in the number of public docks in the park, but some docks would be relocated, improved, or expanded. The Bayfield Visitor Center would be moved closer to the water to improve contact with visitors and to be located with an operations center. The Little Sand Bay Visitor Center would be replaced with a visitor contact station. A new ranger station and accessible beach ramp would be developed at Meyers Beach. Two light stations would be restored or rehabilitated, similar to the Raspberry Island light station. The wilderness area would continue to be managed as it is now, with the exception of the Oak Island group campsite being removed and the site restored.

DATES: There will be a 60-day public review period for comments on this document. Comments on the GMP/WMP/EIS must be received no later than 60 days after the Environmental Protection Agency publishes its notice of availability in the **Federal Register.** Public open houses will be held at Bayfield and Madison, Wisconsin, and in Duluth and the Twin Cities, Minnesota. Specific dates, times, and locations will be announced in the local media, on the Internet at *http://www.nps.gov/apis,* and will also be available by contacting the park's headquarters at 715–779–3398, extension 102.

ADDRESSES: Copies of the GMP/WMP/EIS will be available for public inspection online at *http://parkplanning.nps.gov/apis,* by e-mail message at *apis_comments@nps.gov,* or by request by writing to Mr. Jim Nepstad, Chief of Planning and Resource Management, Apostle Islands National Lakeshore, Route 1, Box 4, Bayfield, WI 54814; telephone: 715–779–3398, extension 102. The document can be picked up in person at the park's headquarters at 415 Washington Avenue, Bayfield, WI.

SUPPLEMENTARY INFORMATION: Persons wishing to comment may do so by any one of several methods. They may attend the open houses noted above. They may comment via the NPS Planning, Environment and Public Comment Web site at *http://parkplanning.nps.gov/apis.* They may mail comments to Mr. Jim Nepstad, Chief of Planning and Resource Management, Apostle Islands National Lakeshore, Route 1, Box 4, Bayfield, WI 54814. Finally, they may hand-deliver comments to the park headquarters at 415 Washington Avenue, Bayfield, WI.

Before including your address, telephone number, electronic mail address, or other personal identifying information in your comments, 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Nepstad, Chief of Planning and Resource Management Apostle Islands National Lakeshore, Route 1, Box 4, Bayfield, WI 54814; telephone 715–779–3198, extension 102; or e-mail at *apis_comments@nps.gov.*

Dated: July 2, 2009.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. E9–21192 Filed 9–1–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM915000 L14200000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management (BLM), Santa Fe, New Mexico, 30 calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The plat representing the dependent resurvey of a portion of the north and west boundaries, a portion of the subdivisional lines, and a metes and bounds survey in sections 6 and 7, Township 6 North, Range 5 East of the New Mexico Principal Meridian, New Mexico, accepted August 11, 2009, for Group 1040 NM.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the survey of the subdivision of section 31, Township 7 North, Range 5 East of the New Mexico Principal Meridian, New Mexico, accepted August 11, 2009, for Group 1040 NM.

The plat, in seven sheets, representing the dependent resurvey of a portion of the north and west boundaries, a portion of the subdivisional lines and certain mining claim boundaries in sections 3 through 8, and the survey of the subdivision of sections 3 through 8, Township 18 South, Range 12 West of the New Mexico Principal Meridian, New Mexico, accepted June 24, 2009, for Group 1081 NM.

The plat, in two sheets, representing the dependent resurvey of a portion of the New Mexico and Colorado State Boundary Line, and a portion of the New Mexico and Arizona State Boundary Line. The dependent resurvey of the south and east boundaries, the survey of the subdivisional lines, and the subdivision of certain sections, Fractional Township 32 North, Range 21 West of the New Mexico Principal Meridian, New Mexico, accepted July 2, 2009, for Group 1066 NM.

The supplemental plat representing Township 22 South, Range 2 East of the New Mexico Principal Meridian, New Mexico, accepted June 25, 2009.

The Protraction Diagram representing Township 22 North, Range 3 West of the New Mexico Principal Meridian, New Mexico, accepted August 4, 2009.

The Protraction Diagram representing Township 22 North, Range 2 West of the New Mexico Principal Meridian, New Mexico, accepted August 4, 2009.

The Protraction Diagram representing Township 22 North, Range 4 West of the New Mexico Principal Meridian, New Mexico, accepted August 4, 2009.

The Protraction Diagram representing Township 23 North, Range 2 West of the New Mexico Principal Meridian, New Mexico, accepted August 4, 2009.

The Protraction Diagram representing Township 23 North, Range 3 West of the New Mexico Principal Meridian, New Mexico, accepted August 4, 2009.

The Protraction Diagram representing Township 23 North, Range 4 West of the New Mexico Principal Meridian, New Mexico, accepted August 4, 2009.

The Protraction Diagram representing Township 24 North, Range 4 West of the New Mexico Principal Meridian, New Mexico, accepted August 4, 2009.

The Protraction Diagram representing Township 26 North, Range 3 West of the New Mexico Principal Meridian, New Mexico, accepted August 4, 2009.

The Protraction Diagram representing Township 21 North, Range 2 West of the New Mexico Principal Meridian, New Mexico, accepted August 4, 2009.

FOR FURTHER INFORMATION, CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–438–7537, or *Marcella_Montoya@nm.blm.gov,* for assistance.

Robert A. Casias,

Chief, Branch of Cadastral Survey.

[FR Doc. E9–21144 Filed 9–1–09; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–685]

In the Matter of Certain Flash Memory and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 31, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Samsung Electronics Co., Ltd. of Korea. A letter supplementing the complaint was filed on August 21, 2009. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,930,050 and 5,740,065. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2599.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 27, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain flash memory or products containing same by reason of infringement of one or more of claims 1, 19, 31, and 35 of U.S. Patent No. 6,930,050 and claims 1–8, 11, and 12 of U.S. Patent No. 5,740,065, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Samsung Electronics Co., Ltd., 416 Maetan-3dong, Yeongtong-gu, Suwon-City, Gyeonggi-do, Korea 443–742.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Spansion, Inc., 915 DeGuigne Drive, P.O. Box 3453, Sunnyvale, CA 94088;
Spansion LLC, 915 DeGuigne Drive, P.O. Box 3453, Sunnyvale, CA 94088;
Spansion Japan Limited, Cube Kawasaki, 1–14, Nisshin-cho, Kawasaki-hu, Kawasaki-shi, Kanagawa, 210–0024, Japan;
Alpine Electronics, Inc., 20–1 Yoshima-Kogyodanchi, Iwaki, Fukushima 970–1192, Japan;
Alpine Electronics of America, Inc., 19145 Gramercy Place, Torrance, CA 90501;
D–Link Corporation, No. 289, Sinhu 3rd Road, Neihu District, Taipei City 114 Taiwan;
D–Link Systems, Inc., 17595 Mt. Hermann Street, Fountain View, CA 92708;
Slacker, Inc., 16935 W. Bernardo Dr. Suite 270, San Diego, CA 92127;
Synology Inc., 2F–3, No. 106, Chang An W. Rd., Taipei 10351, Taiwan;
Synology North America Corp., 2899 152 Ave. NE., Redmond, WA 98052;
Shenzhen Egreat Co., Ltd., 4/F, 1 Building, Sha San Chuang Ye Industrial Park, Sha Jing, Bao An, Shenzhen, China;
Appro International, Inc., 446 South Abbot Avenue, Milipitas, CA 95035.

(c) The Commission investigative attorney, party to this investigation, is Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against a respondent.

By order of the Commission.

Issued: August 27, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Secretary to the Commission.

[FR Doc. E9–21125 Filed 9–1–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 14, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 14, 2009.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of August 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 6/29/09 and 7/2/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
71438	The Gillette Company (Comp)	Boston, MA	06/29/09	06/24/09
71439	Levi Strauss and Company (State)	San Francisco, CA	06/29/09	06/26/09
71440	O'Bryan Brothers, Inc. (State)	Leon, IA	06/29/09	06/26/09
71441	ITT Flow Control/Cape Ann Industrial Park (Comp)	Gloucester, MA	06/29/09	06/23/09
71442	Carlisle Finishing, LLC/Int'l Textile Grp (Comp)	Carlisle, SC	06/29/09	06/25/09
71443	Applied Materials, Inc. (Rep)	Boise, ID	06/29/09	06/25/09
71444	Applied Materials, Inc., c/o Intel Corp. M/S RR5–367 (Rep)	Rio Rancho, NM	06/29/09	06/25/09
71445	Applied Materials, Inc—Sandstone (Rep)	Sandstone, VA	06/29/09	06/25/09
71446	Applied Materials, Inc.—Santa Clara (95054)	Santa Clara, CA	06/29/09	06/25/09
71447	Applied Materials, Inc.—Austin (Rep)	Austin, TX	06/29/09	06/25/09
71448	Applied Materials, Inc.—Lehi (Rep)	Lehi, UT	06/29/09	06/25/09
71449	The Nieslen Company (Wkrs)	Omaha, NE	06/29/09	06/19/09
71450	Hewlett Packard (Comp)	Boise, ID	06/29/09	06/24/09
71451	Doranco, Inc. (State)	Mansfield, MA	06/29/09	06/26/09
71452	IBM (State)	Newark, NJ	06/29/09	06/29/09
71453	Carling Technologies, Inc. (State)	Plainville, CT	06/29/09	06/26/09
71454	American Hollow Boring Co., Inc. (Comp)	Erie, PA	06/29/09	06/26/09
71455	Wisconsin Casting (USW)	Browntown, WI	06/29/09	06/26/09
71456	Knitht Celotex (State)	Sunbury, PA	06/29/09	06/29/09
71457	Oxford Collections (Wkrs)	Gaffney, SC	06/29/09	06/25/09
71458	Form Tech Industries (UAW)	Detroit, MI	06/29/09	06/26/09
71459	Eclipse Aviation Corporation (Wkrs)	Albuquerque, NM	06/29/09	06/25/09
71460	Warner Electric (USW)	So. Beloit, IL	06/29/09	06/25/09
71461	Arrow Electronics, Inc. (Wkrs)	Melville, NY	06/29/09	06/23/09
71462	CSG Openline (Wkrs)	Redmond, WA	06/29/09	06/29/09
71463	Freedom Plastic (USW)	Janesville, WI	06/29/09	06/26/09
71464	A and L Lumber Company (Wkrs)	Tryon, NC	06/29/09	06/22/09
71465	Judieth Leiber (Wkrs)	Secaucus, NJ	06/30/09	06/29/09
71466	Borg Warner Diversified Transmission Products (Comp)	Muncie, IN	06/30/09	06/24/09
71467	Phillips and Temro, Inc. (Comp)	Eden Prairie, MN	06/30/09	06/24/09
71468	Electronic Data Systems (Wkrs)	Pontiac, MI	06/30/09	06/25/09
71469	Acutec Precision Machining Inc. (Wkrs)	Saegertown, PA	06/30/09	06/26/09
71470	Unifi, Inc./Plant #3 (Comp)	Madison, NC	06/30/09	06/29/09
71471	Syncreon.US (UAW)	Fenton, MO	06/30/09	06/26/09
71472	Ford Motor Credit Company (Wkrs)	Dearborn, MI	06/30/09	06/16/09
71473	Meritor Heavy Vehicle Systems (Comp)	Forest City, NC	06/30/09	06/29/09
71474	The Uttermost Company (Wkrs)	Rocky Mount, VA	06/30/09	06/01/09
71475	Akzo Nobel Coatings, Inc. (Wkrs)	Troy, MI	06/30/09	06/29/09
71476	Lyondellbasell Advanced Polyolefins (Comp)	Mansfield, TX	06/30/09	06/18/09
71477	SER Enterprise/DHL Logistics (Wkrs)	Ogden, UT	06/30/09	06/26/09
71478	United States Gypsum (Comp)	Santa Fe Springs, CA	06/30/09	06/29/09
71479	Eastman Kodak Company (Wkrs)	Rochester, NY	06/30/09	06/25/09
71480	Hydro Aluminum Precision Tubing North America (UAW)	Adrian, MI	06/30/09	06/26/09
71481	Koppers (USW)	Clairton, PA	06/30/09	06/29/09
71482	Trane Pueblo (Comp)	Pueblo, CO	06/30/09	06/22/09
71483	Continental Airlines (Wkrs)	Houston, TX	06/30/09	06/26/09
71484	Ontario Die Company of Texas (Comp)	El Paso, TX	06/30/09	06/23/09
71485	Albaugh, Inc. (Wkrs)	St. Joseph, MO	06/30/09	06/23/09
71486	Northwest Metals, Inc. (Wkrs)	Okolona, OH	06/30/09	06/26/09
71487	Work Skills Corporation (Comp)	Brighton, MI	06/30/09	06/17/00
71488	BMJ Mold and Engeering (Wkrs)	Kokomo, IN	06/30/09	06/24/09
71489	Manpower—Dubois (Wkrs)	Dubois, PA	06/30/09	06/26/09
71490	Helicranes, Inc. (Comp)	Bellingham, WA	06/30/09	06/29/09
71491	Teleperformance (Wkrs)	Salt Lake City, UT	06/30/09	06/26/09
71492	Cholestech Corporation (Comp)	Hayward, CA	06/30/09	06/29/09

APPENDIX—Continued

[TAA petitions instituted between 6/29/09 and 7/2/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
71493	Evergreen Shipping Agency (America) Corp. (State)	Jersey City, NJ	06/30/09	06/30/09
71494	Johns Manville (Wkrs)	Spartanburg, SC	07/01/09	06/23/09
71495	IPSCO Koppel Tubulars Corporation (Wkrs)	Beaver Falls, PA	07/01/09	06/17/09
71496	Wikel/Allen Express DHL Contractor (Wkrs)	Cape Girardeau, MO	07/01/09	06/29/09
71497	Telerx/Merck (Wkrs)	Horsham, PA	07/01/09	06/29/09
71498	DuFresne Manufacturing (State)	Vadnaus Heights, MN	07/01/09	06/30/09
71499	Sara Lee Corporation (Comp)	Downers Grove, IL	07/01/09	06/30/09
71500	Datamax—O'Neil Corporation (Wkrs)	Irvine, CA	07/01/09	06/23/09
71501	Sony Electronics, Inc. (Comp)	San Diego, CA	07/01/09	06/22/09
71502	Charleston Stamping and Manufacturing (Comp)	South Charleston, WV	07/01/09	06/20/09
71503	ArcelorMittal USA (USWA)	East Chicago, IN	07/01/09	06/29/09
71504	United Auto Workers Local 98 (UAW)	Indianapolis, IN	07/01/09	06/18/09
71505	The Timken Company (USW)	Canton, OH	07/01/09	07/01/09
71506	ExxonMobil Corporation (Wkrs)	Akron, OH	07/01/09	06/25/09
71507	Eastman Kodak Company (State)	Norwalk, CT	07/01/09	06/30/09
71508	Swiss Plywood Corporation (Wkrs)	Tell City, IN	07/01/09	06/29/09
71509	Walbro Engine Management, LLC (Comp)	Tucson, AZ	07/01/09	06/09/09
71510	Kurz-Kasch (USW)	Newcomerstown, OH	07/01/09	06/30/09
71511	Jeld-Wen Engineering (Wkrs)	Klamath Falls, OR	07/01/09	06/26/09
71512	Allegheny Too and Manufacturing Co., Inc. (Comp)	Meadville, PA	07/01/09	06/29/09
71513	DeLong Sportswear, Corporate Offices (State)	Grinnell, IA	07/01/09	06/30/09
71514	Lexington Home Brands, Inc. (Wkrs)	Thomasville, NC	07/01/09	06/23/09
71515	Hoosier Spline Broach Corporation (Wkrs)	Kokomo, IN	07/01/09	06/24/09
71516	IHSS/Nazi Mokhtari (State)	Mission Hills, CA	07/02/09	07/01/09
71517	Idaho Timber of Montana, LLC (Comp)	Whitefish, MT	07/02/09	06/30/09
71518	Johnson Controls, Inc. (Comp)	Earth City, MO	07/02/09	06/29/09
71519	Cooper-Standard Automotive (Wkrs)	Novi, MI	07/02/09	06/30/09
71520	USP Holding Corp. dba US Products (Comp)	Coeur d'Alene, ID	07/02/09	07/01/09
71521	Qimonda North America Corporation (Wkrs)	Williston, VT	07/02/09	06/29/09
71522	Coldform, Inc. (State)	Terryville, CT	07/02/09	07/01/09
71523	Gates Corporation (Comp)	Rockford, IL	07/02/09	07/01/09
71524	Fluid Routing Solutions (UAW)	Big Rapids, MI	07/02/09	06/03/09
71525	Results Duffield (Wkrs)	Duffield, VA	07/02/09	07/02/09
71526	Cinram, Inc. (Wkrs)	Richmond, IN	07/02/09	06/30/09
71527	Pomeroy IT Solutions (Wkrs)	Hebron, KY	07/02/09	06/26/09
71528	United States Gypsum (Comp)	La Mirada, CA	07/02/09	06/29/09
71529	Sara Lee Corporation (Wkrs)	Earth City, MO	07/02/09	07/01/09
71530	Nordson Corporation (Union)	West Lake, OH	07/02/09	07/01/09
71531	Newton Transporttion Company, Inc. (Comp)	Hudson, NC	07/02/09	07/02/09
71532	Sitel Worldwide Corporation (Wkrs)	Nashville, TN	07/02/09	06/30/09
71533	Mestek, Inc. (IAMAW)	South Windsor, CT	07/02/09	07/01/09
71534	SP News Print (AWPPW)	Newberg, OR	07/02/09	07/01/09
71535	Cequent Performance Product—Trailer Div. (Comp)	Mosinee, WI	07/02/09	06/24/09
71536	Symmetry Medical Cases (Comp)	Auburn, ME	07/02/09	07/01/09
71537	SBNA Services (UAW)	Kenton, OH	07/02/09	07/02/09
71538	Ricerca Biosciences, LLC (Comp)	Concord, OH	07/02/09	06/26/09
71539	Plum Creek (Comp)	Columbia Falls, MT	07/02/09	07/01/09
71540	Philips Products (Wkrs)	Stayton, OR	07/02/09	07/01/09
71541	Minority Auto Handling Specialist (Union)	Fenton, MO	07/02/09	07/01/09
71542	City Service Cleaners (7/1/09)	Lenoir, NC	07/02/09	07/01/09
71543	Wesley Hall Furniture, Inc. (Wkrs)	Hickory, NC	07/02/09	07/02/09
71544	Arenal Casting, Inc. (Wkrs)	Sandish, MI	07/02/09	07/01/09
71545	Agilent Technologies, Inc. (State)	Loveland, CO	07/02/09	07/01/09

[FR Doc. E9–21153 Filed 9–1–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the

determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 14, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 14, 2009.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 24th day of August 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 7/6/09 and 7/10/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
71546	Bodet-Horst (Comp)	Mt. Airy, NC	07/06/09	07/06/09
71547	Liberty Aerospace (Wkrs)	Melbourne, FL	07/06/09	06/15/09
71548	U.S. Steel Tubular Products (USW)	Houston, TX	07/06/09	07/03/09
71549	TMK IPSCO (Wkrs)	Blytheville, AR	07/06/09	07/03/09
71550	IBM (Wkrs)	Chicago, IL	07/06/09	07/01/09
71551	Freescale Semiconductor (Wkrs)	Austin, TX	07/06/09	07/01/09
71552	EDS, an HP Company (Comp)	Englewood, CO	07/06/09	07/02/09
71553	Kersey Tool and Die Co (Comp)	Kersey, PA	07/06/09	07/01/09
71554	International Automotive Components (IAC) (Wkrs)	Huron, OH	07/06/09	06/14/09
71555	Carbone of America (Wkrs)	St. Marys, PA	07/06/09	06/29/09
71556	North River Boats (Wkrs)	Roseburg, OR	07/06/09	06/23/09
71557	Electronic Data Systems (Comp)	Plano, TX	07/07/09	06/24/09
71558	Atlas Paessed Metals (Wkrs)	DuBois, PA	07/07/09	06/18/09
71559	Gresham Chrysler—Jeep, Inc. (Wkrs)	Gresham, OR	07/07/09	06/29/09
71560	Newton Transportation Company, Inc. (Comp)	Hudson, NC	07/07/09	07/02/09
71561	Severstal Wheeling, Inc. (USW)	Wheeling, WV	07/07/09	06/17/09
71562	Magneti Marelli Powertrain USA, LLC (Comp)	Sanford, NC	07/07/09	07/07/09
71563	KB Alloys, LLC (Comp)	Robards, KY	07/07/09	07/07/09
71564	Boby King Automotive (Wkrs)	Winston-Salem, NC	07/07/09	07/01/09
71565	Marinco (Wkrs)	Napa, CA	07/07/09	07/03/09
71566	Oxford Collections (Wkrs)	Gaffney, SC	07/07/09	06/25/09
71567	Patsy Aiken Designs (Wkrs)	Raleigh, NC	07/07/09	06/19/09
71568	C. K. Knitting, Inc. (Comp)	Fort Payne, AL	07/07/09	07/07/09
71569	BBI (IUECWA)	Sidney, OH	07/07/09	06/24/09
71570	Sekisui Voltek, LLC (Wkrs)	Coldwater, MI	07/07/09	07/07/09
71571	Interdent Service Corporation (Comp)	El Segundo, CA	07/07/09	06/11/09
71572	Severstal Wheeling, Inc. (Wkrs)	Steubenville, OH	07/07/09	06/17/09
71573	Mountain State Carbon (USW)	Follansbee, WV	07/07/09	06/17/09
71574	Win On, Inc. (Wkrs)	Brooklyn, NY	07/07/09	06/23/09
71575	A–Stamp Ind. (Wkrs)	Bryan, OH	07/07/09	07/06/09
71576	American Axle and Manufacturing Company, Inc. (State)	Detroit, MI	07/07/09	06/15/09
71577	Dallas Industries (48913)	Troy, MI	07/07/09	06/15/09
71578	Shore to Shore, Inc. (Wkrs)	Miamisburg, OH	07/07/09	06/26/09
71579	United Air Lines, Inc. (IBT)	Jamaica, NY	07/08/09	07/06/09
71580	Goodyear Tire and Rubber Company (Wkrs)	Danville, VA	07/08/09	07/02/09
71581	Global Engine Manufacturing Alliance, LLC (State)	Dundee, MI	07/08/09	07/06/09
71582	Eastman Kodak Company (Wkrs)	Rochester, NY	07/08/09	07/03/09
71583	Data 2 Logistics (State)	Grand Blanc, MI	07/08/09	06/15/09
71584	Chrysler LLC, Quality Egineering Center (State)	Auburn Hills, MI	07/08/09	06/15/09
71585	Alyeska Pipeline Service Company (Comp)	Anchorage, AK	07/08/09	07/06/09
71586	Mars Petcare US, Inc. (State)	Vernon, CA	07/08/09	07/07/09
71587	Magna Donnelly (Wkrs)	Alto, MI	07/08/09	07/06/09
71588	Weathershield Manufacturing (Wkrs)	Ladysmith, WI	07/08/09	07/07/09
71589	Hart Schaffner and Marx/Thorngate Ltd. (Wkrs)	Chicago, IL	07/08/09	07/07/09
71590	General Pattern Company (State)	Blaine, MN	07/08/09	07/07/09
71591	Aztec Machinery Company, Inc. (Comp)	Ivyland, PA	07/08/09	06/25/09
71592	DuBois Chemicals (Wkrs)	Sharonville, OH	07/08/09	06/24/09
71593	UFE Incorporated (Comp)	Osceola, WI	07/08/09	07/07/09
71594	Flextronics, Inc. (Wkrs)	Austin, TX	07/08/09	07/08/09
71595	Carlisle, Motion Control Ind. (Wkrs)	Charlottesville, VA	07/08/09	06/29/09
71596	ATS Systems Oregon, Inc. (Wkrs)	Corvallis, OR	07/08/09	07/06/09
71597	Siemens Energy and Automation, Inc. (IBEW)	Portland, OR	07/08/09	07/07/09
71598	Computer Science Corporation (Wkrs)	Irving, TX	07/08/09	06/29/09
71599	Toyotetsu Mid America (TTMA) (Wkrs)	Owensboro, KY	07/08/09	07/07/09
71600	Gemological Institute of America (State)	Carlsbad, CA	07/08/09	07/07/09
71601	The Bank of New York Mellon (Wkrs)	Syracuse, NY	07/08/09	07/07/09
71602	Cooper Tools (Comp)	Sumter, SC	07/08/09	07/07/09

APPENDIX—Continued

[TAA petitions instituted between 7/6/09 and 7/10/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
71603	Roush Industries, Inc. (Comp)	Allen Park, MI	07/09/09	07/08/09
71604	Rockland Industries, Inc. (Comp)	Baltimore, MD	07/09/09	07/08/09
71605	Suzlon Rotor Company (State)	Pipestone, MN	07/09/09	07/08/09
71606	Ridgway Powdered Metals, Inc. (Wkrs)	Ridgway, PA	07/09/09	07/08/09
71607	Wisconsin Mechanical, LLC (State)	Waukesha, WI	07/09/09	07/08/09
71608	Xilinx, Inc. (Wkrs)	San Jose, CA	07/09/09	07/07/09
71609	EDS, an HP Company (Comp)	St. Charles, MO	07/09/09	07/02/09
71610	DJO, Inc. (formally Enclore Medical, LP/Chattanooga Grp) (Comp).	Hixson, TN	07/09/09	07/02/09
71611	ATT (Wkrs)	Hoffman Estate, IL	07/09/09	07/09/09
71612	Ameriprise Financial (State)	Minneapolis, MN	07/09/09	07/08/09
71613	Cherne Industries (State)	Minneapolis, MN	07/09/09	07/09/09
71614	EGS Electrical Group/O–Z Gedney Company (Comp)	Shoemakersville, PA	07/09/09	07/08/09
71615	Frontier Airlines, Inc. (Wkrs)	Denver, CO	07/09/09	07/09/09
71616	Digi International (Comp)	Minnetonka, MN	07/09/09	07/09/09
71617	Tube City/IMS (USW)	Gary, IN	07/09/09	07/08/09
71618	Volvo Trucks North America (UAW)	Dublin, VA	07/09/09	07/09/09
71619	Freescale Semiconductor (Wkrs)	Austin, TX	07/09/09	07/01/09
71620	Circuit City (State)	Coon Rapids, MN	07/09/09	07/08/09
71621	Sealy Mattress Company (Wkrs)	Trinity, NC	07/09/09	06/30/09
71622	Vision Custom Tooling, Inc. (Comp)	Birdsboro, PA	07/09/09	07/09/09
71623	Eagle of New Bedford (State)	New Bedford, MA	07/09/09	07/06/09
71624	Teknor Apex (IBT)	Hebronville, MA	07/09/09	07/08/09
71625	Eaton (Wkrs)	Shawnee, OK	07/10/09	07/09/09
71626	Robinson Steel (USW)	East Chicago, IN	07/10/09	07/08/09
71627	Circuit Board Express, Inc. (Wkrs)	Haverhill, MA	07/10/09	07/06/09
71628	Meridian Automotive Systems (Wkrs)	Grand Rapids, MI	07/10/09	07/08/09
71629	Hub City (IAM)	Aberdeen, SD	07/10/09	07/01/09

[FR Doc. E9–21154 Filed 9–1–09; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of July 27 through August 14, 2009.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–65,683; Freeport—McMoran, Inc., Morenci, AZ: March 23, 2008.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–65,577; Behr Dayton Thermal Products, a Subsidiary of Behr America, Dayton, OH: March 11, 2008.

TA–W–65,808A; Qimonda North America, Cary Burlington Division, Williston, VT: April 15, 2008.

TA–W–65,808B; Qimonda North America, Houston Division, Houston, TX: April 15, 2008.

TA–W–65,808C; Qimonda North America, Austin Division, Austin, TX: April 15, 2008.

TA–W–65,808; Qimonda North America, San Jose Division, San Jose, CA: April 15, 2008.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–65,402; Ideal Products, LLC, Brown Falls, CT: February 25, 2008.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–65,634; Northern Engraving Corporation, Spring Grove, MN.

TA–W–65,720; Roseburg Forest Products, Plywood Division, Riddle Plywood #4, Riddle, OR.

TA–W–65,784; Oval International, Hoquiam, WA.

TA–W–65,883; Muth Mirror Systems, Sheboygan, WI.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

None.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of July 27 through August 14, 2009. Copies of these determinations are available for

inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 18, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–21156 Filed 9–1–09; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,439; TA–W–63,439A]

Watson Laboratories, Inc., a Connecticut Corporation, Carmel, NY; Watson Laboratories, Inc., a Connecticut Corporation Also Known as Danbury Pharmacal, Inc., Danbury, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 20, 2008, applicable to workers of Watson Laboratories, Inc., a Connecticut Corporation, Carmel, New York. The notice was published in the **Federal Register** on July 14, 2008 (73 FR 40388). The certification was amended on May 18, 2009 to include workers of the certified worker group located at an off-site facility in Danbury, Connecticut. The notice was published in the **Federal Register** on June 18, 2009 (74 FR 28957).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce pharmaceuticals and medicines.

New information shows that some workers separated from employment at the Danbury, Connecticut location had their wages reported under a separated unemployment insurance (UI) tax account for Danbury Pharmacal, Inc.

The intent of the Department's certification is to include all workers at the subject firm who were adversely affected by the shift in production of pharmaceuticals and medicines to India and their subsequent import.

Accordingly the Department is amending this certification to include workers of the Danbury, Connecticut location whose (UI) wages are reported under the also known as name Danbury Pharmacal, Inc.

The amended notice applicable to TA–W–64,439 is hereby issued as follows:

''All workers of Watson Laboratories Inc., a Connecticut Corporation, Carmel, New York (TA–W–63,439) and Watson Laboratories, Inc., a Connecticut Corporation, also known as Danbury Pharmacal, Inc., Danbury, Connecticut (TA–W–63,439A), who became totally or partially separated from employment on or after May 27, 2007 through June 20, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 19th day of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–21157 Filed 9–1–09; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of July 13 through July 24, 2009.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Under Section 222(a)(2)(B), all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–70,178; Geo Specialty Chemical, Rubber and Plastics Division, Gibbstown, NJ: May 18, 2009.

TA–W–70,258; Toho Tenax America, Inc., Rockwood, TN: May 18, 2008.

TA–W–70,315A; Dodger Industries, Inc., Clinton, NC: May 18, 2008.

TA–W–70,315B; Dodger Industries, Inc., Fayetteville, NC: May 18, 2008.

TA–W–70,315C; Dodger Industries, Inc., Raleigh, NC: May 18, 2008.

TA–W–70,315; Dodger Industries, Inc., Eldora, IA: May 18, 2008.

TA–W–70,497; Victor Insulators, Inc., Victor, NY: May 21, 2008.

TA–W–70,522A; Advanced Accessory Systems, Shelby Township, MI: May 21, 2008.

TA–W–70,522B; Advanced Accessory Systems, Sterling Heights, MI: May 21, 2008.

TA–W–70,522; Advanced Accessory Systems, Port Huron, MI: May 21, 2008.

TA–W–70,704; Grote Industries, LLC, Madison, IN: May 19, 2008.

TA–W–71,152; Noble Metal Processing, Beacon Professional and RCM, South Haven, MI: June 10, 2008.

TA–W–71,182; R and B Fabrication, Inc., Oakwood, OH: June 10, 2008.

TA–W–71,644; Jeld-Wen Premium Doors, Doors Division, Oshkosh, WI: July 10, 2008.

TA–W–70,180K; Chicago Sun-Times, Chicago, IL: May 18, 2008.

TA–W–70,180L; Pioneer Press, Glenview, IL: May 18, 2008.

TA–W–70,180M; The Doings, Hinsdale, IL: May 18, 2008.

TA–W–70,180N; Post-Tribune, Merrillville, IN: May 18, 2008.

TA–W–70,180O; Fox Valley Productions, Plainfield, IL: May 18, 2008.

TA–W–70,180P; Aurora Beacon News, Aurora, IL: May 18, 2008.

TA–W–70,180Q; Waukegan News Sun, Waukegan, IL: May 18, 2008.

TA–W–70,180R; Sun Publications, Naperville, IL: May 18, 2008.

TA–W–70,180S; Joliet Herald News, Joliet, IL: May 18, 2008.

TA–W–70,180T; Midwest Suburban Publishing, Tinley Park, IL: May 18, 2008.

TA–W–70,273; Plum Creek MDF, Inc., A Subsidiary of Plum Creek Timber Company, Inc., Columbia Falls, MT: May 19, 2008.

TA–W–70,096A; Auburn Mills, Inc., A/K/A Craftex Mills, Inc., Auburn, PA: May 18, 2008.

TA–W–70,096; Auburn Mills, Inc., A/K/A Craftex Mills, Inc., Montgomeryville, PA: May 18, 2008.

TA–W–70,220; BoMag Americas, Inc., A Subsidiary of BoMag GMBH, Kewanee, IL: May 18, 2008.

TA–W–70,681; Performance Fibers, Scottsboro, AL: May 26, 2008.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W–70,020; TMD Friction, Inc., Executive Regional Management, Dublin, VA: May 18, 2008.

TA–W–70,053; Plexus Services Corp, Adecco, Nampa, ID: May 18, 2008.

TA–W–70,056; Tensolite, LLC, D/B/A Carlisle Company Interconnect Assemblies, Vancouver, WA: May 18, 2008.

TA–W–70,071; Indalex, Inc., Lincolnshire Corporate Office, Lincolnshire, IL: May 18, 2008.

TA–W–70,121; Banner Engineering Corp., Fergus Falls Manufacturing Facility, Leased Workers from Doherty Staffing, Fergus Falls, MN: May 18, 2008.

TA–W–70,148; W.Y. Shugart and Sons, Inc., Fort Payne, AL: May 18, 2008.

TA–W–70,193A; Robertson Airtech International, Inc., Gastonia, NC: May 18, 2008.

TA–W–70,193; Robertson Airtech International, Inc., Charlotte, NC: May 18, 2008.

TA–W–70,207; FLA Orthopedics, Inc., Leased Workers of the Reserves Network, Staff Masters, Miramar, FL: May 18, 2008.

TA–W–70,221; Wacker Polymers Corporation, Wacker Polymers Division, Dayton, NJ: May 18, 2008.

TA–W–70,222; Solutia, Inc., Saflex Division, Leased From Spherion, Trenton, MI: May 18, 2008.

TA–W–70,224; Therm-O-Disc, Inc., Emerson Electric, Muskegon, MI: May 18, 2008.

TA–W–70,225; Thin Film Technology, A Subsidiary of Susumu Co., LTD, North Mankato, MN: May 18, 2008.
TA–W–70,254; Moldingmaster, Appleone, Aerotek Adecco, Santa Fe Springs, CA: May 18, 2008.
TA–W–70,256; Fluidmaster Inc., Appleone, Aerotek, Adecco, San Juan Capistrano, CA: May 18, 2008.
TA–W–70,263; Sumitomo Electric Wiring Systems, Inc., A Subsidiary of Sumitomo Wiring Systems, LTD, Edmonton, KY: May 18, 2008.
TA–W–70,280; Hewlett-Packard Caribe, BV, LLC, On-Site Leased Workers of Synova, Volt, Manpower, and Kelly Services, Aguadilla, PR: May 18, 2008.
TA–W–70,313; Continental Automotive Systems US Inc., (Formerly Siemens AG), Elkhart, IN: December 20, 2008.
TA–W–70,460; Delphi Steering, On-Site Leased Workers from Bartech and Securitas, Saginaw, MI: May 20, 2008.
TA–W–70,498; Munksjo Paper, Inc., A Subsidiary of Munksjo AB, Fitchburg, MA: May 21, 2008.
TA–W–70,508; Honeywell Scanners and Mobility, A Subsidiary of Honeywell International, Blackwood, NJ: May 15, 2009.
TA–W–70,509; Jervis B. Webb Co., A Subsidiary of Daifuku Company, LTD, Carlisle, SC: May 20, 2008.
TA–W–70,510; The Timken Company, On-Site Leased Workers from Personnel Staffing Unlimited, Rutherfordton, NC: May 14, 2008.
TA–W–70,588; Yusa Corporation, On site Leased Workers from Remedy Intelligent Staffing, Washington Court House, OH: May 22, 2008.
TA–W–70,594; Peace Industries, Ltd., Onsite Leased Workers from Genie Temporary Staffing, Rolling Meadows, IL: May 22, 2008.
TA–W–70,603; Datwyler Rubber and Plastics, Inc., Marion, SC: May 19, 2008.
TA–W–70,624; Core Molding Technologies, Columbus, OH: May 20, 2008.
TA–W–70,811; Rockwell Automation, Manchester, NH: May 28, 2008.
TA–W–70,832; American Standard Brands, Crane Plastic, A Subsidiary of AS America, Mansfield, OH: June 1, 2008.
TA–W–70,836; Anderson Products Inc., A Subsidiary of Weiler Corp., Worcester, MA: June 1, 2008.
TA–W–70,876; Chromalox, Corp Office/ Headquarters, Office Team, Accounttemps, Pittsburgh, PA: May 28, 2008.
TA–W–70,899; Agfa HealthCare, Inc., Research and Development, Hartland, WI: June 1, 2008.
TA–W–70,954; SNC Manufacturing Company, Inc, Oshkosh, WI: May 27, 2008.
TA–W–70,957; Focus Products Group, LLC, St. Louis, MO: June 2, 2008.
TA–W–71,053; Electrolux Home Products, Inc, Electrolux Major Appliances Division, Subsidiary of Electrolux Holdings INC, Jefferson, IA: June 5, 2008.
TA–W–71,120; Atlas Copco Comptec, LLC, Gas and Process Division, Atlas Corpo North America, Voorheesville, NY: June 3, 2008.
TA–W–71,194; Delphi Rochester Operations, Delphi Powertrain Division, Leased workers From Bartech, Rochester, NY: June 9, 2009.
TA–W–71,202; Sappi Fine Paper N.A., A Subsidiary of Sappi LTD., On-Site Leased Workers from ABB, Muskegon, MI: June 12, 2008.
71265; Numatics, Inc, Emerson Electric Company, Lapeer, MI: June 10, 2008.
TA–W–71,289; Shadowline, Inc., Morganton, NC: June 8, 2009.
TA–W–71,309; Komatsu Forklift USA, LLC, Spherion, Randstad, TSI Future, Staffmark, Resource, Covington, GA: June 15, 2008.
TA–W–71,640; Albany International, Process Belts, Tumwater, WA: July 10, 2008.
TA–W–70,061; Castleford Tailors, Ltd, Burberry Wholesale Ltd., Burberry Ltd. (USA), Williamstown, NJ: May 18, 2008.
TA–W–70,463A; Zebra Technologies, Inc, Specialty Printer Group, Camarillo, CA: May 19, 2008.
TA–W–70,463; Zebra Technologies, Inc, Specialty Printer Group, Leased Workers of Appleone Employment, Vernon Hills, IL: May 19, 2008.
TA–W–70,658; Adams USA, Inc, Monterey Division, Cookeville, TN: May 26, 2008.
TA–W–70,694; Avaya, Inc., Manufacturing, Procurement and Logistics Division, Leased Workers From Kelly, Westminster, CO: May 26, 2011.
TA–W–70,911; R. H. Donnelley, Inc., Dunmore, PA: May 18, 2008.
TA–W–71,137; Bowne of Detroit, Subsidiary of Bowne & Company, Inc., Detroit, MI: June 9, 2008.
TA–W–71,500; Datamax—O'Neil Corporation, On-Site Leased Workers of Kimco and Staffsource, Irvine, CA: June 23, 2008.
TA–W–70,048; Symantec Corporation, Symantec Accounts Payable/ Expense Reporting Team, Finance Dept., Springfield, OR: May 18, 2008.
TA–W–70,244; Align Technology, Inc., Sales Department, Marketing, Finance and Accounting, Santa Clara, CA: May 18, 2008.
TA–W–70,332; LexisNexis, Global Operations, Randstand, Certified Employment, San Francisco, CA: May 18, 2008.
TA–W–70,534; Jones Distribution Center, On-Site Leased Workers from Wise Staffing Group, Lawrenceburg, TN: May 21, 2008.
TA–W–70,768; Steelcase University, A Subsidiary of Steelcase, Inc., Grand Rapids, I: May 27, 2008.
TA–W–70,897; Nortel Networks, CNM and Tools Release Division and Network, Richardson, TX: May 21, 2008.
TA–W–70,180A; Pioneer Press, Glenview, IL: May 18, 2008.
TA–W–70,180B; The Doings, Hinsdale, IL: May 18, 2008.
TA–W–70,180C; Post-Tribune, Merrillville, IN: May 18, 2008.
TA–W–70,180D; Fox Valley Productions, Plainfield, IL: May 18, 2008.
TA–W–70,180E; Aurora Beacon News, Aurora, IL: May 18, 2008.
TA–W–70,180F; Elgin Courier, Elgin, IL: May 18, 2008.
TA–W–70,180G; Waukegan News Sun, Waukegan, IL: May 18, 2008.
TA–W–70,180H; Sun Publications, Naperville, IL: May 18, 2008.
TA–W–70,180I; Joliet Herald News, Joliet, IL: May 18, 2008.
TA–W–70,180J; Midwest Suburban Publishing, Tinley Park, IL: May 18, 2008.
TA–W–70,180; Chicago Sun-Times, Chicago, IL: May 18, 2008.
TA–W–70,796; Los Angeles Times Communications, Advertising Financial Services, Los Angeles, CA: May 27, 2009.
TA–W–70,945; GMAC Insurance, Winston Salem, NC: June 3, 2008.

The following certifications have been issued. The requirements of Section 222(b) (adversely affected workers in public agencies) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–70,003; EFTEC North America, LLC, Dayton, OH: May 18, 2008.
TA–W–70,680; Performance Fibers, Winfield Division, Winfield, AL: May 26, 2008.
TA–W–70,746; Tightline Logging, Potomac, MT: May 19, 2008.
TA–W–71,184; John Maneely Company, Formerly Known as Sharon Tube Company, Sharon, PA: June 9, 2008.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–70,018; Auto Truck Transport USA, Inc., A Subsidiary of JHT Holdings, Inc., Mt. Holly, NC: May 18, 2008.

TA–W–70,134; Finish Line Hosiery, Inc., Fort Payne, AL: May 18, 2008.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W–70,164; Goodyear Tire & Rubber Co., Union City, TN: May 18, 2008.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W–70,287; Straits Steel and Wire Company, Dallas, TX.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

None.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W–70,089; Glenn Springs Holdings, Inc., New Castle, DE. TA–W–71,015; United Auto Workers Union, Local 10, Fenton, MO.

The investigation revealed that the criteria under paragraphs (b)(2) and (b)(3) (public agency acquisition of services from a foreign country) of section 222 have not been met.

None.

The investigation revealed that criteria of Section 222(c)(2) has not been met. The workers' firm (or subdivision) is not a Supplier to or a Downstream Producer for a firm whose workers were certified as eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of July 13 through July 24, 2009. Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 24, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–21155 Filed 9–1–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 14, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 14, 2009.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 19th day of August 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 6/8/09 and 6/12/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
71031	International Business Machines Corporation (Wkrs)	Endicott, NY	06/08/09	05/20/09
71032	Agy Holding Corporation (Union)	Huntingdon, PA	06/08/09	06/04/09
71033	Jessem Tool Company (Wkrs)	Greeneville, TN	06/08/09	05/19/09
71034	Farbacher Automotive (Comp)	Sharpsburg, PA	06/08/09	06/04/09
71035	Prestige Printing (Comp)	Madison, TN	06/08/09	06/05/09
71036	Ametek, Inc. (Union)	Kent, OH	06/08/09	06/02/09
71037	Chardon Rubber Company (USW)	Chardon, OH	06/08/09	06/04/09
71038	General Pattern Company (State)	Blaine, MN	06/08/09	06/05/09
71039	Mitsubishi Electric Automotive America, Inc. (Comp)	Mason, OH	06/08/09	06/05/09
71040	United States Steel—Granite City Works (USW)	Granite City, IL	06/08/09	06/05/09
71041	Menlo Worldwide Logistics (Wkrs)	Brownstown, MI	06/08/09	06/03/09
71042	Pacific Rail Services (Wkrs)	Seattle, WA	06/08/09	06/05/09
71043	Philip Morris (IAMAW)	Concord, NC	06/08/09	05/29/09
71044	Weastec Inc. (Comp)	Hillsboro, OH	06/08/09	06/05/09
71045	Bayer Films Americas (State)	Plainville, CT	06/08/09	05/05/09
71046	Dresser Waukesha (Union)	Waukesha, WI	06/08/09	05/05/09

APPENDIX—Continued

[TAA petitions instituted between 6/8/09 and 6/12/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
71047	Chrysler LLC, Technical Training Center (Comp)	Detroit, MI	06/08/09	05/27/09
71048	Warren Corporation (State)	Stafford Springs, CT	06/08/09	06/05/09
71049	Chrysler Corp, LLC Warren Office Building (Wkrs)	Warren, MI	06/08/09	05/27/09
71050	Xalay, Inc. (Wkrs)	Pulaski, VA	06/08/09	06/02/09
71051	Seymour Tubing Inc. (Comp)	Dunlap, TN	06/08/09	06/05/09
71052	Clarity Technologies, Inc. (State)	Auburn Hills, MI	06/08/09	06/06/09
71053	Electrolux Home Products, Inc (Union)	Jefferson, IA	06/08/09	06/05/09
71054	Apria Healthcare (Comp)	Foothill Ranch, CA	06/08/09	06/05/09
71055	Milliken—Johnston Plant (State)	Johnston, SC	06/09/09	05/19/09
71056	Stanadyne Corp (State)	Windsor, CT	06/09/09	06/04/09
71057	Hall Transport (State)	Clarinda, IA	06/09/09	06/05/09
71058	WellPoint Inc (Wkrs)	Richmond, VA	06/09/09	06/05/09
71059	Rite Hite/Duct Sox (Wkrs)	Dubuque, IA	06/09/09	05/27/09
71060	Carhartt, Inc (Comp)	Marrowbone, KY	06/09/09	06/06/09
71061	Elkay Manufacturing Company (Comp)	Oak Brook, IL	06/09/09	06/08/09
71062	Kautex Textron (Wkrs)	Lavonia, GA	06/09/09	06/05/09
71063	Precision Compacted Components, Inc (Comp)	Wilcox, PA	06/09/09	06/05/09
71064	Premedia Global, Inc. (Comp)	York, PA	06/09/09	05/19/09
71065	NOV/Hydra Rig (Wkrs)	Duncan, OK	06/09/09	06/05/09
71066	North American Hoganas (Comp)	Hollsopple, PA	06/09/09	06/08/09
71067	Plastic Trim International, Inc (Comp)	East Tawas, MI	06/09/09	06/08/09
71068	JDS Uniphase (Comp)	Germantown, MD	06/09/09	06/08/09
71069	BonaKemi USA, Inc., Monroe Production (Comp)	Monroe, NC	06/09/09	06/08/09
71070	Parkside Mortgage Corporation (Comp)	Philadelphia, PA	06/09/09	06/08/09
71071	Dura Operating Systems d/b/a Dura Automotive Systems, Inc. (State).	Rochester Hills, MI	06/09/09	06/01/09
71072	Stanley Tools—Pittsfield Plant (Comp)	Pittsfield, VT	06/09/09	06/08/09
71073	General Motors Acceptance Corp (Wkrs)	Winston-Salem, NC	06/09/09	06/04/09
71074	American Roller Bearing (Comp)	Hiddenite, NC	06/09/09	06/03/09
71075	Umicore Cobalt Specialty Materials (Comp)	Maxton, NC	06/09/09	06/02/09
71076	ITT Corporation (Comp)	Santa Ana, CA	06/09/09	06/08/09
71077	Wal-Mart Stores East, LP (Wkrs)	Lockbourne, OH	06/09/09	06/05/09
71078	Noble Metal Processing, KY–G.P. (Comp)	Shelbyville, KY	06/09/09	06/08/09
71079	Ametek Aerospace Seattle Support Center (Comp)	Mukilteo, WA	06/09/09	06/08/09
71080	Umicore Cobalt Specialty Materials (Comp)	Maxton, NC	06/09/09	06/02/09
71081	Wachovia Bank NA (Wkrs)	Reading, PA	06/09/09	06/08/09
71082	Hart & Cooley, Inc. (Comp)	Grand Rapids, MI	06/09/09	06/04/09
71083	Johnson Brothers Contracting, Inc. (Wkrs)	Missoula, MT	06/09/09	06/05/09
71084	Sierra Pacific Industries (Wkrs)	Quincy, CA	06/09/09	05/19/09
71085	IBM/BTD/Tulsa (Wkrs)	Tulsa, OK	06/09/09	06/03/09
71086	Apria Healthcare (Comp)	Foothill Ranch, CA	06/09/09	06/05/09
71087	Formed Fiber Technologies (Comp)	Sidney, OH	06/09/09	06/09/09
71088	Cubicon (Wkrs)	Ripley, MS	06/09/09	06/04/09
71089	Cowin and Company, Inc. (State)	Birmingham, AL	06/09/09	05/19/09
71090	Avaya, Inc. (State)	Westminster, CO	06/09/09	06/02/09
71091	Computer Science Corporation (State)	Austin, TX	06/09/09	05/22/09
71092	Neocork Technologies (Wkrs)	Napa, CA	06/09/09	05/18/09
71093	Bill Wink Chevrolet (Comp)	Dearborn, MI	06/09/09	06/08/09
71094	Duro Textiles, LLC (Comp)	Fall River, MA	06/09/09	06/01/09
71095	Future Die Cast and Engineering, Inc. (Wkrs)	Shelby Township, MI	06/09/09	06/03/09
71096	Harsco—Windpoint (Union)	Harrisburg, PA	06/09/09	05/20/09
71097	Commercial Vehicle Group/Trim Systems (Comp)	Dublin, VA	06/09/09	05/28/09
71098	American Roller Bearing (Comp)	Hiddenite, NC	06/09/09	06/03/09
71099	Seymour Tubing, Inc. (Comp)	Dunlap, TN	06/09/09	06/05/09
71100	Standard Precision Manufacturing (Comp)	Meadville, PA	06/09/09	06/01/09
71101	Stroh Die Casting Company, Inc (Union)	Milwaukee, WI	06/09/09	06/05/09
71102	Centocor (Wkrs)	Malvern, PA	06/09/09	06/02/09
71103	Circor Energy (Wkrs)	OKC, OK	06/09/09	06/01/09
71104	Ashland, Inc. (Wkrs)	Pittsburgh, PA	06/09/09	06/08/09
71105	Medtronic, Inc (State)	Mounds View, MN	06/09/09	06/08/09
71106	Paris Accessories (Union)	New Smithville, PA	06/09/09	05/27/09
71107	Northfield Foundry and Machine Co. (State)	Northfield, MN	06/09/09	06/08/09
71108	Air Way Automation, Inc. (Comp)	Grayling, MI	06/09/09	06/08/09
71109	Micro Component Technology (MCT) (State)	St. Paul, MN	06/09/09	06/08/09
71110	International Decisions Systems (State)	Minneapolis, MN	06/09/09	06/08/09
71111	Evraz North America (Wkrs)	Portland, OR	06/09/09	06/08/09
71112	Collins Ink Corporation (Wkrs)	Cincinnati, OH	06/09/09	06/09/09
71113A	Mitsubishi Heavy Industries (Comp)	Greenwood, IN	06/09/09	06/09/09
71113	Mitsubishi Heavy Industries (Comp)	Franklin, IN	06/09/09	06/09/09
71114	Engineered Machined Products, Inc. (Union)	Greenfield, IN	06/09/09	05/19/09

APPENDIX—Continued

[TAA petitions instituted between 6/8/09 and 6/12/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
71115	Capital Records, LLC (Comp)	Jacksonville, IL	06/09/09	06/09/09
71116	Russell Brands, LLC/Fabrics (Comp)	Alexander City, AL	06/09/09	05/18/09
71117	Sapa HE Tubing, Inc. (Union)	Louisville, KY	06/09/09	06/09/09
71118	Rexnord Engineered Chain LLC (Union)	West Milwaukee, WI	06/09/09	06/09/09
71119	Hunter Douglas (Wkrs)	Renton, WA	06/09/09	06/05/09
71120	Atlas Copco Comptec, LLC (Wkrs)	Voorheesville, NY	06/09/09	06/03/09
71121	Albion Associates Inc. (Wkrs)	High Point, NC	06/10/09	06/02/09
71122	Masimo (Other)	Irvine, CA	06/10/09	06/08/09
71123	Schott Solar Inc (Wkrs)	Billerica, MA	06/10/09	06/09/09
71124	ACTCO Tool & Mfg. Co. (Comp)	Meadville, PA	06/10/09	06/10/09
71125	Intra Corporation (Comp)	Westland, MI	06/10/09	06/10/09
71126	Hynix Semiconductor America (State)	Eugene, OR	06/10/09	06/09/09
71127	Lear Corporation Lordstown Facility (Union)	Lordstown, OH	06/10/09	06/09/09
71128	H.P.G. International (Union)	Mountain Top, PA	06/10/09	06/09/09
71129	Shakespeare Monofilaments, LLC (State)	Columbia, SC	06/10/09	06/09/09
71130	Affiliated Computer Services (Wkrs)	Dallas, TX	06/10/09	05/21/09
71131	Reliant Manufacturing Service LLC (Comp)	Longmont, CO	06/10/09	06/08/09
71132	General Motors Fabricating Division (Union)	Grand Rapids, MI	06/10/09	05/20/09
71133	DSI Ground Support (Wkrs)	Blairsville, PA	06/10/09	06/03/09
71134	Leech Industries, Inc (Comp)	Meadville, PA	06/10/09	06/03/09
71135	Noble Metal Processing Ohio—LLC (Wkrs)	Stow, OH	06/10/09	06/08/09
71136	Chrysler LLC, Conner Ave Assembly (Union)	Detroit, MI	06/10/09	05/27/09
71137	Bowne of Detroit (Wkrs)	Detroit, MI	06/10/09	06/09/09
71138	Schrader-Bridgeport International Incorporated (Wkrs)	Altavista, VA	06/10/09	06/09/09
71139	Techne, Inc. (Comp)	Scottsburg, IN	06/11/09	06/04/09
71140	TBA–Leitchfield Plant (Comp)	Leitchfield, KY	06/11/09	06/10/09
71141	Ruud Lighting, Inc. (Wkrs)	Racine, WI	06/11/09	05/28/09
71142	Plaza Travel (16505)	Hermitage, PA	06/11/09	06/09/09
71143	Oakdale Cotton Mills, Inc. (Comp)	Jamestown, NC	06/11/09	06/10/09
71144	Pink Frog Interactive, Inc. (Comp)	Pittsburgh, PA	06/11/09	06/09/09
71145	St. Marys Carbon Company (Wkrs)	Brookville, PA	06/11/09	06/10/09
71146	Sanford Brands—A Newell Rubbermaid Company (Comp)	Shelbyville, TN	06/11/09	06/10/09
71147	NNR Global Logistics USA, Inc. (State)	Itasca, IL	06/11/09	06/10/09
71148	Avistrap an ITW Company (Comp)	Lewistown, PA	06/11/09	06/11/09
71149	Alcoa Mill Products Texarkana (Union)	Nash, TX	06/11/09	06/11/09
71150	Seton Company Americas Sales Office (Comp)	Farmington Hills, MI	06/11/09	06/10/09
71151	J and D Manufacturing (State)	Eau Claire, WI	06/11/09	06/10/09
71152	Noble Metal Processing (Comp)	South Haven, MI	06/11/09	06/10/09
71153	DeRoyal Textiles, Inc. (Comp)	Camden, SC	06/11/09	06/10/09
71154	Shogren, Inc. (Wkrs)	Concord, NC	06/11/09	06/10/09
71155	Boise Cascade, LLC (AFLCIO)	Medford, OR	06/11/09	06/10/09
71156	G–Seven Ltd (Comp)	Hatfield, PA	06/11/09	06/10/09
71157	JDS Uniphase (Comp)	Indianapolis, IN	06/11/09	06/09/09
71158	Supervalu, Inc. (Comp)	Eden Prairie, MN	06/11/09	06/11/09
71159	RHI Monofrax, Ltd (Comp)	Falconer, NY	06/11/09	06/10/09
71160	TTM Technologies (State)	Stafford, CT	06/11/09	06/10/09
71161	Standard Motor Products, Inc. (Comp)	Long Island City, NY	06/11/09	06/10/09
71162	Husky Injection Molding Systems, Inc. (Comp)	Cheektowaga, NY	06/11/09	06/10/09
71163	Erickson Air Crane (Wkrs)	Central Point, OR	06/11/09	05/27/09
71164	Fortis Plastics, LLC (Comp)	Brownsville, TX	06/11/09	06/09/09
71165	Darly Custom Technology, Inc. (State)	Bloomfield, CT	06/11/09	06/10/09
71166	Franklin Electronic Publishing (State)	Burlington, NJ	06/11/09	06/10/09
71167	Cattron Group International ≤(Wkrs)	Sharpsville, PA	06/11/09	06/10/09
71168	Agilent Technologies, EEs of Division (Comp)	Westlake Village, CA	06/11/09	06/02/09
71168A	Agilent Technologies, EEs of Division (Comp)	Santa Rosa, CA	06/11/09	06/02/09
71168D	Agilent Technologies, EEs of Division (Comp)	Everett, WA	06/11/09	06/02/09
71168C	Agilent Technologies, EEs of Division (Comp)	Alpharetta, CA	06/11/09	06/02/09
71168B	Agilent Technologies, EEs of Division (Comp)	Santa Clara, CA	06/11/09	06/02/09
71169	Woco Motor Acoustic Systems, Inc. (Wkrs)	Warren, MI	06/11/09	06/02/09
71170	Corning (Wkrs)	Danville, VA	06/11/09	06/10/09
71171	Cargill, Incorporated (Comp)	Decatur, AL	06/11/09	06/10/09
71172	Penda Corporation (UAW)	Lapeer, MI	06/11/09	06/09/09
71173	Penske Logistics (Comp)	Reading, PA	06/11/09	06/11/09
71174	General Electric (Wkrs)	Erie, PA	06/12/09	06/10/09
71175	Resinoid Engineering Corporation (Wkrs)	Heath, OH	06/12/09	06/04/09
71176	Euclid Industries, Inc. (Comp)	Bay City, MI	06/12/09	06/11/09
71177	Daimler Truck North American, LLC (Wkrs)	Portland, OR	06/12/09	06/09/09
71178	Anderson Global (IAMAW)	Muskegon Heights, MI	06/12/09	06/10/09
71179	Citibank/Citigroup (Wkrs)	Hagerstown, MD	06/12/09	06/08/09
71180	Bracalente Manufacturing Company (Wkrs)	Trumbaursville, PA	06/12/09	06/01/09

APPENDIX—Continued

[TAA petitions instituted between 6/8/09 and 6/12/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
71181	Philips Electronics (Comp)	Snoqualmie, WA	06/12/09	06/10/09
71182	R and B Fabrication, Inc. (Wkrs)	Oakwood, OH	06/12/09	06/10/09
71183	Cintas Corporation (Comp)	Portal, GA	06/12/09	06/10/09
71184	John Maneely Company (USWA)	Sharon, PA	06/12/09	06/09/09
71185	Caterpillar, Inc. (Wkrs)	Pendergrass, GA	06/12/09	06/12/09
71186	Vertis Communications (State)	North Haven, CT	06/12/09	06/12/09
71187	Cisco Systems, Inc. (Wkrs)	Boxborough, MA	06/12/09	05/18/09
71188	Delta Faucet Company (Comp)	Greensburg, IN	06/12/09	06/09/09
71189	Morgan Advanced Materials and Technology, Inc. (IUECWA).	St. Marys, PA	06/12/09	06/11/09
71190	JIT Services, LLC (Wkrs)	Peachtree City, GA	06/12/09	06/10/09
71191	Detroit Diesel Remanufacturing East (Comp)	Byesville, OH	06/12/09	06/11/09
71192	Auto Truck Transport (Wkrs)	Mt. Holly, NC	06/12/09	06/01/09
71193	Tyler Refrigeration Company (USW)	Niles, MI	06/12/09	06/10/09
71194	Delphi Rochester Operations (UAW)	Rochester, NY	06/12/09	05/20/09
71195	Timken ? Bucyrus Operations (Comp)	Bucyrus, OH	06/12/09	06/11/09
71196	Invensys Process Systems/Triconex (Comp)	Foxboro, MA	06/12/09	06/11/09
71197	RM Mechnical, Inc. (Wkrs)	Boise, ID	06/12/09	05/26/09
71198	Chrysler LLC (Wkrs)	Fenton, MO	06/12/09	06/10/09
71199	Appleton Papers, Inc. (USW)	Appleton, WI	06/12/09	06/12/09
71200	Caplugs (Union)	Erie, PA	06/12/09	05/24/09
71201	Formed Fiber Technologies, Inc. (Comp)	Auburn, ME	06/12/09	06/12/09
71202	Sappi Fine Paper N.A. (USW)	Muskegon, MI	06/12/09	06/12/09
71203	Datex Ohmeda/GE Healthcare (IAWAW)	Madison, WI	06/12/09	06/10/09

[FR Doc. E9–21158 Filed 9–1–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 14, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 14, 2009.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of August 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 6/22/09 and 6/26/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
71323	Sanlo, Inc. (Comp)	Michigan City, IN	06/22/09	06/19/09
71324	Chart Energy and Chemical, Inc. (IAMAW)	La Crosse, WI	06/22/09	06/19/09
71325	29–J Commerce Way (Smart Parts) (Wkrs)	Totowa, NJ	06/22/09	05/22/09
71326	International Business Machines Corporation (Wkrs)	Boulder, CO	06/22/09	06/19/09
71327	ArcelorMittal McNessen (Union)	Monessen, PA	06/22/09	05/31/09
71328	Dental Office Management (Comp)	El Segundo, CA	06/22/09	06/11/09
71329	General Motors Corporation (UAW)	Mansfield, OH	06/22/09	06/15/09
71330	Siemen Building Technologies (State)	Florham Park, NJ	06/22/09	06/22/09
71331	Eos Airlines, Inc. (Wkrs)	Purchase, NY	06/22/09	05/18/09
71332	Pace Industries, LLC (Comp)	Fayetteville, AR	06/22/09	06/12/09
71333	Array Marketing (AFLCIO)	Chattanooga, TN	06/22/09	06/22/09
71334	Saint-Gobain Crystals (Comp)	Washougal, WA	06/22/09	06/19/09
71335	Suburban Precision Mold Company, Inc. (Wkrs)	Meadville, PA	06/22/09	06/11/09

APPENDIX—Continued

[TAA petitions instituted between 6/22/09 and 6/26/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
71336	Burke Industrial Supply, Inc. (Comp)	Morganton, NC	06/22/09	06/22/09
71337A	Craftex Mills, Inc. (Wkrs)	Auburn, PA	06/22/09	06/18/09
71337	Craftex Mills, Inc. of Penna. (Wkrs)	Chalfont, PA	06/22/09	06/18/09
71338	Extang Corporation (Wkrs)	Sandusky, MI	06/22/09	06/22/09
71339	A.R.E. Manufacturing, Inc. (Comp)	Newberg, OR	06/22/09	03/16/09
71340	Bowne of Detroit (Wkrs)	Detroit, MI	06/22/09	06/09/09
71341	Chart Energy and Chemical, Inc. (IAMAW)	La Crosse, WI	06/22/09	06/19/09
71342	ArborCraft, LLC (Rep)	Johnson City, TN	06/22/09	06/19/09
71343	Metso Minerals, Inc. (Wkrs)	Columbia, SC	06/22/09	06/22/09
71344	B.W. Elliott Manufacturing Co., LLC (Comp)	Binghamton, NY	06/22/09	06/19/09
71345	Mollertech, LLC (Wkrs)	Shelby Township, MI	06/22/09	06/22/09
71346	Martin Plant Services A Division of MSCO (Comp)	Sheffield, AL	06/22/09	06/19/09
71347	Gulford Mills (Wkrs)	Greensboro, NC	06/23/09	06/05/09
71348	Rocky Fashion, Inc. (Wkrs)	New York, NY	06/23/09	06/22/09
71349	Kroeschell Operations, Inc. (Wkrs)	Arlington Heights, IL	06/23/09	06/15/09
71350	International Extrusion Corporation (Wkrs)	Alhambra, CA	06/23/09	06/22/09
71351	MeadWestvaco (Comp)	Louisa, VA	06/23/09	06/22/09
71352	Tooling Science (State)	Maple Grove, MN	06/23/09	06/23/09
71353	Albion Associates, Inc. (Wkrs)	High Point, NC	06/23/09	06/02/09
71354	Rodale, Inc. (Wkrs)	Emmaus, PA	06/23/09	06/09/09
71355	Hollingsworth and Vose Company (Comp)	Hawkinsville, GA	06/23/09	06/10/09
71356	Child Craft, LLC (Comp)	New Salisbury, IN	06/23/09	06/19/09
71357	Moyno, Inc. (UAW)	Springfield, OH	06/23/09	06/15/09
71358	Manpower, Inc. (Wkrs)	Milwaukee, WI	06/23/09	06/16/09
71359	Electrolux Major Appliance (State)	Anderson, SC	06/23/09	06/08/09
71360	Monarch Industries (State)	Waterbury, CT	06/23/09	06/23/09
71361	ZF Lemforder Corporation (Comp)	Brewer, ME	06/23/09	06/22/09
71362	A.R.E. Manufacturing, Inc. (Comp)	Newberg, OR	06/23/09	05/23/09
71363	Frank Chervan, Inc. (Comp)	Bedford, VA	06/24/09	06/12/09
71364	Maggy London Int'l Ltd/Production (Wkrs)	New York, NY	06/24/09	06/12/09
71365	Heartland Companies, Ltd (Wkrs)	Syracuse, NY	06/24/09	06/11/09
71366	Hewlett Packard (Wkrs)	Boise, ID	06/24/09	05/20/09
71367	Seigwork/Graphics Packaging (State)	Lawrenceburg, TN	06/24/09	06/15/09
71368	IAC Canton, LLC (USWA)	Canton, OH	06/24/09	06/22/09
71369	Ramsey Techonology (Wkrs)	Coon Rapids, MN	06/24/09	06/23/09
71370	Conmed Corporation (Comp)	Utica, NY	06/24/09	06/22/09
71371	Standard Lockout, LLC (Wkrs)	Westfield, IN	06/24/09	06/22/09
71372	Starcom MediaVest Group (State)	Detroit, MI	06/24/09	06/15/09
71373	IBM—Armonk (Comp)	Chicago, IL	06/24/09	06/22/09
71374	GM Warren Transmission (UAW)	Warren, MI	06/24/09	06/16/09
71375	AK Steel Mansfield Ohio Works (USW)	Mansfield, OH	06/24/09	06/23/09
71376	Johnstown Specialty Castings, Inc. (USW)	Johnstown, PA	06/24/09	06/17/09
71377	IBM—Southbury (State)	Southbury, CT	06/24/09	06/22/09
71378	Borg Warner Diversified Transmission Products, Inc. (Wkrs).	Muncie, IN	06/24/09	06/22/09
71379	General Motors Assembly Center (UAW)	Wentzville, MO	06/24/09	06/23/09
71380	Seagate Technology (State)	Shakopee, MN	06/24/09	06/23/09
71381	James Tower, Inc. (State)	North Mankato, MN	06/24/09	06/23/09
71382	Nortech International Systems/Division of Intercon 1 (State).	Baxter, MN	06/24/09	06/23/09
71383	Nortech International Systems Division of Aerospace Systems (State).	Wayzata, MN	06/24/09	06/23/09
71384	Nortech Systems/Division of Aerospace Systems, Fairmont (State).	St. Paul, MN	06/24/09	06/23/09
71385	Nortech International Systems (State)	Merrifield, MN	06/24/09	06/23/09
71386	LDS Test and Measurement, LLC (State)	Middleton, WI	06/24/09	06/23/09
71387	Kipe and Associates, Inc. (Comp)	Beaverton, OR	06/24/09	05/18/09
71388	Lucas Smith Automotive, Inc. (Wkrs)	Potosi, MO	06/24/09	06/18/09
71389	Ann Arbor Machine Company (Wkrs)	Chelsea, MI	06/24/09	06/10/09
71390	Whitley's Clothing, Inc. d/b/a Whitley Apparel Co. (Comp)	Dover, NC	06/24/09	06/23/09
71391	Aero Metric, Inc. (State)	Sheboygan, WI	06/24/09	06/23/09
71392	Donaldson Company (State)	Cresco, IA	06/24/09	06/23/09
71393	Ethan Allen Retail, Inc. (Wkrs)	Wexford, PA	06/24/09	06/23/09
71394	Cascade Structural Laminators (Wkrs)	Willamina, OR	06/24/09	06/10/09
71395	Star Tek, Inc. (Wkrs)	Lynchburg, VA	06/25/09	06/24/09
71396	Mat Nuwood (Comp)	Lenoir, NC	06/25/09	06/24/09
71397	Teredyne, Inc. (Wkrs)	Richardson, TX	06/25/09	06/23/09
71398	Yazaki North America (Wkrs)	Canton, MI	06/25/09	06/04/09
71399	IBM (Wkrs)	Endicott, NY	06/25/09	06/23/09
71400	Smart Apparel (US) Inc. (Wkrs)	Quakertown, PA	06/25/09	06/23/09

APPENDIX—Continued

[TAA petitions instituted between 6/22/09 and 6/26/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
71401	Setco (IAM)	Paris, TN	06/25/09	06/25/09
71402	The Timkin company (Wkrs)	Randleman, NC	06/25/09	06/23/09
71403	Ethan Allen Operations, Inc. (State)	Beecher Falls, VT	06/25/09	06/25/09
71404	Ethan Allen Operations, Inc. (State)	Orleans, VT	06/25/09	06/25/09
71405	A. Schulman (IAMAW)	Bellevue, OH	06/25/09	06/23/09
71406	Weyerhaeuser NR Company (IAM)	Cosmopolis, WA	06/25/09	06/12/09
71407	Weyerhaeuser NR Company (IAM)	Pe Ell, WA	06/25/09	06/12/09
71408	Circuit City (Wkrs)	Marion, IL	06/25/09	06/23/09
71409	Emerson/McGill Manufacturing (IAMAW)	Valparaiso, IN	06/25/09	06/24/09
71410	Noble Metal Processing, Indiana, Inc. (Comp)	Butler, IN	06/25/09	06/22/09
71411	F and M Industries (State)	Thorofare, NJ	06/25/09	06/23/09
71412	HTT Inc. (State)	Sheboygan Falls, WI	06/25/09	06/24/09
71413	Crystal Employment Services (Comp)	Madison Heights, MI	06/26/09	06/25/09
71414	TaTa Technologies (Wkrs)	Novi, MI	06/26/09	06/25/09
71415	Sealy Mattress Company (Comp)	Clarion, PA	06/26/09	06/24/09
71416	Kennametal, Inc. (State)	Latrobe, PA	06/26/09	06/25/09
71417	Liberty Manufacturing Company (Comp)	Portage, MI	06/26/09	06/25/09
71418	Thermagon Inc. dba Laird Technologies (Rep)	Cleveland, OH	06/26/09	06/22/09
71419	USS Clairton Coke Works (USW)	Clairton, PA	06/26/09	06/24/09
71420	Business Technology Services, Inc. (Comp)	King of Prussia, PA	06/26/09	06/16/09
71421	Trialon Corporation (Wkrs)	Kokomo, IN	06/26/09	06/17/09
71422	Texas Petrochemicals, LLC (Comp)	Houston, TX	06/26/09	06/26/09
71423	JBT Corporation, Automated Systems (Wkrs)	Chalfont, PA	06/26/09	06/24/09
71424	Sumco Phoenix Corporation—Cincinnati (Comp)	Maineville, OH	06/26/09	06/23/09
71425	US Steel Corp—Fairfield Works (USW)	Fairfield, AL	06/26/09	06/24/09
71426	Magna Seating (UAW)	Lordstown, OH	06/26/09	06/25/09
71427	Modern Industries, Inc. (Comp)	Erie, PA	06/26/09	06/26/09
71428	Tungfat Gmt Fty (Wkrs)	San Francisco, CA	06/26/09	06/12/09
71429	Teradyne, Inc. (Wkrs)	Richardson, TX	06/26/09	06/23/09
71430	Peddinghaus Corporation (Wkrs)	Bradley, IL	06/26/09	06/22/09
71431	Sealing Products Manufacturing, LLC (UAW)	Danville, KY	06/26/09	06/24/09
71432	Baxter Healthcare Corporation (Wkrs)	Mountain Home, AR	06/26/09	06/25/09
71433	Syncreon Logistics Automotives (Wkrs)	Belvidere, IL	06/26/09	06/16/09
71434	Eramet Marietta, Inc. (Comp)	Marietta, OH	06/26/09	06/12/09
71435	Carrier Corporation (Wkrs)	Carrollton, TX	06/26/09	06/24/09
71436	Fortis Plastics, LLC (Wkrs)	Booneville, MS	06/26/09	06/25/09
71437	Imperial Fabricating Company (Wkrs)	Chehalis, WA	06/26/09	06/23/09

[FR Doc. E9–21160 Filed 9–1–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 14, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 14, 2009.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 19th day of August 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 6/15/09 and 6/19/09]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
71204	Keystone Powdered Metal Co (USW)	St. Marys, PA	06/15/09	06/15/09
71205	ArcelorMittal Georgetown (USW)	Georgetown, SC	06/15/09	05/20/09
71206	SVS/Comdata/Ceridian (Wkrs)	El Paso, TX	06/15/09	06/12/09
71207	Sanford Business to Business (Wkrs)	Janesville, WI	06/15/09	06/12/09
71208	Steelcase, Inc. (Comp)	Kentwood, MI	06/15/09	05/27/09
71209	A.J. Oster LLC (Comp)	Allentown, PA	06/15/09	06/11/09
71210	Grede Foundries, Inc. (Wkrs)	Greenwood, SC	06/15/09	06/12/09
71211	Heli-One USA, Inc (Wkrs)	Hurst, TX	06/15/09	06/12/09
71212	International Automotive Components of NA (Comp)	Plymouth, MI	06/15/09	06/12/09
71213	Unitex Chemical Corp (Comp)	Greensboro, NC	06/15/09	06/12/09
71214	Color-fi (Comp)	Sumter, SC	06/15/09	06/12/09
71215	Carl W. Newel Mfg. (0000)	Glendale, CA	06/15/09	06/12/09
71216	Midland Forge (Comp)	Cedar Rapids, IA	06/15/09	06/11/09
71217	Republic Special Metals, Inc., Bay City Forge Division (Wkrs).	Erie, PA	06/16/09	05/25/09
71218	Wausau Paper Corporation (54914)	Appleton, WI	06/16/09	06/15/09
71219	Bush Industries, Inc. (Comp)	Jamestown, NY	06/16/09	06/10/09
71220	Schering-Plough Corporation (State)	Kenilworth, NJ	06/16/09	06/15/09
71221	Eveden, Inc. (Wkrs)	Monroe, GA	06/16/09	06/04/09
71222	Teleflex Medical (USW)	Wyomissing, PA	06/16/09	06/15/09
71223	Keystone Powdered Metal Company (Comp)	Cherryville, NC	06/16/09	06/15/09
71224	Oracle Lens Manufacturing (Comp)	Warwick, RI	06/16/09	06/15/09
71225	Dura Automotive Systems (Comp)	Stockton, IL	06/16/09	06/05/09
71226	Tempel Steel Company (Comp)	Chicago, IL	06/16/09	06/15/09
71227	Dream Clean, Inc. (Comp)	Piney Flats, TN	06/16/09	06/15/09
71228	Kawneer Company, Inc. (USW)	Hernando, MS	06/16/09	06/15/09
71229	Diamond Chain Co. (USW)	Indianapolis, IN	06/16/09	06/11/09
71230	Monaco Coach Corporation (State)	Coburg, OR	06/16/09	06/15/09
71231	International Color Services (Wkrs)	Scottsdale, AZ	06/16/09	06/09/09
71232	Norandal (Wkrs)	Huntingdon, TN	06/16/09	06/15/09
71233	Advance Accessory System (Wkrs)	Shelby, MI	06/16/09	06/05/09
71234	Paper Converting Machine Co (UAW)	Green Bay, WI	06/16/09	06/03/09
71235	Vairex Corp. (State)	Boulder, CO	06/16/09	06/15/09
71236	Diversified Machine Milwaukee (Comp)	Milwaukee, WI	06/17/09	06/12/09
71237	Phillips Plastics Custom Div. (Wkrs)	Phillips, WI	06/17/09	06/02/09
71238	John Maneely Company (USW)	Sharon, PA	06/17/09	06/09/09
71239	Marshall Manufacturing Corp (Wkrs)	Cape Canaveral, FL	06/17/09	06/08/09
71240	On Target Xpress, Inc./DHL (Wkrs)	Spokane, WA	06/17/09	05/18/09
71241	A.O. Smith Electrical Products Co (Comp)	Tipp City, OH	06/17/09	06/16/09
71242	BAE Systems Controls, Inc. (Comp)	Irving, TX	06/17/09	06/15/09
71243	Affiliated Computer Services (ACS) (Wkrs)	Lexington, KY	06/17/09	06/03/09
71244	Weekly Reader Publishing/Readers Digest (Wkrs)	Pleasantville, NY	06/17/09	06/15/09
71245	Montana Tunnels Mining, Inc. (Comp)	Jefferson City, MT	06/17/09	06/01/09
71246	True Temper Sports (Wkrs)	Amory, MS	06/17/09	06/08/09
71247	International Automotive Components of NA (Rep)	Dearborn, MI	06/17/09	06/12/09
71248	International Business Machines Corporation (IBM) (Wkrs)	Armonk, NY	06/17/09	06/01/09
71249	General Motors Boxwood Road Assembly Plant (UAW)	Wilmington, DE	06/17/09	06/15/09
71250	T & S Hardwoods, Inc. (Comp)	Milledgeville, GA	06/17/09	06/15/09
71251	Ancor Specialties (Wkrs)	Ridgway, PA	06/17/09	06/12/09
71252	Mold Base Industries (Wkrs)	Harrisburg, PA	06/17/09	06/15/09
71253	Integrated Silicon Solution, Inc. (ISSI) (Comp)	San Jose, CA	06/17/09	06/15/09
71254	Precision Parts Center (Comp)	Corpus Christi, TX	06/17/09	06/15/09
71255	Flextronics (Wkrs)	Louisville, KY	06/17/09	06/03/09
71256	Powerex, Inc. (Comp)	Youngwood, PA	06/17/09	06/10/09
71257	Beaver Brook Lumber (Wkrs)	Nashville Plantation, ME	06/17/09	06/17/09
71258	UPM Raflatac, Inc. (Comp)	Hanover Township, PA	06/17/09	06/16/09
71259	Cooper Tools (UAW)	Dayton, OH	06/17/09	06/16/09
71260	Cascade Microtech, nc. (Rep)	Beaverton, OR	06/17/09	06/16/09
71261	Interlake Material Handling (UAW)	Naperville, IL	06/17/09	06/16/09
71262	Penn-Union Corporation (GMP)	Edinboro, PA	06/17/09	05/21/09
71263	Belvidere Chrysler Assembly (UAW)	Belvidere, IL	06/17/09	06/16/09
71264	Aviza Technology, Inc. (Wkrs)	Scotts Valley, CA	06/17/09	05/26/09
71265	Numatics, Inc (Comp)	Lapeer, MI	06/17/09	06/10/09
71266	Rockwell Automation (Wkrs)	Troy, MI	06/17/09	06/15/09
71267	B. F. Goodrich Tire Manufacturing (USW)	Opelika, AL	06/17/09	06/16/09
71268	Komo Machine, Inc. (State)	Sauk Rapids, MN	06/17/09	06/16/09
71269	Horton Manufacturing Company, LLC (Wkrs)	Tallmadge, OH	06/17/09	06/16/09
71270	Pentagon Technologies Group, Inc. (Comp)	Portland, OR	06/17/09	06/16/09
71271	North American Hoganas, High Alloys, LLC (Comp)	Johnstown, PA	06/17/09	06/16/09
71272	Crucible Specialty Metals (Wkrs)	Syracuse, NY	06/17/09	06/16/09

APPENDIX—Continued

[TAA petitions instituted between 6/15/09 and 6/19/09]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
71273	Comau Automation (Wkrs)	Novi, MI	06/17/09	06/09/09
71274	England, Inc. (Wkrs)	Morristown, IN	06/17/09	06/12/09
71275	United Airlines (IBT)	Portland, OR	06/17/09	06/16/09
71276	Health Net of the Northeast (Wkrs)	Shelton, CT	06/18/09	05/28/09
71277	Carson Industries (Union)	Freeport, PA	06/18/09	05/31/09
71278	Kennametal, Inc. (Wkrs)	Farmington Hills, MI	06/18/09	06/09/09
71279	HCL America (Wkrs)	Sunnyvale, CA	06/18/09	06/17/09
71280	IBM (State)	Beaverton, OR	06/18/09	06/16/09
71281	International Automotive Components of NA (Bldgs 1 and 2) (Rep).	Troy, MI	06/18/09	06/15/09
71282	Bowater Alabama, LLC (USW)	Westover, AL	06/18/09	06/16/09
71283	Wolters Kluwer Health-Pharma Solutions Business Unit (Wkrs).	Phoenix, AZ	06/18/09	06/12/09
71284	Airtex Products LP (Comp)	Fairfield, IL	06/18/09	06/05/09
71285	Modar, Inc. (Comp)	Benton Harbor, MI	06/18/09	06/16/09
71286	Frame Builders, Inc. (Comp)	Thomasville, NC	06/18/09	06/10/09
71287	Masco Builder Cabinet Group (Wkrs)	Jackson, OH	06/18/09	06/11/09
71288	Hancock Company/dba Gitman and Company (Wkrs)	New York, NY	06/18/09	06/18/09
71289	Shadowline, Inc. (Comp)	Morganton, NC	06/18/09	06/08/09
71290	Unison Engine Components (Wkrs)	Asheville, NC	06/18/09	05/16/09
71291	Modine Manufacturing (USW)	Pemberville, OH	06/18/09	06/12/09
71292	Nobel Automotive Ohio, LLC (Comp)	Archbald, OH	06/18/09	06/18/09
71293	Worthington Steel Co. of Kentucky LLC (Comp)	Louisville, KY	06/18/09	05/18/09
71294	Liberty Pressed Metals LLC (Wkrs)	Kersey, PA	06/19/09	06/17/09
71295	Advanced Industrial Machinery Inc (Comp)	Hickory, NC	06/19/09	05/30/09
71296	Applied Materials, MTA (Wkrs)	Boise, ID	06/19/09	05/19/09
71297	TNS Custom Research (Wkrs)	Indiana, PA	06/19/09	06/17/09
71298	Key Safety Inc (Wkrs)	Sterling Heights, MI	06/19/09	06/08/09
71299	Polymer Division of Johnson Diverse (Comp)	Sturevant, WI	06/19/09	06/18/09
71300	Five Fortune Sewing Co. (Wkrs)	San Francisco, CA	06/19/09	06/12/09
71301	Blazing Color (State)	Bloomington, MN	06/19/09	06/18/09
71302	TNS Custom Research (Wkrs)	Indiana, PA	06/19/09	06/17/09
71303	New Page Corporation (Comp)	Wickliffe, KY	06/19/09	06/18/09
71304	Hitachi Cable Indiana-KY Plant (Wkrs)	Russell Springs, KY	06/19/09	06/17/09
71305	Rockwell Automation (Comp)	Sumner, IA	06/19/09	06/17/09
71306	Sprint Nextel (Wkrs)	Overland Park, KS	06/19/09	06/10/09
71307	Clear Lake Lumber (Wkrs)	Spartansburg, PA	06/19/09	06/10/09
71308	Dometic Sanitation Corp. (Wkrs)	Big Prairie, OH	06/19/09	05/28/09
71309	Komatsu Forklift USA, LLC (Comp)	Covington, GA	06/19/09	06/15/09
71310	Littelfuse, Inc (Comp)	Chicago, IL	06/19/09	06/18/09
71311	Outbound Technologies (Wkrs)	Indianapolis, IN	06/19/09	06/18/09
71312	Wolfers Kluwer Health Pharma Solutions Business Unit (Wkrs).	Phoenix, AZ	06/19/09	06/12/09
71313	Fort Wayne Foundry Corporation (UAW)	Fort Wayne, IN	06/19/09	06/16/09
71314	Mattson Technology, Inc. (State)	Fremont, CA	06/19/09	06/18/09
71315	Cascade Grain Products, LLC (Union)	Clatskanie, OR	06/19/09	06/18/09
71316	Nypro Oregon (Comp)	Corvallis, OR	06/19/09	06/16/09
71317	Product Action (Wkrs)	Toledo, OH	06/19/09	06/11/09
71318	Holm Industries, Inc. (IAMAW)	Scottsburg, IN	06/19/09	06/18/09
71319	Occidental Chemical Corporation (Comp)	Mobile, AL	06/19/09	06/18/09
71320	Eck Industries, Inc. (Union)	Manitowoc, WI	06/19/09	06/12/09
71321	Auburn Hosiery Mills, Inc. (Comp)	Auburn, KY	06/19/09	06/18/09
71322	New Page (Wkrs)	Wickliffe, KY	06/19/09	06/16/09

[FR Doc. E9–21159 Filed 9–1–09; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 2, 2009. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755,

Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2010–008

1. *Applicant:* Carlos Gutierrez, One Discovery Place, Silver Spring, MD 20910–3354.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant plans to enter Cape Royds (ASPA 121), Cape Crozier (ASPA 124), Tramway Ridge (ASPA 130), Cape Evans (ASPA 155), and Backdoor Bay (ASPA 157) to film Adelie penguins, scientists working on Mount Erebus to capture key science and wildlife stories for the Discovery/BBC series, ''Frozen Planet''.

Location

Cape Royds (ASPA 121), Cape Crozier (ASPA 124), Tramway Ridge (ASPA 130), Cape Evans (ASPA 155), and Backdoor Bay (ASPA 157).

Dates

October 12, 2009 to January 25, 2010.

Permit Application No. 2010–009

2. *Applicant:* Alexander Ray Simms, Boone Pickens School of Geology, Oklahoma State University, 105 NRC, Stillwater, OK 74078.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant plans to enter Emperor Island, Dion Islands (ASPA 107), Lagotellerie Island (ASPA 115), Avian Island (ASPA 117), Rothera Point, Adelaide Island (ASPA 147), Ablation Valley, Ganymede Heights (ASPA 147), Green Island (ASPA 108), Litchfield Island (ASPA 113), Biscoe Point (ASPA 139), South Bay, Doumer Island (ASPA 146), East Dallman Bay (ASPA 153), Cierva Point (ASPA 134), Western Bransfield Strait (ASPA 152), Mount Flora, Hope Bay (ASPA 148), Byers Peninsula (ASPA 126), Port Foster (ASPA 145), Deception Island (ASPA 140), Cape Shirreff (ASPA 149), Potter Peninsula (ASPA 132), Western Shore Admiralty Bay (ASPA 128), Lions Rump (ASPA 151), Chile Bay (Discovery Bay) (ASPA 144), Coppermine Peninsula (ASPA 112), Harmony Point (ASPA 133), Ardley Island (ASPA 150), and Fildes Peninsula (ASPA 125) to collect surface samples and rocks from the beaches in order to reconstruct the record of sea-level changes over the last 10,000 years. A sea-level history from multiple sites across the Antarctic Peninsula will allow the applicant to test models of the ice sheet and its response to past sea-level and climate change.

Location

Cape Royds (ASPA 121), Cape Crozier (ASPA 124), Tramway Ridge (ASPA 130), Cape Evans (ASPA 155), and Backdoor Bay (ASPA 157).

Dates

February 15, 2010 to May 15, 2010.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E9–21118 Filed 9–1–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of August 31, September 7, 14, 21, 28, October 5, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 31, 2009

Thursday, September 3, 2009

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (*Contact:* Andrea Jones, 301 415–2309).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of September 7, 2009—Tentative

There are no meetings scheduled for the week of September 7, 2009.

Week of September 14, 2009—Tentative

There are no meetings scheduled for the week of September 14, 2009.

Week of September 21, 2009—Tentative

There are no meetings scheduled for the week of September 21, 2009.

Week of September 28, 2009—Tentative

Wednesday, September 30, 2009

9:30 am Discussion of Management Issues (Closed—Ex. 2).

Week of October 5, 2009—Tentative

There are no meetings scheduled for the week of October 5, 2009.

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. *Contact Person for More Information:* Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., Braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: August 27, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–21272 Filed 8–31–09; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

Name of Agency: Postal Regulatory Commission.

Time and Date: Thursday, September 10, 2009, at 10:30 a.m.

Place: Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

Status: Closed.

Matters To Be Considered: Personnel matters—selection of the secretary and deputy secretary.

Contact Person for More Information: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001, 202–789–6820 and *stephen.sharfman@prc.gov.*

Dated: August 31, 2009.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–21303 Filed 8–31–09; 4:15 pm]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

Name of Agency: Postal Regulatory Commission.

Time and Date: Monday, September 14, 2009, at 3 p.m.

Place: Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

Status: Open.

Matters To Be Considered: 1. Consideration and adoption of FY 2011 budget. (2) Election of vice-chairman.

Contact Person for More Information: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001, 202–789–6820 and *stephen.sharfman@prc.gov.*

Dated: August 31, 2009.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–21304 Filed 8–31–09; 4:15 pm]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28890; File No. 812–13584]

Jackson National Life Insurance Company, et al.

August 27, 2009.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of contract enhancements applied to purchase payments made under certain deferred variable annuity contracts.

Applicants: Jackson National Life Insurance Company (''Jackson National''), Jackson National Separate Account—I (the ''JNL Separate Account''), and Jackson National Life Distributors LLC (''Distributor,'' and collectively, ''Applicants'').

SUMMARY: *Summary of Application:* Applicants seek an order under Section 6(c) of the Act to exempt certain transactions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture, under specified circumstances, of certain contract enhancements applied to purchase payments made under the deferred variable annuity contracts described in the application that Jackson National has issued [1] and will issue through the JNL Separate Account (the ''Contracts'') as well as other contracts that Jackson National may issue in the future through its existing or future separate accounts (''Other Accounts'') that are substantially similar in all material respects to the Contracts (''Future Contracts''). Applicants also request that the order being sought extend to any other Financial Industry Regulatory Authority (''FINRA'') member broker-dealer controlling or controlled by, or under common control with, Jackson National, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future Contracts (''Affiliated Broker-Dealers'') and any successors in interest to the Applicants.

DATES: *Filing Date:* The application was filed on October 9, 2008, and amended on February 10, 2009, April 23, 2009, and August 26, 2009.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 21, 2009, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: c/o Jackson National Life Insurance Company, Attn: Joan E. Boros, Esq., Jorden Burt LLP, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington, DC 20007–5208; copies to Anthony L. Dowling, Esq., Jackson National Life Insurance Company, 1 Corporate Way, Lansing, Michigan 48951.

FOR FURTHER INFORMATION CONTACT: Ellen J. Sazzman, Senior Counsel, at (202) 551–6762, or Harry Eisenstein, Branch Chief, at (202) 551–6795, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Jackson National is a stock life insurance company organized under the laws of the State of Michigan in June 1961. Its legal domicile and principal business address is 1 Corporate Way, Lansing, Michigan 48951. Jackson National is admitted to conduct life insurance and annuity business in the District of Columbia and all States except New York. Jackson National is ultimately a wholly owned subsidiary of Prudential plc (London, England).

2. The JNL Separate Account was established by Jackson National on June 14, 1993, pursuant to the provisions of Michigan law and the authority granted under a resolution of Jackson National's Board of Directors. Jackson National is the depositor of the JNL Separate Account. The JNL Separate Account meets the definition of a ''separate account'' under the Federal securities laws and is registered with the Commission as a unit investment trust under the Act (File No. 811–8664). The JNL Separate Account will fund the variable benefits available under the Contracts. The registration statement relating to the offering of the Contracts was filed under the Securities Act of 1933 (the ''1933 Act'').

3. The Distributor is a wholly owned subsidiary of Jackson National and serves as the distributor of the Contracts. The Distributor is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of FINRA. The Distributor enters into selling group agreements with affiliated and unaffiliated broker-dealers. The Contracts are sold by licensed insurance agents, where the Contracts may be

[1] The existing contract referred to in the application is registered under the Securities Act of 1933 File No. 333–155675.

lawfully sold, who are registered representatives of broker-dealers that are registered under the 1934 Act and are members of FINRA.

4. The Contracts require a minimum initial premium payment of $5,000 or $10,000 under most circumstances depending on the contract ($2,000 for a qualified plan contract). Subsequent payments may be made at any time during the accumulation phase but before the contract anniversary after the owner's 85th birthday. Each subsequent payment must be at least $500 ($50 under an automatic payment plan). Prior approval of Jackson National is required for aggregate premium payments of over $1,000,000.

5. The Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of six fixed accounts (the ''Fixed Accounts''), including four ''Fixed Account Options'' which offer guaranteed crediting rates for specified periods of time (currently, 1, 3, 5, or 7 years), and two ''DCA+ Fixed Account Options'' (used in connection with dollar cost averaging transfers, each of which from time to time offers special crediting rates). In addition, if certain optional guaranteed minimum withdrawal benefits are elected, automatic transfers of an owner's contract value may be allocated to a ''Guaranteed Minimum Withdrawal Benefit ('GMWB') Fixed Account.'' The GMWB Fixed Account also offers a guaranteed crediting rate for a specified period.

6. The Contracts also permit owners to accumulate contract values on a variable basis, through allocations to one or more of the investment divisions of the JNL Separate Account (the ''Investment Divisions,'' collectively with the Fixed Account and the GMWB Fixed Account, the ''Allocation Options''). Under most of the Contracts, 93 Investment Divisions currently are expected to be offered but additional Investment Divisions may be offered in the future and some could be eliminated or combined with other Investment Divisions in the future. Similarly, Future Contracts may offer additional or different Investment Divisions.

7. Transfers among the Investment Divisions are permitted. The first 15 transfers in a contract year are free; subsequent transfers cost $25. Certain transfers to, from and among the Fixed Account Options are also permitted during the Contracts' accumulation phase, but are subject to certain adjustments and limitations. Dollar cost averaging and rebalancing transfers are offered at no charge and do not count against the 15 free transfers permitted each year. If certain optional guaranteed minimum withdrawal benefits are elected, automatic transfers may be required to and from the GMWB Fixed Account according to non-discretionary formulas. These automatic transfers also do not count against the 15 free transfers permitted each year and are without charge.

8. If the owner dies during the accumulation phase of the Contracts, the beneficiary named by the owner is paid a death benefit by Jackson National. The Contracts' base death benefit, which applies unless an optional death benefit has been elected, is a payment to the beneficiary of the greater of: (i) Contract value on the date Jackson National receives proof of death and completed claim forms from the beneficiary or (ii) the total premiums paid under that Contract minus any prior withdrawals (including any withdrawal charges, recapture charges, or other charges or adjustments to such withdrawals).

9. The owner may also be offered certain optional endorsements (for fees described in the application) that can change the death benefit paid to the beneficiary. First, an ''Earnings Protection Benefit Endorsement'' generally would add to the death benefit otherwise payable an amount equal to a specified percentage (that varies with the owner's age at issue) of earnings under the Contract up to a cap of 250% of remaining premiums (premiums not previously withdrawn).

10. Second, the owner of a Contract may be offered six optional death benefits (State variations may apply) that would replace the base death benefit. The optional death benefits include: (i) A 5% Roll-Up death benefit, (ii) a 6% Roll-Up death benefit, (iii) a Highest Quarterly Anniversary Value death benefit, (iv) a Combination 5% Roll-Up and Highest Quarterly Anniversary Value death benefit, (v) a Combination 6% Roll-Up and Highest Quarterly Anniversary Value death benefit, and (vi) a death benefit available in conjunction with the purchase of the LifeGuard Freedom Guaranteed Minimum Withdrawal Benefit.

11. The Contracts offer fixed and variable versions of the following four types of annuity payment or ''income payment'': life income, joint and survivor, life annuity with 120 or 240 monthly payments guaranteed to be paid (although not guaranteed as to amount if variable), and income for a specified period of 5 to 30 years. Jackson National may also offer other income payment options. The Contracts may also offer an optional Guaranteed Minimum Income Benefit (''GMIB'') endorsement.

12. In addition to the Earnings Protection Benefit, GMIB, and optional death benefit endorsements described above, there are nine different Guaranteed Minimum Withdrawal Benefit (''GMWB'') optional endorsements. Three variations of the GMWB allow, subject to specific conditions, partial withdrawals prior to the income date that, in total, equal the benefit's Guaranteed Withdrawal Balance (''GWB''). The guarantee is effective if gross partial withdrawals taken within any one contract year do not exceed a specified percentage of the GWB. Six variations of the GMWB generally allow, subject to specific conditions, partial withdrawals prior to the income date for the longer of the duration of the owner's life or until total periodic withdrawals equal the GWB.

13. Jackson National will add an additional amount to the owner's contract value (a ''Contract Enhancement'') for the initial premium payment, and for each subsequent premium payment received prior to the first contract anniversary following the owner's 85th birthday. Premium payments will not be accepted on or after the first contract anniversary following the owner's 85th birthday. If the owner is age 85 at issue, premium payments will not be accepted on or after the first contract anniversary. All Contract Enhancements are paid from Jackson National's general account assets. The Contract Enhancement is equal to 6% of the premium payment if the adjusted premium, as defined below, is less than $100,000 at the time the premium payment is received. The Contract Enhancement is equal to 8% of the premium payments if adjusted premium is greater than or equal to $100,000 at the time the premium payment is received. The adjusted premium is determined at the time each premium payment is processed and is equal to (a) the sum of all premium payments processed prior to the receipt of the current premium payment plus the current premium payment less (b) the sum of all partial withdrawals processed prior to the receipt of the current premium payment (including any applicable withdrawal charges, recapture charges and other charges or adjustments to such withdrawals).

14. During the first contract year only, at the time that a subsequent premium payment is received that causes the adjusted premium to equal or exceed $100,000 when it was less than $100,000 before the receipt of the premium payment, a retroactive Contract Enhancement will be added to

the contract value equal to 2% of each previous premium payment for which a 6% Contract Enhancement was credited and for which no 2% retroactive Contract Enhancement has already been added. The Contract Enhancement will be applied as of the date of the subsequent premium payment and there will be no adjustments to previous contract values. For example, if the initial premium payment is equal to $50,000, then the initial adjusted premium is equal to $50,000 and the Contract Enhancement credited to the contract value is equal to 6% (since the adjusted premium is less than $100,000) of the initial premium payment (.06*$50,000 = $3,000). If a withdrawal equal to $25,000 is taken at the end of the third contract month and a premium payment equal to $75,000 is made at the end of the sixth contract month, then the adjusted premium at the time the $75,000 subsequent premium payment is received is equal to the initial premium less the withdrawal plus the subsequent premium payment ($50,000 − $25,000 + $75,000 = $100,000). The Contract Enhancement credited to the contract value at the time of the subsequent premium payment is equal to 8% (since the adjusted premium is equal to or greater than $100,000) of the subsequent premium payment plus the retroactive Contract Enhancement of 2% of the initial premium payment (.08*$75,000 + .02*$50,000 = $7,000).

15. Jackson National will recapture all or a portion of any Contract Enhancements by imposing a recapture charge whenever an owner: (i) Makes a total withdrawal within the recapture charge period (nine years after a premium payment) or a partial withdrawal of corresponding premiums within the recapture charge period in excess of those permitted under the Contracts' free withdrawal provision unless the withdrawal is made for certain health-related emergencies specified in the Contracts; (ii) elects to receive payments under an income payment option within the recapture charge period; or (iii) returns the Contract during the free-look period.

16. The amount of the recapture charge varies, depending upon when the charge is imposed, as follows:

CONTRACT ENHANCEMENT RECAPTURE CHARGE

[As a percentage of premium payments]

Completed Years Since Receipt of Premium	0–1	1–2	2–3	3–4	4–5	5–6	6–7	7–8	8–9	9+
Recapture Charge	6%	5.50%	4.50%	4%	3.50%	3%	2%	1%	.50%	0%

The above specified recapture charge percentages apply in all circumstances, whether the Contract Enhancement is 6% at the time of the premium payment, or includes the additional 2%. Therefore, the recapture charge percentage is not higher for premium payments that receive the 8% Contract Enhancement than those that receive the 6% Contract Enhancement. For example, if the initial premium is $50,000 and the Contract Enhancement credited to the contract value is 6% of $50,000 (.06*$50,000 = $3,000), the recapture charge applied when the initial premium is withdrawn after the free-look period but within the first Completed Year is 6% of $50,000 (.06*$50,000 = $3,000). If the initial premium is $100,000 and the Contract Enhancement credited to the contract value is 8% of $100,000 (.08*$100,000 = $8,000), the recapture charge applied when the initial premium is withdrawn is 6% of $100,000 (.06*$100,000 = $6,000).

17. A ''Completed Year'' is the succeeding twelve months from the date on which Jackson National receives a premium payment. The first Contract anniversary begins Completed Year 1–2 and each successive Completed Year begins with the Contract anniversary of the preceding Contract year.

18. The recapture charge percentage will be applied to the corresponding premium reflected in the amount withdrawn or the amount applied to income payments that remain subject to a recapture charge. The amount recaptured will be taken from the Investment Divisions and the Fixed Account (and the GMWB Fixed Account, if applicable) in the proportion their respective values bear to the contract value. The dollar amount recaptured will never exceed the dollar amount of the Contract Enhancement added to the contract. Recapture charges will be applied upon electing to commence income payments, even in a situation where the withdrawal charge is waived.

19. Jackson National does not assess the recapture charge on any payments paid out as: Death benefits; withdrawals of earnings; withdrawals taken under the free withdrawal provision, which allows for free withdrawals up to 10% of remaining premium, less earnings; withdrawals necessary to satisfy the required minimum distribution of the Internal Revenue Code (if the withdrawal requested exceeds the required minimum distribution, the recapture charge will not be waived on the required minimum distribution); if permitted by the owner's State, withdrawals of up to $250,000 from the JNL Separate Account, the Fixed Account or the GMWB Fixed Account in connection with the owner's terminal illness or if the owner needs extended hospital or nursing home care as provided in the Contract; or if permitted by the owner's State, withdrawals of up to 25% (12.5% for each of two joint owners) of contract value from the JNL Separate Account, the Fixed Account or the GMWB Fixed Account in connection with certain serious medical conditions specified in the Contract.

20. The contract value will reflect any gains or losses attributable to a Contract Enhancement described above. For purposes of determining the recapture charge and withdrawal charge, withdrawals will be allocated first to earnings, if any (which may be withdrawn free of any recapture charge and withdrawal charge), second to premium on a first-in, first-out basis, so that all withdrawals are allocated to premium to which the lowest (if any) withdrawal charges and recapture charges apply, and third to Contract Enhancements. For all purposes, other than for tax purposes and the calculation of the Earnings Protection Benefit, earnings are defined to be the excess, if any, of the contract value over the sum of remaining Contract Enhancements (the total Contract Enhancements, reduced by withdrawals of Contract Enhancements) and remaining premiums (the total premium, reduced by withdrawals that incur withdrawal charges and/or recapture charges, and withdrawals of premiums that are no longer subject to withdrawal charges and/or recapture charges). Contract Enhancements and any gains or losses attributable to a Contract Enhancement will be considered earnings under the Contract for tax purposes and the calculation of the Earnings Protection Benefit.

21. The Contracts have a ''free-look'' period of ten days after the owner receives the Contract (or any longer

period required by State law). Contract value (or premiums paid, as may be required by State law), less the full amount of any Contract Enhancement(s) is returned upon exercise of free look rights by an owner. Therefore, 100% of the Contract Enhancement will be recaptured under all circumstances if an owner returns the Contract during the free-look period, but any gain or loss on investments of the Contract Enhancement would be retained by the owner. The dollar amount recaptured will never exceed the dollar amount of the Contract Enhancement added to the contract. A withdrawal charge will not be assessed upon exercise of free look rights.

22. The JNL Separate Account consists of sub-accounts, each of which will be available under the JNL Separate Account. The sub-accounts are referred to as ''Investment Divisions.'' The JNL Separate Account currently consists of 93 Investment Divisions. Each Investment Division will invest in shares of a corresponding series (''Series'') of JNL Series Trust (''Trust'') or JNL Variable Fund LLC (''Fund'') (collectively the ''Trust and Fund''). Not all Investment Divisions may be available. The Trust and Fund are open-end management investment companies registered under the Act and its shares are registered under the 1933 Act. Jackson National Asset Management, LLC (''JNAM'') serves as the investment adviser for all of the Series of the Trust and Fund. JNAM has retained sub-advisers for each Series. Jackson National, at a later date, may determine to create additional Investment Divisions of the JNL Separate Account to invest in any additional Series, or other such underlying portfolios or other investments as may now or in the future be available. Similarly, Investment Division(s) of the JNL Separate Account may be combined or eliminated from time to time. Any changes to the Investment Divisions offered will be effected in compliance with the terms of the Contracts and with applicable State and Federal laws.

23. In addition to the Contract Enhancement recapture charges, the Contracts may have the following charges: mortality and expense risk charge of 1.65% (as an annual percentage of average daily account value); administration charge of 0.15% (as an annual percentage of average daily account value); contract maintenance charge of $35 per year (waived if contract value is $50,000 or more at the time the charge is imposed); Earnings Protection Benefit charge of 0.30% (as an annual percentage of daily account value—only applies if related optional endorsement is elected); GMIB charge of 0.85% per year (0.2125% per quarter) of the ''GMIB Benefit Base'' (as defined in the application); GMWB charge ranging from 0.45% to 1.85% per year (0.1125% to 0.4650% per quarter) of the ''Guaranteed Withdrawal Balance'' (as defined in the application), depending upon age at election and upon which (if any) GMWB endorsement is elected; optional death benefit charge ranging from 0.30% to 1.80% per year (0.0750% to 0.4500% per quarter) of the ''GMDB Benefit Base'' (as defined in the application), depending upon which (if any) optional death benefit endorsement is elected; transfer fee of $25 for each transfer in excess of 15 in a contract year (for purposes of which dollar cost averaging and rebalancing transfers are excluded); commutation fee that applies only upon withdrawals from income payments for a fixed period, measured by the difference in values paid upon such a withdrawal due to using a discount rate of 1% greater than the assumed investment rate used in computing the amounts of income payments; and a withdrawal charge that applies to total withdrawals, partial withdrawals in excess of amounts permitted to be withdrawn under the Contract's free withdrawal provision and on the income date (the date income payments commence) if the income date is within a year of the date the Contract was issued.

24. The withdrawal charges shown in the table below apply to the Contracts and Future Contracts. The amount of the withdrawal charge depends upon the contribution year of the premium withdrawn as follows:

WITHDRAWAL CHARGE

[As a percentage of premium payments]

Completed Years Since Receipt of Premium	0	1	2	3	4	5	6	7	8	9+
Withdrawal Charge	7.5%	7%	6%	5.50%	5%	4%	3%	2%	1%	0

25. Jackson National does not assess the withdrawal charge on any payments paid out as: Death benefits; election to begin income payments after the first contract year; cancellation of the Contract upon exercise of free look rights by an owner; withdrawals of earnings; withdrawals taken under the free withdrawal provision, which allows for free withdrawals up to 10% of remaining premium, less earnings; withdrawals necessary to satisfy the required minimum distribution of the Internal Revenue Code (if the withdrawal requested exceeds the required minimum distribution, the withdrawal charge will not be waived on the required minimum distribution); if permitted by the owner's State, withdrawals of up to $250,000 from the Investment Divisions, Fixed Account or GMWB Fixed Account of the Contracts in connection with the terminal illness of the owner of a Contract, or in connection with extended hospital or nursing home care for the owner; and if permitted by the owner's State, withdrawals of up to 25% (12.5% each for two joint owners) of contract value from the Investment Divisions, Fixed Account or GMWB Fixed Account of the Contracts in connection with certain serious medical conditions specified in the Contract.

Applicants' Legal Analysis

1. Applicants state that Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions requested below with respect to the Contracts and any Future Contracts funded by the JNL Separate Account or Other Accounts that are issued by Jackson National and underwritten or distributed by the Distributor or Affiliated Broker-Dealers. Applicants undertake that Future Contracts funded by the JNL Separate Account or Other Accounts, in the future, will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the Act.

2. Applicants state that Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of the Contract Enhancement in the circumstances set forth in its application would not deprive an owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the amount of the Contract Enhancement allocated to his or her contract value upon receipt of a premium payment is not fully vested until nine complete years following a premium payment. Until or unless the amount of any Contract Enhancement is vested, Jackson National retains the right and interest in the Contract Enhancement amount, although not in the earnings attributable to that amount. Thus, Applicants urge that when Jackson National recaptures any Contract Enhancement it is simply retrieving its own assets, and because a Contract owner's interest in the Contract Enhancement is not vested, the Contract owner has not been deprived of a proportionate share of the JNL Separate Account's assets, *i.e.,* a share of the JNL Separate Account's assets proportionate to the Contract owner's contract value.

4. In addition, Applicants represent that it would be patently unfair to allow a Contract owner exercising the free-look privilege to retain the Contract Enhancement amount under a Contract that has been returned for a refund after a period of only a few days. If Jackson National could not recapture the Contract Enhancement, individuals could purchase a Contract with no intention of retaining it and simply return it for a quick profit. Furthermore, Applicants state that the recapture of the Contract Enhancement relating to withdrawals and to income payments within the first nine years of a premium contribution is designed to protect Jackson National against Contract owners not holding the Contract for a sufficient time period. It provides Jackson National with sufficient time to recover the cost of the Contract Enhancement, and to avoid the financial detriment that would result from a shorter recapture period.

5. Applicants represent that it is not administratively feasible to track the Contract Enhancement amount in the JNL Separate Account after the Contract Enhancement(s) is applied. Accordingly, the asset-based charges applicable to the JNL Separate Account will be assessed against the entire amounts held in the JNL Separate Account, including any Contract Enhancement amounts. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the Contract owner's contract value did not include any Contract Enhancement.

6. Applicants submit that the provisions for recapture of any Contract Enhancement under the Contracts do not violate Sections 2(a)(32) and 27(i)(2)(A) of the Act. Sections 26(e) and 27(i) were added to the Act to implement the purposes of the National Securities Markets Improvement Act of 1996 and Congressional intent. The application of a Contract Enhancement to premium payments made under the Contracts should not raise any questions as to compliance by Jackson National with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an order providing exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of the Contract Enhancements, under the circumstances described herein and in the Application, without the loss of relief from Section 27 provided by Section 27(i).

7. Applicants state that Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

8. Applicants state that it is possible that someone might view Jackson National's recapture of the Contract Enhancements as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the JNL Separate Account. Applicants contend, however, that the recapture of the Contract Enhancement does not violate Rule 22c–1. The recapture of some or all of the Contract Enhancement does not involve either of the evils that Section 22(c) and Rule 22c–1 were intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. To effect a recapture of a Contract Enhancement, Jackson National will redeem interests in a Contract owner's contract value at a price determined on the basis of the current net asset value of the JNL Separate Account. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that Jackson National paid out of its general account assets. Although Contract owners will be entitled to retain any investment gains attributable to the Contract Enhancement and to bear any investment losses attributable to the Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the JNL Separate Account. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c–1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c–1, Applicants request an order granting an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts.

9. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in the application.

10. Applicants submit, for the reasons stated herein, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21140 Filed 9–1–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28891; File No. 812–13617]

DNP Select Income Fund Inc., et al.; Notice of Application

August 27, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(a)(1)(A) and (B) of the Act.

Applicants: DNP Select Income Fund Inc. (''DNP'') and Duff & Phelps Utility and Corporate Bond Trust Inc. (''DUC'') (each of DNP and DUC, a ''Fund'' and, collectively, the ''Funds'').

Summary of Application: Applicants request an order (''Order'') granting an exemption from sections 18(a)(1)(A) and (B) of the Act for a period from the date of the Order until October 31, 2010. The Order would permit each Fund to issue or incur debt subject to asset coverage of 200% that would be used to refinance the Fund's issued and outstanding auction preferred shares (''APS Shares'') and/or remarketed preferred stock (''RP Shares,'' and, collectively with the APS Shares, the ''Preferred Shares'') issued prior to February 1, 2008 that are outstanding at the time such post-Order debt is issued or incurred. The Order also would permit each Fund to declare dividends or any other distributions on, or purchase, capital stock during the term of the Order, provided that such post-Order debt has asset coverage of at least 200% after deducting the amount of such transaction.

Filing Dates: The application was filed on December 29, 2008, and amended on June 3, 2009, June 24, 2009, and August 26, 2009. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 21, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: c/o Nathan I. Partain, Duff & Phelps Investment Management Co., 200 South Wacker Drive, Suite 500, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Attorney Adviser, at (202) 551–6819, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. Each of the Funds is organized as a Maryland corporation and is a closed-end management investment company registered under the Act. Each Fund is advised by Duff & Phelps Investment Management Co. (''Duff & Phelps''). DNP has outstanding a class of common shares and two series each of APS Shares and RP Shares, and DUC has outstanding a class of common shares and one series of APS Shares.

2. Applicants state that the Funds issued their outstanding Preferred Shares for purposes of investment leverage to augment the amount of investment capital available for use in the pursuit of their investment objectives. Applicants state that, through the use of leverage, the Funds seek to enhance the investment return available to the holders of their common shares by earning a rate of portfolio return (which includes the return obtained from securities that are purchased from the proceeds of Preferred Share offerings) that exceeds the dividend rate that the Funds pay to the holders of the Preferred Shares. Applicants represent that holders of APS Shares are entitled to receive a stated liquidation preference amount of $25,000 per share (plus any accumulated but unpaid dividends, whether or not declared) in any liquidation, dissolution or winding up of the relevant Fund, before any distribution or payment to holders of the Fund's common shares. Applicants also state that dividends declared and payable on the APS Shares have a similar priority over dividends declared and payable on the Fund's common shares. In addition, applicants state that APS Shares are ''perpetual'' securities and are not subject to mandatory redemption by a Fund so long as the Fund meets certain asset coverage tests specified in its charter. Further, applicants state that the APS Shares are redeemable at each Fund's option.

3. Applicants represent that holders of RP Shares are entitled to receive a stated liquidation preference amount of $100,000 per share (plus any accumulated but unpaid dividends, whether or not declared) in any liquidation, dissolution or winding up of DNP, before any distribution or payment to holders of its common shares. Applicants state that dividends declared and payable on the RP Shares have a similar priority over dividends declared and payable on DNP's common shares. Applicants also state that the RP Shares are subject to mandatory redemption on a date certain and, therefore, are classified as a liability on the statement of assets and liabilities and the related dividends as interest expense on the statement of operations.[1] In addition, the RP Shares are subject to mandatory redemption if certain asset

[1] The mandatory redemption dates are as follows: Series D—December 22, 2021; and Series E—December 11, 2024.

coverage tests are not met as specified in DNP's charter. Further, applicants state that the RP Shares are redeemable at DNP's option.

4. Applicants state that, prior to February 2008, dividend rates on the Preferred Shares for each dividend period were set at the market clearing rate determined through an auction process or a remarketing mechanism, in the case of APS Shares or RP Shares, respectively, that brought together bidders, who sought to buy Preferred Shares, and holders of Preferred Shares, who sought to sell their Preferred Shares. Applicants explain that, if an auction fails to clear for a series of APS Shares or a remarketing fails for a series of RP Shares (because of an imbalance of sell orders over bids), the dividend payment rate for that series over the next dividend period is set at a specified maximum applicable rate (the ''Maximum Rate'') defined in the relevant Fund's charter, determined by reference to a short-term market interest rate. Applicants state that a failed auction or remarketing is not an event of default; the relevant Fund continues to pay dividends to all holders of Preferred Shares, but at the specified Maximum Rate rather than a market clearing rate. Applicants state that they experienced no unsuccessful auctions or remarketings prior to February 2008.

5. Applicants state that, prior to February 2008, if investors did not purchase all of the APS Shares tendered for sale at an auction or all of the RP Shares tendered for sale in a remarketing, dealers would enter into such auction or remarketing and purchase any excess APS Shares or RP Shares to prevent the auction or remarketing from failing. Applicants represent that, for approximately twenty years, auction rate securities traded successfully in the auction market with, so far as applicants are aware, very few exceptions.[2] Applicants state that they understand that Preferred Shares were bought by many retail investors believing that they were safe short-term liquid investments and, in many situations, the equivalent of cash.

6. Applicants state that, in February 2008, the financial institutions that historically provided ''back stop'' liquidity to APS Share auctions and RP Share remarketings stopped participating in them. Applicants state that, since February 2008, all closed-end funds advised by Duff & Phelps that had Preferred Shares outstanding, including the Funds, have experienced unsuccessful auctions and remarketings due to an imbalance between buy and sell orders. Applicants also state that they believe an established secondary market for Preferred Shares does not exist today that would assure that holders of APS Shares would receive the liquidation preference of $25,000 per share and that holders of RP Shares would receive the liquidation preference of $100,000 per share. Applicants state that, on March 6, 2009, each Fund entered into a committed borrowing facility (each a ''Committed Facility'') under a prime brokerage arrangement that permits such Fund to borrow money to redeem their outstanding Preferred Shares. As described more fully in the application, applicants state that, as of June 24, 2009, the Funds have redeemed seven series of Preferred Shares with an aggregate liquidation preference of $695 million. Applicants state, however, that neither Fund can borrow enough money under its respective Committed Facility to redeem all of its remaining series of Preferred Shares without violating the 300% asset coverage requirements of section 18(a)(1)(A) of the Act. As a result, applicants state that there is currently no reliable mechanism for holders of auction rate securities, including the Funds' Preferred Shares, to obtain liquidity and believe that, industry-wide, the current lack of liquidity is causing distress for a substantial number of holders of auction rate securities and creating severe hardship for many investors.

7. Applicants seek relief for a temporary period from the date on which the Order is granted until October 31, 2010 (''Exemption Period''). The proposed replacement of the Preferred Shares with debt would provide liquidity for the holders of applicants' Preferred Shares, while applicants continue their diligent efforts to obtain a more permanent form of financing (such as a new type of senior security that is equity) that fully complies with the asset coverage requirements of section 18.[3] Applicants state that it is uncertain when, or if, the securities and capital markets will return to conditions that would enable the Funds to achieve compliance with the asset coverage requirements that would apply in the absence of the Order. In particular, applicants believe that the development of a robust market for alternative forms of equity-based leverage could take up to a year, or longer. Applicants further state that, once such a market has developed, the negotiation, execution and closing of an issuance of replacement equity-based securities for each Fund might require an additional several months to consummate. Given the uncertainty and the current and continuing unsettled state of the securities and capital markets, applicants believe that the Exemption Period is reasonable and appropriate. Each Fund's refinancing of Preferred Shares is subject to approval of such arrangements by the Fund's board (''Board'').

Applicants' Legal Analysis:

1. Section 18(a)(1)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security representing indebtedness, or to sell such security of which it is the issuer, unless such class of senior security will have an asset coverage of at least 300% immediately after issuance or sale. Section 18(a)(2)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security that is a stock, or to sell any such security of which it is the issuer, unless such class of senior security will have an asset coverage of at least 200% immediately after such issuance or sale.[4]

2. Section 18(a)(1)(B) prohibits a closed-end fund from declaring a dividend or other distribution on, or purchasing, its own capital stock unless its outstanding indebtedness will have an asset coverage of at least 300% immediately after deducting the amount of such dividend, distribution or purchase price.[5] Section 18(a)(2)(B)

[2] For purposes of the requested Order, applicants use the term ''auction market'' to refer generically to the auction and remarketing mechanisms that serve as a method of providing liquidity for holders of APS Shares and RP Shares, respectively, and the term ''auction rate securities'' to refer generically to the two types of preferred shares.

[3] *See, e.g.,* Eaton Vance Management, SEC No-Action Letter (June 13, 2008) (permitting the issuance of ''liquidity protected preferred shares'' to supplement or replace Eaton Vance funds' auction rate preferred stock).

[4] Section 18(h) of the Act defines asset coverage of a senior security representing indebtedness of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer. The section defines asset coverage of the preferred stock of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer plus the amount the class of senior security would be entitled to on involuntary liquidation.

[5] An exception is made for the declaration of a dividend on a class of preferred stock if the senior security representing indebtedness has an asset coverage of at least 200% at the time of declaration after deduction of the amount of such dividend. *See* section 18(a)(1)(B) of the Act. Further, section 18(g) of the Act provides, among other things, that ''senior security,'' for purposes of section

Continued

prohibits a closed-end fund from declaring a dividend or other distribution on, or purchasing, its own common stock unless its outstanding preferred stock will have an asset coverage of at least 200% immediately after deducting the amount of such dividend, distribution or purchase price.

3. Section 6(c) of the Act provides, in relevant part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision of the Act if and to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request that the Commission issue an Order under section 6(c) of the Act to exempt each Fund from the 300% asset coverage requirements set forth in sections 18(a)(1)(A) and (B) of the Act. Specifically, the Funds seek relief from the section 18 asset coverage requirements for senior securities representing indebtedness for the Exemption Period to permit the Funds to refinance any Preferred Shares issued prior to February 1, 2008 that are outstanding at the time of the Order with debt issued or incurred after the issuance of the Order subject to the 200% asset coverage requirement that applies to each Fund's existing Preferred Shares, rather than the 300% asset coverage that would ordinarily apply under section 18 to senior securities representing indebtedness, (a) when they incur that debt, and (b) when they declare dividends or any other distributions on, or purchase, their capital stock, after deduction of the amount of such dividend, distribution or purchase price. Applicants state that, except as permitted under the requested Order, if issued, the Funds would meet all of the asset coverage requirements of section 18(a) of the Act. In addition, applicants state that each Fund that borrows in reliance on the Order will either pay down or refinance the debt within the Exemption Period so that, upon expiration of the Exemption Period, it will have asset coverage of at least 300% for each class of senior security representing indebtedness.

5. Applicants state that section 18 reflects congressional concerns regarding preferential treatment for certain classes of shareholders, complex capital structures, and the use of excessive leverage. Applicants submit that another concern was that senior securities gave the misleading impression of safety from risk. Applicants believe that the request for temporary relief is necessary, appropriate and in the public interest and that such relief is consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

6. Applicants note that the illiquidity of Preferred Shares is a unique, exigent situation that is posing urgent, and in some cases devastating, hardships on their holders. Applicants represent that the proposed replacement of the Preferred Shares with debt would provide liquidity for the holders of applicants' Preferred Shares, while applicants continue their diligent efforts to obtain a more permanent form of financing (such as a new type of senior security that is equity) that fully complies with the asset coverage requirements of section 18.[6]

7. Applicants represent that the Order would help avoid the potential harm to common shareholders that could result if the Funds were to deleverage their portfolios in the current difficult market environment or that could result if a reduction in investment return reduced the market price of common shares. Applicants also state that the requested Order would permit the Funds to continue to provide the holders of their common shares with the enhanced returns that leverage may provide.

8. Applicants believe that the interests of all classes of the Funds' current investors would be well served by the requested Order—the holders of Preferred Shares because they would achieve the liquidity that the market currently cannot provide, as well as full recovery of the liquidation value of their shares, and the holders of common shares because the cost of the new form of leverage would, over time, be lower than that of the total cost of the Preferred Shares based on their Maximum Rates and the adverse consequences of deleveraging would be avoided.

9. Applicants represent that the proposed borrowing would be obtained from banks, insurance companies or qualified institutional buyers (as defined in Rule 144A(a)(1) under the Securities Act of 1933), who would be capable of assessing the risk associated with the transaction. Applicants also state that, to the extent the Act's asset coverage requirements were aimed at limiting leverage because of its potential to magnify losses as well as gains, they believe that the proposal would not unduly increase the speculative nature of the Funds' common shares because the relief is temporary and the Funds would be no more highly leveraged if they replace the existing Preferred Shares with borrowing.[7] Applicants also state that the proposed liquidity solution would not make the Funds' capital structure more complex, opaque, or hard to understand or result in pyramiding or inequitable distribution of control.

10. Applicants submit that the current state of the credit markets, which has affected auction rate securities of all types, including applicants' Preferred Shares, is a historic event of unusual severity and requires a creative and flexible response on the part of both the private and public sectors. Applicants believe that these issues have created an urgent need for limited, prompt, thoughtful and responsive solutions. Applicants believe that the request meets the standards for exemption under section 6(c) of the Act.

Applicants' Conditions:

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each Fund that borrows subject to 200% asset coverage under the Order will do so only if such Fund's Board, including a majority of the members of the Board who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) (''Independent Board Members''), shall have determined that such borrowing is in the best interests of such Fund, the holders of its common shares and the holders of its Preferred Shares. Each Fund shall make and preserve for a period of not less than six years from the date of such determination, the first two years in an easily accessible place, minutes specifically describing the deliberations by the Board and the information and documents supporting those deliberations, the factors considered by the Board in connection with such

18(a)(1)(B), does not include any promissory note or other evidence of indebtedness issued in consideration of any loan, extension or renewal thereof, made by a bank or other person and privately arranged, and not intended to be publicly distributed.

[6] *See supra* note 1.

[7] Applicants acknowledge that managing any portfolio that relies on borrowing for leverage entails the risk that, when the borrowing matures and must be repaid or refinanced, an economically attractive form of replacement leverage may not be available in the capital markets. For that reason, any portfolio that relies on borrowing for leverage is subject to the risk that it may have to forcibly deleverage, which could be disadvantageous to the portfolio's common shareholders. Applicants therefore state that they regard leveraging through borrowing as potentially a temporary, interim step, with the issuance of new preferred stock as a possible longer-term replacement source of portfolio leverage.

determination, and the basis of such determination.

2. Upon expiration of the Exemption Period, each Fund will have asset coverage of at least 300% for each class of senior security representing indebtedness.

3. The Board of any Fund that has borrowed in reliance on the Order shall receive and review, no less frequently than quarterly during the Exemption Period, detailed progress reports prepared by management (or other parties selected by the Independent Board Members) regarding and assessing the efforts that the Fund has undertaken, and the progress that the Fund has made, towards achieving compliance with the appropriate asset coverage requirements under section 18 by the expiration of the Exemption Period. The Board, including a majority of the Independent Board Members, will make such adjustments as it deems necessary or appropriate to ensure that the Fund comes into compliance with section 18 of the Act within a reasonable period of time, not to exceed the expiration of the Exemption Period. Each Fund will make and preserve minutes describing these reports and the Board's review, including copies of such reports and all other information provided to or relied upon by the Board, for a period of not less than six years, the first two years in an easily accessible place.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21141 Filed 9–1–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28889; File No. 812–13610]

Rafferty Asset Management, LLC, et al.; Notice of Application

August 27, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

Applicants: Rafferty Asset Management, LLC (''Adviser'') and Direxion Shares ETF Trust (''Trust'').

Summary of Application: Applicants request an order to amend a prior order that permits: (a) Series of an open-end management investment company to issue shares (''ETS'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in ETS to occur at negotiated prices; (c) dealers to sell ETS to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933; (d) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of ETS for redemption; and (e) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units (''Prior Order'').[1] Applicants seek to amend the Prior Order to: (a) Provide greater operational flexibility to the existing and future series of the Trust (''Funds''); (b) expand the category of Funds designed to correspond to the return of an underlying securities index (''Underlying Index'' and such Funds, the ''Conventional Funds'') to include Funds that seek to match the performance of an Underlying Index primarily focused on United States equity securities that apply a strategy referred to as 130/30 (''130/30 Funds''); (c) supersede the definition of Leveraged Funds and Inverse Funds in the application on which the Prior Order was issued (''Prior Application''); (d) delete the relief granted in the Prior Order from section 24(d) of the Act and revise the Prior Application accordingly; and (e) amend the terms and conditions of the Prior Application with respect to certain disclosure requirements.

Filing Dates: The application was filed on December 17, 2008, and amended on February 13, 2009, June 3, 2009 and July 20, 2009.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 21, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 33 Whitehall Street, 10th Floor, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust offers series that operate pursuant to the Prior Order. The Adviser, which is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), or an entity controlled by or under common control with the Adviser will serve as investment adviser to each Fund.

2. Applicants request relief that would provide greater operational flexibility to the Funds by permitting: (a) The Funds to enter into short positions in the component securities comprising the relevant Underlying Index (''Component Securities''); (b) each Conventional Fund to invest at least 80% of its total assets (exclusive of collateral held for purposes of securities lending) in Component Securities and/or investments that have economic characteristics that are substantially identical to the economic characteristics of Component Securities; and (c) Leveraged Funds (defined below) to determine what percentage, if any, of its total assets to invest in Component Securities. Applicants state this greater operational flexibility will provide the Funds with the ability to pursue more cost-effective techniques in seeking to achieve their investment objectives. ''Leveraged Funds'' are Funds that seek a specified multiple, up to 300%, of the performance of an Underlying Index

[1] Rafferty Asset Management, LLC, *et al.*, Investment Company Act Release Nos. 28379 (Sep. 12, 2008) (notice) and 28434 (Oct. 6, 2008) (order).

and ''Inverse Funds'' are Funds that seek a specified multiple, up to 300%, of the inverse performance of an Underlying Index.

3. Applicants also seek to amend the terms and conditions of the Prior Application to provide that all representations and conditions contained in the Prior Application that require a Fund to disclose particular information in the Fund's prospectus (''Prospectus'') and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009) (''Summary Prospectus Rule''). Applicants state that such amendment is warranted because the Commission's amendments to Form N–1A with regard to exchange-traded funds as part of the Summary Prospectus Rule reflect the Commission's view with respect to the appropriate types of prospectus and annual report disclosures for an exchange-traded fund.

4. Applicants also seek relief to introduce Conventional Funds that will be 130/30 Funds. Applicants state that in general, ''130/30'' strategies: (a) establish long positions in securities such that total long exposure amounts to approximately 130% of net assets; and (b) simultaneously establish short positions in other securities such that total short exposure amounts to approximately 30% of net assets. Each 130/30 Fund will hold at least 80% of its total assets (exclusive of collateral held for purposes of securities lending) in the Component Securities that are specified for the long positions and could invest up to 20% in such Component Securities, cash equivalents or other securities. The 130/30 Funds would also enter into financial instruments to obtain any remaining 50% long and 30% short positions dictated by its Underlying Index. The 130/30 Funds will provide full portfolio disclosure so that the intraday value of a 130/30 Fund can accurately be calculated, market participants will be able to understand the principal investment strategies of the 130/30 Funds, and informed trading of 130/30 Funds' ETS may occur. The creation and redemption process for the 130/30 Funds will be the same as for the existing Leveraged Funds in that Creation Units of 130/30 Funds will generally be purchased and redeemed for a basket of in-kind securities and cash, or solely cash.

5. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

Applicants' Legal Analysis:

1. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants seek to amend the Prior Order to delete the relief granted from section 24(d) of the Act. Applicants state that the deletion of the exemption from section 24(d) that was granted in the Prior Order is warranted because the adoption of the Summary Prospectus Rule should supplant any need by a Fund to use a product description (''Product Description''). The deletion of the relief granted with respect to section 24(d) of the Act from the Prior Order will also result in the deletion of related discussions in the Prior Application, revision of the Prior Application to delete references to Product Description including in the conditions, and the deletion of condition 4 of the Prior Order.

Applicants' Conditions:

Applicants agree that any amended order granting the requested relief will be subject to the same conditions as those imposed by the Prior Order except for condition 4 which will be deleted. All representations and conditions contained in the application and the Prior Application that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall remain effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21139 Filed 9–1–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28888; File No. 812–13221]

Highland Capital Management, L.P., *et al.;* Notice of Application

August 27, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution fees and early withdrawal charges.

Applicants: Highland Capital Management, L.P. (''Highland Capital''), Highland Funds Asset Management, L.P. (''Highland,'' and together with Highland Capital, the ''Adviser'') and Highland Special Situations Fund II (the ''Special Situations Fund'').

Filing Dates: The application was filed on August 3, 2005, and amended on July 12, 2007, November 29, 2007, June 20, 2008 and August 7, 2009.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 21, 2009 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Michael Colvin, Highland Capital Management, L.P., NexBank Tower, 13455 Noel Road, Suite 800, Dallas, TX 75240.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at (202) 551–6878 or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://*

www.sec.gov/search/search.htm or by calling (202) 551–8090.

Applicants' Representations

1. The Special Situations Fund is a Delaware statutory trust that is registered as a non-diversified closed-end management investment company under the Act. The Special Situations Fund's investment strategy focuses on distressed securities, principally in the senior loan market. Highland Capital and Highland are each a Delaware limited partnership and registered as an investment adviser under the Investment Advisers Act of 1940. Highland Capital will serve as investment adviser to the Special Situations Fund. It is expected that Highland will become the investment adviser to the Special Situations Fund after an internal reorganization.

2. Applicants request that the order also apply to any continuously-offered registered closed-end management investment company that has been previously organized or that may be organized in the future for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,[1] acts as investment adviser and which operates as an interval fund pursuant to rule 23c–3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Securities Exchange Act of 1934 (''Exchange Act'') (each, a ''Fund,'' and together with the Special Situations Fund, the ''Funds'').[2]

3. The Special Situations Fund will continuously offer its shares to the public at net asset value. Shares of the Funds will not be listed on any securities exchange and will not be quoted on any quotation medium. The Funds do not expect there to be any secondary trading market for their shares. The Special Situations Fund has adopted a fundamental policy to repurchase a specified percentage of its shares (between 5% and 25%) at net asset value on a quarterly basis. Such repurchase offers will be conducted pursuant to rule 23c–3 under the Act.

4. The Funds seek the flexibility to be structured as multiple class funds. If the requested relief is granted, the Special Situations Fund intends to offer three classes of shares. The Special Situations Fund will offer Class A shares with a front-end sales charge of up to 4.5% and an annual servicing and/or distribution fee of up to .35% of average daily net assets. Class C shares will be offered without a front-end sales load, with annual distribution fees of .75%, annual servicing fees of .25% and early withdrawal charges (''EWCs'') of 1% for shares repurchased within one year of purchase. Class Z shares would not be subject to sales charges, distribution or servicing fees, or EWCs. The Funds may in the future offer additional classes of shares and/or another sales charge structure.

5. Applicants represent that any asset-based service and distribution fees will comply with the provisions of NASD Rule 2830(d) (''NASD Sales Charge Rule'').[3] Applicants also represent that each Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and disclose any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[4] Each Fund and its distributor will also comply with any requirements that may be adopted by the Commission regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Fund and its distributor.[5]

6. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

7. Each Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, each Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

8. Each Fund operating as an interval fund pursuant to rule 23c–3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act, as if the Fund were an open-end investment company subject to rule 11a–3. In complying with rule 11a–3, each Fund will treat an EWC as if it were a contingent deferred sales load.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock.

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

[3] All references to the NASD Sales Charge Rule include any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[4] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[5] Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release Nos. 26341 (Jan. 29, 2004) (proposing release) and 26778 (Feb. 28, 2005) (re-opening the comment period for the proposed rules and requesting additional comments).

Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its shares and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company will purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted above, section 6(c) provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request relief under sections 6(c) and 23(c) from rule 23c–3 to the extent necessary for the Funds to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

4. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permits open-end investment companies to impose contingent deferred sales loads (''CDSLs''), subject to certain conditions. Applicants state that EWCs are functionally similar to CDSLs imposed by open-end investment companies under rule 6c–10. Applicants state that EWCs may be necessary for the distributor to recover distribution costs. Applicants state that any EWC imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs. Applicants further state that the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-based Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21138 Filed 9–1–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60572; File No. SR–CBOE–2009–060]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Hybrid Quote Locks

August 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on August 19, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System,* and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System,* to eliminate provisions in each respective rule that provide that Market-Makers whose quotes are locked (or inverted) will receive a quote update notification. CBOE is also proposing to amend Rule 6.45A to provide that the length of the quote lock counting period will be established by the Exchange, may vary by product, and will not exceed one second. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rules 6.45A(d) and 6.45B(d) describe how the Hybrid System operates in the event that a Market-Maker's disseminated quotes interact with the disseminated quote(s) of other Market-Makers, resulting in a ''locked'' quote (*e.g.,* $1.00 bid—$1.00 offer). In the event of a quote lock, the following currently occurs:

(i) The Exchange will disseminate the locked market and both quotes will be deemed ''firm'' disseminated market quotes.

(ii) The Market-Makers whose quotes are locked will receive a quote update notification advising that their quotes are locked.

(iii) When the market locks, a ''counting period'' will begin during which Market-Makers whose quotes are locked may eliminate the locked market. Provided, however, in accordance with paragraph (i) above a Market-Maker will be obligated to execute customer and broker-dealer orders eligible for automatic execution pursuant to Rule 6.13, *CBOE Hybrid System's Automatic Execution Feature,* at his disseminated quote in accordance with Rule 8.51, *Firm Disseminated Market Quotes.* If at the end of the counting period the quotes remain locked, the locked quotes will automatically execute against each other in accordance with the applicable allocation algorithm. Under Rule 6.45A (applicable to equity options), the counting period is one second. Under Rule 6.45B (applicable to index and ETF options), the length of the counting period is established by the Exchange, may vary by product, and will not exceed one second.[5]

(iv) The Hybrid System will not disseminate an internally crossed market (*i.e.,* the CBOE best bid is higher than the CBOE best offer). If a Market-Maker submits a quote (''incoming quote'') that would invert an existing quote (''existing quote''), the Hybrid System will change the incoming quote such that it locks the first quote and send a notice to the second Market-Maker indicating that its quote was changed. Locked markets are handled in accordance with paragraphs (i) through (iii) above. During the lock period, if the existing quote is cancelled subsequent to the time the incoming quote is changed, the incoming quote will automatically be restored to its original terms.

Through this rule change, the Exchange is seeking to amend the locked quote process in two respects. First, the Exchange is proposing to eliminate the provisions that provide that Market-Makers whose quotes are locked (or inverted) will receive a quote update notification message (as described in paragraphs (ii) and (iv) above). The Exchange will continue to disseminate the locked market and have a counting period during which Market-Makers whose quotes are locked may eliminate the locked market in the same manner as described above. The Exchange believes that elimination of the notification messages will permit its systems to operate more efficiently. In addition, the Exchange believes that it is no longer necessary for Market-Makers to have a separate notification to react to a quote lock. For example, they can instead react based on a disseminated locked market.

Second, the Exchange is amending Rule 6.45A (applicable to equity options) to provide that the length of the counting period, which is currently fixed at one-second, will instead be established by the Exchange, may vary by product, and will not exceed one second. This change will provide more flexibility in the administration of the rule and is consistent with the counting period language that already exists in Rule 6.45B (applicable to index and ETF options). The Exchange had previously indicated that the ability to vary the timer by product is more important in an index setting where there are larger trading crowds than there are in an equity setting.[6] However, the Exchange believes we no longer need to have that distinction and we should have the same flexibility to reduce the timer in an equity setting.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[7] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b-4(f)(6).

[5] Under Rule 6.45B, an exception applies when the market locks in a Hybrid 3.0 class. In such cases, there is no counting period. Locked quotes will not automatically execute against each other and will remain locked until a quote is cancelled or changed. *See* Rule 6.45A(d)(i)(C).

[6] *See* Securities Exchange Act Release No. 51680 (May 10, 2005), 70 FR 28326 (May 17, 2005) (SR–CBOE–2004–87) (notice of proposed rule change relating to trading rules on the Hybrid System for index options and options on ETFs); *see also* Securities Exchange Act Release No. 51822 (June 10, 2005), 70 FR 35321 (June 17, 2005) (order approving SR–CBOE–2004–87).

[7] 15 U.S.C. 78s(b)(1). [sic]

[8] 15 U.S.C. 78f(b).

the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the elimination of the notification messages will permit its systems to operate more efficiently and the change to the counting period for equity options classes will provide more flexibility in the administration of the rule in a manner consistent with the existing rule for index and ETF options classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–CBOE–2009–060 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–CBOE–2009–060. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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–CBOE–2009–060 and should be submitted on or before September 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21135 Filed 9–1–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60573; File No. SR–NYSE–2009–86]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Length of Time That Exchange Systems Transmit Odd-Lot Order-by-Order Information to the DMM Unit Algorithm Prior to the Opening Transaction From August 31, 2009 to October 31, 2009

August 26, 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 August 21, 2009, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange designated the proposal eligible for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the length of time that Exchange systems transmit odd-lot order-by-order information to the DMM unit algorithm prior to the opening transaction from August 31, 2009 to October 31, 2009. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') proposes to extend the length of time that Exchange systems transmit odd-lot order-by-order information to the DMM unit algorithm prior to the opening transaction from August 31, 2009 to October 31, 2009.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC (formerly the American Stock Exchange).[5]

Background

On October 24, 2008, the Securities and Exchange Commission (''SEC'' or ''Commission'') approved the operation of a pilot for the Exchange's New Market Model (''Pilot'').[6] As part of that filing, the Exchange explained that although the Designated Market Maker (''DMM'') would no longer receive order-by-order information, there would continue to be certain times when human interaction was essential to market quality and maintaining a fair and orderly market.

Currently the DMM is responsible for facilitating the opening transaction and ultimately determines the price,[7] and executes the orders at that price to open the trading in his or her assigned securities. In order to effect a fair and orderly opening transaction, the individual DMM is provided aggregate order information.[8] DMMs have access to aggregate order information as it pertains to round-lot and odd-lot orders; however, the DMM unit algorithm receives odd-lot information on an order-by-order basis prior to the opening transaction. In order for the DMM unit algorithm to effectively facilitate an opening transaction, the DMM unit algorithm is provided odd-lot information prior to the opening. Constraints inherent to the Odd-lot System require that odd-lot information be transmitted to the DMM unit algorithm on an order-by-order basis prior to the opening. As such, prior to the opening, Exchange systems transmit to the DMM unit algorithm odd-lot order information[9] excluding odd-lot cancellations, Stop odd-lot orders and prior day Good 'til Cancel (''GTC'') orders.[10] Once the security is opened, Exchange systems do not provide any order-by-order odd-lot information to the DMM unit algorithm.

Proposed Amendment to NYSE Rule 104

The Exchange anticipated that the work required to modify its systems to transmit aggregate odd-lot information to DMM unit algorithms would have been completed by August 31, 2009; however, after the completion of several system modifications it is clear that the Exchange will require an extension to October 31, 2009, in order to complete these particular enhancements.

Since the commencement of the Pilot, the Exchange has completed several modifications to remove and enhance legacy systems. These enhancements are necessary to provide the foundation needed for Exchange systems to transmit aggregate odd-lot information to the DMM unit algorithm prior to the opening transaction.[11] The Exchange continues to enhance its systems to create a strong platform for technological growth that offers its customers the most comprehensive set of trading technology solutions to meet their needs and expectations. In furtherance of this goal, the Exchange must either upgrade or replace in its entirety legacy systems that accept, manage, execute and report executions.

The extensive nature of the modifications requires the Exchange to progressively implement these systemic changes on a security by security basis as it gains experience with the new technology until the new technology is operative in all securities traded on the Floor. Consequently, the modifications have progressed at a slower pace than initially anticipated. The next Exchange technology release will modify Exchange systems such that odd-lot information will be provided to the Display Book in aggregate prior to the opening transaction. Display Book in turn will provide aggregate order information to the DMM unit algorithm prior to the opening transaction to facilitate the ability of the DMM unit algorithm to electronically open trading in certain securities. It is anticipated that these modifications will be completed no later than October 31, 2009.

Given the above, the Exchange requests an extension to October 31, 2009, to complete the system modifications required to transmit aggregate odd-lot information to the DMM unit algorithms prior to the opening transaction.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'')[12] for these proposed rule changes is the requirement under Section 6(b)(5)[13] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change supports these principles and

[5] *See* SR–NYSE Amex–2009–58.

[6] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (approving certain rules to operate as a pilot scheduled to end October 1, 2009).

[7] In an opening and reopening trade, NYSE's Display Book® (''Display Book'') will verify that all interest that must be executed in the opening or reopening trade can be executed at the price chosen by the DMM. If all the interest that must be executed in the transaction cannot be executed at that price, the Display Book will block the execution. In addition, when executing blocks (10,000 shares or more or value of $200,000 or more), trading out of a gap quote situation or an Liquidity Replenishment Point (''LRP'') that locks or crossed the market, the Display Book may adjust the execution price if there is enough interest on the Display Book to complete the transaction at a better price.

The Display Book® is an order management and execution facility. The Display Book receives and displays orders to the DMM, contains order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[8] *See* NYSE Rule 104(a)(2).

[9] *See* NYSE Rule 104 Supplementary Material .05.

[10] Odd-lot cancellations and GTC odd-lot orders are not included because of system constraints. Stop odd-lot orders are elected by the opening transaction which in turn commences the execution of orders in the Odd-lot System. The Stop odd-lot orders elected by the opening transaction are executed in the Odd-lot system pursuant to the rule governing odd-lot executions. *See* NYSE Rule 124(e).

[11] *See* Securities and Exchange Act Release No. 59592 (March 17, 2009), 74 FR 12417 (March 24, 2009) (SR–NYSE–2009–29) (Filing to, among other things, replace references to specific NYSE systems that perform particular functions and replace it with the phrase ''Exchange systems'' in order to keep pace with the enhancements to its technology).

[12] 15 U.S.C. 78a.

[13] 15 U.S.C. 78f(b)(5).

serves to protect the investor and the public interest in that it seeks to continue providing DMM unit algorithms with the order by order odd-lot information required to facilitate the timely opening of securities on the Exchange until Exchange systems can be modified to provide such information in an aggregated format.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

The Exchange has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to provide the DMM unit algorithms with order-by-order odd-lot information prior to the opening transaction without interruption until October 31, 2009, when the Exchange anticipates necessary modifications to its systems will be completed. Therefore, the Commission designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–86. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–86 and should be submitted on or before September 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21136 Filed 9–1–09; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60571; File No. SR–BX–2009–051]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Flash and Cancel Orders

August 26, 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 August 21, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate Flash and Cancel Orders. The Exchange has filed this proposal under Exchange Act Rule 19b–4(f)(6) [5] and, as such, the proposal is immediately effective. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6).

Exchange will implement the proposed rule change on September 1, 2009.

The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq OMX BX implemented Flash and Cancel Orders on July 20, 2009.[6] Upon further review, Nasdaq OMX BX proposes to eliminate Flash and Cancel Orders effective September 1, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[6] *See* SR–BX–2009–029.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii)[12] 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. The Exchange requests this waiver so as to allow it to eliminate Flash and Cancel Orders on September 1, 2009.[13] Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative on September 1, 2009.[14]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *Id.*

[13] *See* SR–BX–2009–051, Item 7.

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BX–2009–051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BX–2009–051. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2009–051 and should be submitted on or before September 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21165 Filed 9–1–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60570; File No. SR–NASDAQ–2009–079]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate Flash Orders

August 26, 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 August 21, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. Nasdaq will implement the proposed rule change on September 1, 2009. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes a rule change to eliminate Flash Orders.[4] The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

4750. Nasdaq Market Center-Execution Services

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a) through (e) No Change.

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(10) No Change.

(11) *Reserved* [''Flash and Cancel Orders'' are market or marketable limit orders which are to be executed in whole or in part immediately upon receipt by the System with any unfilled balance being displayed to Nasdaq market participants (and market data vendors) for potential execution for a period of time not to exceed one-half of one second. If any unfilled balance remains after such display, such marketable unfilled balance shall be cancelled back to the entering party, and such nonmarketable unfilled balance shall be retained by the System for potential execution. The System will provide an electronic method to distinguish the Flash Order during the flash period from the System's protected quote under Regulation NMS.]

(12)–(13) No Change.

(g) through (i) No Change.

* * * * *

4758. Order Routing

(a) Order Routing Process

(1) The Order Routing Process shall be available to Participants from 7:00 a.m. until 8:00 p.m. Eastern Time, and shall route orders as described below: All routing of orders shall comply with Rule 611 of Regulation NMS under the Exchange Act.

(A) The System provides three routing options. Of these three, DOT is only available for orders ultimately sought to be directed to either the New York Stock Exchange (''NYSE'') or NYSE Amex. The System will consider the quotations only of accessible markets and will provide an electronic method to distinguish orders displayed during a prerouting display period from the System's protected quote under Regulation NMS. The three System routing options are:

(i) DOT (''DOT'')—under this option, after checking the System for available shares if so instructed by the entering firm, orders are sent to other available market centers for potential execution, per entering firm's instructions, before being sent to the destination exchange, so long as the price at such market centers would not violate the Order Protection Rule. [If instructed by the entering firm, prior to sending orders to other available markets, such orders shall be displayed to Nasdaq market participants (and market data vendors) for potential execution, at the NBBO price, for a period of time not to exceed one-half of one second as determined by Nasdaq.] Any un-executed portion will thereafter be sent to the NYSE or NYSE Amex, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either SDAY, SIOC, MDAY, MIOC, GTMC or market-on-open/close. Notwithstanding the foregoing, orders designated for participation in the NYSE or NYSE Amex opening or closing processes will not check the System for available shares prior to routing.

(ii) Reactive Electronic Only (''STGY'')—under this option, after checking the System for available shares if so instructed by the entering firm, orders are sent to other available market centers for potential execution, per entering firm's instructions. When checking the book, the System will seek to execute at the price it would send the order to a destination market center. [If instructed by the entering firm, prior to sending orders to other available markets, such orders shall be displayed to Nasdaq market participants (and market data vendors) for potential execution, at the NBBO price, for a period of time not to exceed one-half of one second as determined by Nasdaq.] If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

(iii) Electronic Only Scan (''SCAN'')—under this option, after checking the System for available shares if so instructed by the entering firm, orders are sent to other available market centers for potential execution, per entering firm's instructions, in compliance with Rule 611 under Regulation NMS. When checking the book, the System will seek to execute at the price it would send the order to a destination market center. [If instructed by the entering firm, prior to sending orders to other available markets, such orders shall be displayed to Nasdaq market participants (and market data vendors) for potential execution, at the NBBO price, for a period of time not to exceed one-half of one second as determined by Nasdaq.] If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Nasdaq filed separate proposals to create flash orders that ultimately could be routed to other markets, and flash orders that would cancel back to the entering party. *See* SR–NASDAQ–2009–043 and SR–NASDAQ–2009–048. This filing eliminates both versions of these orders, with both types referred to herein collectively as Flash Orders.

System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

Orders that do not check the System for available shares prior to routing may not be sent to a facility of an exchange that is an affiliate of Nasdaq, except for orders that are sent to the NASDAQ OMX BX Equities Market.

(B) No Change.

(b) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq implemented Flash Orders on June 5, 2009. Upon further review, Nasdaq proposes to eliminate Flash Orders effective September 1, 2009.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 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. Nasdaq has requested that the Commission waive the 30-day operative delay. Nasdaq requests this waiver so as to allow it to eliminate Flash Orders on September 1, 2009.[11] Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative on September 1, 2009.[12]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2009–079 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2009–079. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2009–079 and should be submitted on or before September 23, 2009.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[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 that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied this requirement.

[10] *Id.*

[11] *See* SR–NASDAQ–2009–079, Item 7.

[12] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21162 Filed 9–1–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60574; File No. SR–NYSEAmex–2009–58]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Length of Time That Exchange Systems Transmit Odd-Lot Order-by-Order Information to the DMM Unit Algorithm Prior to the Opening Transaction From August 31, 2009 to October 31, 2009

August 26, 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 August 21, 2009, NYSE Amex LLC (''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange designated the proposal eligible for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the length of time that Exchange systems transmit odd-lot order-by-order information to the DMM unit algorithm prior to the opening transaction from August 31, 2009 to October 31, 2009. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex LLC (''NYSE Amex'' or the ''Exchange''), formerly the American Stock Exchange LLC, proposes to extend the length of time that Exchange systems transmit odd-lot order-by-order information to the DMM unit algorithm prior to the opening transaction from August 31, 2009 to October 31, 2009.

The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC (''NYSE'').[5]

Background

As described more fully in a related rule filing,[6] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC,[7] later renamed NYSE Amex LLC (hereinafter referred to as ''NYSE Amex'') and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the ''Act'').[8] The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (the ''NYSE Amex Trading Systems'') are operated by the NYSE on behalf of the Exchange.[9]

As part of the Equities Relocation, the Exchange adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Alternext Equities Rules, now renamed NYSE Amex Equities Rules, to govern trading on the NYSE Amex Trading Systems.[10] The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Included in the adoption of the NYSE Rules was the adoption and operation of the NYSE's New Market Model Pilot (''Pilot'') approved by the Securities and Exchange Commission (''SEC or ''Commission'') on October 24, 2008.[11] As part of the original Pilot filing, the NYSE explained that although the Designated Market Maker (''DMM'') would no longer receive order-by-order information, there would continue to be certain times when human interaction was essential to market quality and maintaining a fair and orderly market.

Currently the DMM is responsible for facilitating the opening transaction and ultimately determines the price,[12] and

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* SR–NYSE–2009–86.

[6] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving the Merger).

[7] NYSE Alternext US LLC was subsequently renamed NYSE Amex LLC. *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

[8] 15 U.S.C. 78f.

[9] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63) (approving the Equities Relocation).

[10] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63) (approving the Equities Relocation); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106) *and* Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03) (together, implementing the Bonds Relocation); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10) (adopting amendments to NYSE Alternext Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11) (adopting amendments to Rule 62—NYSE Alternext Equities to track changes to corresponding NYSE Rule 62).

[11] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (approving certain rules to operate as a pilot scheduled to end October 1, 2009.)

[12] In an opening and reopening trade, the Display Book® (''Display Book'') will verify that all interest that must be executed in the opening or reopening can be executed at the price chosen by the DMM. If all the interest that must be executed in the

executes the orders at that price to open the trading in his or her assigned securities. In order to effect a fair and orderly opening transaction, the individual DMM is provided aggregate order information.[13] DMMs have access to aggregate order information as it pertains to round-lot and odd-lot orders; however, the DMM unit algorithm receives odd-lot information on an order-by-order basis prior to the opening transaction. In order for the DMM unit algorithm to effectively facilitate an opening transaction, the DMM unit algorithm is provided odd-lot information prior to the opening. Constraints inherent to the Odd-lot System require that odd-lot information be transmitted to the DMM unit algorithm on an order-by-order basis prior to the opening. As such, prior to the opening, Exchange systems transmit to the DMM unit algorithm odd-lot order information [14] excluding e-Quote odd-lots, odd-lot cancellations, Stop odd-lot orders and Good 'til Cancel odd-lot orders.[15] Once the security is opened, Exchange systems do not provide any order-by-order odd-lot information to the DMM unit algorithm.

Proposed Amendment to NYSE Amex Equities Rule 104

The Exchange anticipated that the work required to modify its systems to transmit aggregate odd-lot information to DMM unit algorithms would have been completed by August 31, 2009; however, after the completion of several system modifications it is clear that the Exchange will require an extension to October 31, 2009, in order to complete these particular enhancements.

Since the commencement of the Pilot, the Exchange has completed several modifications to remove and enhance legacy systems. These enhancements are necessary to provide the foundation needed for Exchange systems to transmit aggregate odd-lot information to the DMM unit algorithm prior to the opening transaction.[16] The Exchange continues to enhance its systems to create a strong platform for technological growth that offers its customers the most comprehensive set of trading technology solutions to meet their needs and expectations. In furtherance of this goal, the Exchange must either upgrade or replace in its entirety legacy systems that accept, manage, execute and report executions.

The extensive nature of the modifications requires the Exchange to progressively implement these systemic changes on a security by security basis as it gains experience with the new technology until the new technology is operative in all securities traded on the Floor. Consequently, the modifications have progressed at a slower pace than initially anticipated. The next Exchange technology release will modify Exchange systems such that odd-lot information will be provided to the Display Book in aggregate prior to the opening transaction. Display Book in turn will provide aggregate order information to the DMM unit algorithm prior to the opening transaction to facilitate the ability of the DMM unit algorithm to electronically open trading in certain securities. It is anticipated that these modifications will be completed no later than October 31, 2009.

Given the above, the Exchange requests an extension to October 31, 2009, to complete the system modifications required to transmit aggregate odd-lot information to the DMM unit algorithms prior to the opening transaction.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") [17] for these proposed rule changes is the requirement under Section 6(b)(5) [18] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change supports these principles and serves to protect the investor and the public interest. in that it seeks to continue providing DMM unit algorithms with the order by order odd-lot information required to facilitate the timely opening of securities on the Exchange until Exchange systems can be modified to provide such information in an aggregated format.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

The Exchange has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the

transaction cannot be executed at that price, the Display Book will block the execution. In addition, when executing blocks (10,000 shares or more or value of $200,000 or more), trading out of a gap quote situation or an Liquidity Replenishment Point ("LRP") that locks or crossed the market, the Display Book may adjust the execution price if there is enough interest on the Display Book to complete the transaction at a better price.

The Display Book® is an order management and execution facility. The Display Book receives and displays orders to the DMM, contains order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[13] *See* proposed NYSE Amex Equities Rule 104(a)(2).

[14] *See* NYSE Amex Equities Rule 104 Supplementary Material .05.

[15] Odd-lot cancellations and GTC odd-lot orders are not included because of system constraints. Stop odd-lot orders are elected by the opening transaction which in turn commences the execution of orders in the Odd-lot System. The Stop odd-lot orders elected by the opening transaction are executed in the Odd-lot system pursuant to the rule governing odd-lot executions. *See* NYSE Amex Equities Rule 124(e).

[16] *See* Securities and Exchange Act Release No 59592 (March 17, 2009), 74 FR 12417 (March 24, 2009) (SR–NYSE–2009–29) (Filing to, among other things, replace references to specific NYSE systems that perform particular functions and replace it with the phrase "Exchange systems" in order to keep pace with the enhancements to its technology).

[17] 15 U.S.C. 78a.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Exchange to provide the DMM unit algorithms with order-by-order odd-lot information prior to the opening transaction without interruption until October 31, 2009, when the Exchange anticipates necessary modifications to its systems will be completed. Therefore, the Commission designates the proposal operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2009–58 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–2009–58. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–58 and should be submitted on or before September 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21137 Filed 9–1–09; 8:45 am]

BILLING CODE 8010–01–P

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Director for Reports Clearance to the addresses or fax numbers shown below.

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA. *Fax:* 202–395–6974. *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, Attn: Director, Center for Reports Clearance, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. *Fax:* 410–965–0454. *E-mail address: OPLM.RCO@ssa.gov.*

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than November 2, 2009. Individuals can obtain copies of the collection instruments by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the e-mail address we list above.

1. *Blood Donor Locator Service (BDLS)—20 CFR 401.200—0960–0501.* This regulation stipulates that when blood donor facilities identify blood donations as Human Immunodeficiency Virus (HIV)-positive, the overseeing State agency must provide the names and Social Security Numbers of the affected donors to SSA's Blood Donor Locator Service. SSA uses this information to furnish the State agencies with the blood donors' address information to notify the blood donors. Respondents are State agencies acting on behalf of blood donor facilities.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 10.

Frequency of Response: 5.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 13 hours.

2. *Continuation of SSI Benefits for the Temporarily Institutionalized—Certification of Period and Need to Maintain Home—20 CFR 416.212(b)(1)—0960–0516.* When Supplemental Security Income (SSI) recipients: (1) Enter a public institution, or (2) enter a private medical institution with Medicaid paying more than 50% of expenses, their SSI payments are reduced to a nominal sum. However, if this institutionalization is temporary (defined as a maximum of 3 months), SSA may waive the reduction of benefits.

Before SSA can waive the benefit reduction, the agency must receive the following documentation: (1) A physician's certification that the beneficiary will only be institutionalized for a maximum of 3 months, and (2) certification from the beneficiary, beneficiary's family, or beneficiary's friend confirming that SSI benefits are needed to maintain the living arrangements to which the beneficiary will return post-institutionalization. The respondents are doctors of SSI beneficiaries and the beneficiaries or their family/friends.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 5,000 hours.

3. *Privacy and Disclosure of Official Records and Information; Availability of Information and Records to the Public—20 CFR 401.40(b)&(c), 401.55(b), 401.100(a), 402.130, 402.185—0960–0566.* Under the Privacy and Disclosure of Official Records and Information, SSA has established methods in which the public can request the following: Access to their SSA records; disclosure of SSA records; corrections/amendments to their SSA records; consent for release of records; records accessible through the Freedom of Information Act (FOIA); and waiver/reduction of fees normally charged for release of FOIA records. SSA most often collected the required information for these requests through a written letter, with the exception of the consent for release of records for which there is the Form SSA–3288. Respondents are individuals requesting access to, correction of, or disclosure of SSA records.

Type of Request: Revision of an OMB-approved information collection.

Type of request	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Access to Records	10,000	1	11	1,833
Designating a Representative for Disclosure of Records	3,000	1	2	100
Amendment of Records	100	1	10	17
Consent of Release of Records	3,000,000	1	3	150,000
FOIA Requests for Records	15,000	1	5	1,250
Waiver/Reduction of Fees	400	1	5	33
Totals	3,028,500			153,233

4. *Representative Payee Report of Benefits and Dedicated Account—20 CFR 416.546, 416.635, 416.640, 416.665—0960–0576.* SSA requires representative payees (RPs) to submit a written report accounting for the use of money paid to Social Security and/or Supplemental Security Income (SSI) recipients, and to establish and maintain a dedicated account for these payments. SSA uses Form SSA–6233 to ensure the RPs are using the benefits received for the recipient's current maintenance and personal needs, and the expenditures of funds from the dedicated account are in compliance with the law. Respondents are representative payees for SSI recipients.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 10,000 hours.

5. *The Ticket to Work and Self-Sufficiency Program —20 CFR 411—0960–0644.* Through its Ticket to Work Program Manager, SSA uses the information collected to operate and manage the Ticket to Work Program. SSA uses the Ticket to Work Program to assign Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) beneficiaries to a service provider, and follows their progress through the various stages of ticket program participation, such as progress reviews or changes in ticket status. Most of the collections in this Information Collection Request (ICR) require service providers to provide information to SSA for such tasks as selecting a payment system or requesting payments for helping the beneficiary achieve certain work goals. Most of the categories of information collected in this ICR are necessary for SSA to: (1) Comply with the Ticket to Work legislation, and (2) provide proper oversight of the program. SSA collects this information through several modalities, including forms, electronic exchanges, and written documentation. The respondents are SSDI beneficiaries and blind or disabled SSI beneficiaries and their employment networks or State vocational rehabilitation agencies assigned under the auspices of the Ticket to Work Program.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
(a) 20 CFR 411.140(d)(3); 411.150(b)(3); 411.325(a); SSA–1365; SSA–1370	13,700	1	240	54,800
(a) 20 CFR 411.166; 411.170(b); Electronic Data Sharing	35,584	1	5	2965
(b) 20 CFR 411.145; 411.325; Requesting Ticket Un-assignments	2,532	1	15	633
(b) 20 CFR 411.535(a)(1)(iii); VR Case Closures	8,505	1	5	709
(c) 20 CFR 411.192(b)&(c); Request to Place Ticket in Inactive Status	1,000	1	30	500
(c) 20 CFR 411.200(b); SSA–1375; SSA–L1373; SSA–L1374; SSA–L1377; Certification of Work and Educational Progress	127,000	1	15	31,750
(c) 20 CFR 411.210(b); Ticket-Use Status after Not Making Timely Progress	3,145	1	30	1,573
(d) 20 CFR 411.365; 411.505; 411.515; Selecting a Payment System	118	1	30	59
(e) 20 CFR 411.325(d); 411.415; Reporting Referral Agreement	48	1	480	384
(f) 20 CFR 411.575; SSA–1391; SSA–1389; SSA–1393; SSA–1399; SSA–1396; SSA–1392; SSA–1398; Requesting EN Payments	12,420	1	60	12,420
(f) 20 CFR 411.560; SSA–1401; Split Payment Situations	100	1	20	33
(g) 20 CFR 411.325(f); Periodic Outcomes Reporting	2,470	1	120	4,940
(h) 20 CFR 411.435; 411.615; 411.625; Dispute Resolutions	2	1	120	4

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
(i) 20 CFR 411.320; SSA–1394; EN Contract Changes	202	1	10	34
Totals	206,826			110,804

6. *Medical Consultant's Review of Psychiatric Review Technique Form—20 CFR 404.1520a, 404.1640, 404.1643, 404.1645, 416.920a—0960–0677.* Form SSA–3023 is a program evaluation form SSA's regional review component uses to facilitate the contract medical/psychological consultant's review of the Psychiatric Review Technique Form (PRTF). SSA–3023 records the reviewing medical/psychological consultant's assessment of the PRTF. The medical/psychological consultant only completes form SSA–3023 when an adjudicating component's PRT is in the file. SSA requires form SSA–3023 for each PRT form completed. The respondents are medical/psychological consultants who review the Psychiatric Review Technique Form for quality purposes.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 344.

Frequency of Response: 165.

Average Burden per Response: 12 minutes.

Estimated Annual Burden: 11,352 hours.

Dated: August 28, 2009.

Elizabeth A. Davidson,

Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. E9–21215 Filed 9–1–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number: FTA–2009–0036]

Additional Final Guidance on New Starts/Small Starts Policies and Procedures

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Response to comments; final guidance.

SUMMARY: The purpose of this notice is to convey additional 2009 final guidance on New Starts/Small Starts policies and procedures. On July 29, 2009, FTA announced in the **Federal Register** the availability of proposed guidance and requested public comment. FTA received a total of 15 comments from transit agencies, metropolitan planning organizations, labor unions, advocacy groups, and other interested parties. After reviewing the public comments, FTA is issuing final guidance, which is included at the end of this notice.

DATES: Unless otherwise stated in this notice, this final guidance is effective September 2, 2009.

FOR FURTHER INFORMATION CONTACT: Elizabeth Day, Office of Planning and Environment, telephone (202) 366–5159 and Christopher Van Wyk, Office of Chief Counsel, telephone (202) 366–1733. FTA is located at 1200 New Jersey Ave., SE., East Building, Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

Organization

The proposed guidance issued on July 29, 2009 covered the following three topic areas: (a) Proposed policy changes; (b) clarification to existing policies and procedures; and (c) potential changes to FTA internal practices for managing the New Starts and Small Starts program.

This guidance first presents and responds to comments for area (a), proposed policy changes, for which the following three proposed policy changes are presented: (1) Local financial commitment rating; (2) New Starts and Small Starts ''other'' factors criteria; and (3) New Starts project planning horizon year. The second section of the guidance presents and responds to comments regarding area (b), clarification to existing policies and procedures, and addresses: (1) Documentation of uncertainties; and (2) alternate ridership and transportation user benefits estimation methods. These responses to comments are provided to further clarify existing policy. The third section of the guidance presents and responds to comments regarding area (c), potential changes to FTA internal practices for managing the New Starts and Small Starts program, specifically, expanded use of pre-award authority and letters of no prejudice (LONPs). The fourth section presents and responds to submitted comments not directly related to any of the three areas covered in the proposed guidance. Following the responses to comments for each of these areas, the final guidance and a description of changes to FTA internal practices are articulated in full.

Proposed Policy Changes—Response to Comments

1. Local Financial Commitment Rating

In the proposed guidance, FTA suggested eliminating the policy of considering the degree to which a project employs innovative contractual agreements in the evaluation and rating of the operating financial plan under the local financial commitment criterion. Specifically, FTA proposed eliminating the policy of increasing the operating financial plan rating when project sponsors provide evidence that the operations and maintenance for the proposed project will be contracted out or when there is evidence that an opportunity had been given for contracting out but the project sponsor had substantive reasons for not doing so.

Of the 15 comments received, 12 expressed general support for the proposal. Of the remaining respondents, two did not directly address the proposal and one expressed concern with the proposal. The latter comment is addressed below.

Comment: One respondent noted that public investments in transportation, including New Starts and Small Starts projects, might trigger reimbursement clauses in the public/private contracts of competing infrastructure. For example, a new light rail line may cause automobile commuters to shift from a privately operated toll road to public transit. Depending on the terms of the toll road public/private partnership contract, such a shift could trigger a reimbursement clause. The commenter suggested that the cost of the example light rail line should, therefore, include the cost of reimbursing the private entity operating the example toll road. The respondent encouraged FTA to rethink this proposal to the extent that it would exclude information on the existence of infrastructure privatization terms that would increase the costs of new or improved public transit projects.

Response: FTA's proposal would eliminate the policy of increasing the operating financial plan rating when a project sponsor provides evidence that the operations and maintenance of the proposed project will be contracted out or when there is evidence that an opportunity had been given for contracting out. The commenter's concern and recommendation deals with a different issue, that is, reimbursement clauses in the public/private partnership contracts of transportation infrastructure and inclusion of such reimbursement costs in the budget of the proposed project that would impact the public/private infrastructure project. The proposal changes how FTA rates a proposed project; it does not address the terms in existing contracts for public/private partnerships for other transportation infrastructure projects.

2. New Starts and Small Starts Other Factors Criterion

In the proposed guidance, FTA suggested being less prescriptive on the items considered under the ''other'' factors criterion to better accommodate all of the unique project characteristics or circumstances that may justify special treatment in the evaluation of a project. Examples of other factors previously highlighted by FTA in earlier guidance included whether the project was a principal element of a congestion management strategy/auto pricing strategy, ''make-the-case'' documents, and the reliability of cost estimates and ridership forecasts.

Of the 15 comments received, six expressed general support for the proposal. Of the remaining respondents, six did not directly address the proposal, and three expressed concerns with specific aspects of the proposal. The concerns of the three respondents are addressed below.

Comments: One respondent suggested that not formally evaluating and rating the reliability of information (as was previously scheduled to begin in August 2009) goes against President Obama's transparency goals. The respondent suggested that FTA's assessment of reliability should be communicated in an open and clear manner, which is best accomplished by assigning an explicit rating to the reliability of information as opposed to FTA's proposal of considering, but not explicitly rating, reliability. The respondent also noted that FTA calling out any ''other'' factors does not prevent FTA from also considering the unique characteristics or circumstances that may justify special treatment.

One other respondent inquired as to the rationale for not formally and explicitly rating the reliability of information provided on costs and travel forecasts. The respondent argued that it is fundamental to the public good that FTA provide independent oversight, including assessing the reliability of cost estimates and travel forecasts.

One other respondent stated that measuring the reliability of project costs and ridership has merit and the rating procedures should be implemented through notice and comment rule making.

Response: If FTA were to formally evaluate and rate each of the project justification ''considerations'' listed in the Safe, Accountable, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), which can vary significantly among proposed projects, the submittal of information would be cumbersome to project sponsors and increase FTA review time. FTA recognizes that the project justification criteria that FTA does explicitly rate, while broad, cannot always capture the project characteristics or circumstances that may justify special treatment. In some cases, confidence in or concerns with the reliability of cost and ridership/user benefit estimates may motivate FTA to adjust a project's justification rating. In other cases, the positive impacts of the project, for example, the consequences of project-related compact land use development on the capacity, utilization, or longevity of other surface transportation assets—a project consideration listed in 49 U.S.C. 5309(d)(3)(E)—may motivate FTA to adjust a project's justification rating. The proposed guidance suggests not dictating which of these considerations may be more or less important to all projects. Rather, FTA encourages project sponsors to submit information germane to their proposed project, whether that information relates to considerations specifically listed in SAFETEA–LU or other considerations/factors, for FTA to consider in determining a project justification rating.

FTA will continue to perform thorough examinations of the cost and ridership/user benefit estimates submitted in support of New Starts and Small Starts projects to ensure the estimates are plausible and that the methods used generally follow accepted practice. Further, FTA will continue to consider the reliability of cost and ridership/user benefit estimates using factors described in the August 2008 policy guidance, including the track record of the project sponsor in implementing similar projects within budget, and the track record of the project sponsor in achieving projected ridership after implementing similar projects.

Comment: One respondent suggested that the ''make-the-case'' document requires very little effort to produce provided the project sponsor understands the justification for the proposed project. Further, the respondent noted that the document helps many project sponsors and the public understand the project's benefits. The respondent argued that the document should be required.

Response: FTA agrees that the ''make-the-case'' document is valuable and FTA encourages project sponsors to voluntarily prepare and submit the document to FTA for the reasons stated by the respondent. The document can help FTA and the public understand a project's benefits. However, the ''make-the-case'' documents submitted to FTA over the past two years were not sufficiently consistent to allow FTA to assign ratings; the content and presentation varied widely. In an effort to streamline and simplify the New Starts and Small Starts program, FTA does not want to continue to require documents that are useful on an individual basis, but have not proven effective in meaningfully distinguishing between competing projects.

3. New Starts Project Planning Horizon Year

In the proposed guidance, FTA suggested, effective March 2010, allowing New Starts project sponsors to use the adopted planning horizon forecast year—provided the year is either 2030 or 2035—of the metropolitan planning organization (MPO) to estimate project ridership, transportation system user benefits, and operations and maintenance costs.

Of the 15 comments received, six expressed general support for the proposal. Of the remaining respondents, six did not directly address the proposal and three either suggested changes or requested clarification of the policy moving forward. Comments from the latter three respondents are addressed below.

Comments: Two respondents suggested allowing the use of adopted planning horizons more than 25 years into the future to allow for additional flexibility to those regions which have already adopted plans with longer planning horizons. Another respondent asked if this proposal is intended as a short- or long-term practice.

Response: In acknowledgement of the long-term nature of major capital transit

investments, FTA asks New Starts project sponsors to estimate project ridership, user benefits, and operations and maintenance costs for some future, horizon year—20 years ''out'' is the adopted standard. By using a standard forecast year, FTA can compare projects fairly: the benefits provided by Project A in 20 years can be compared to the benefits provided by Project B in 20 years. For the next few years, a 20-year horizon could reasonably be represented by either a 2030 or 2035 forecast. In an effort to streamline and simplify the New Starts process, FTA proposed allowing project sponsors to use the same horizon year as the regional metropolitan planning organization, provided that horizon year is either 2030 or 2035. This proposal strikes a compromise between two agency/program goals: maintaining a level playing field nationally and simplifying the New Starts process. Allowing project sponsors to use horizon years beyond 2035, as suggested by the respondents, would compromise FTA's ability to evaluate projects fairly. In the next few years, FTA expects most metropolitan planning organizations will adopt a 2035 or later horizon year. At a point five years or so in the future, FTA may again allow project sponsors the option of adopting one of two horizon years.

Comment: One respondent suggested this proposal be implemented immediately, as it allows more flexibility for metropolitan planning organizations, rather than implementing the proposal in March 2010 as proposed by FTA.

Response: Implementing this proposal immediately would motivate numerous project sponsors who have already generated 2030 forecasts required in support of information submitted for FTA's fiscal year 2011 *Annual Report on Funding Recommendations* to hastily prepare a new set of 2035 forecasts. By allowing a delayed implementation, FTA is providing sponsors and metropolitan planning organizations the opportunity to use 2035 forecasts or continue to use 2030 forecasts next year.

Clarification to Existing Policies—Response to Comments

The proposals presented in this section are intended to further clarify existing policy rather than introduce or change policy.

1. New Starts and Small Starts Documentation of Uncertainties

In the proposed guidance, FTA reminded project sponsors that the policy adopted in the August 2008 guidance requiring that predictions of capital costs and project ridership for the locally preferred alternative be expressed as ranges, with accompanying explanations of the contributing sources of uncertainty, will not be implemented until six months after FTA issues separate guidance concerning this provision. Separate guidance has not been published.

Comments: Three respondents expressed concern that, when put into place, the documentation of uncertainties will increase the reporting burden of the project sponsor. These respondents note that significant oversight tools are currently in place and that FTA should give these tools time to work before implementing new ones. Another respondent suggested that expressing cost and ridership projections as ranges could be costly and time consuming and is unlikely to improve the reliability of forecasts. This respondent suggested the factors contributing to uncertainty be discussed in text.

One other respondent noted the difficulty in large, multi-jurisdictional metropolitan planning organizations of reaching consensus on a single land use forecast and suggested it would be very difficult to come to consensus on alternative high and low land use forecasts.

Two respondents suggested that FTA rescind the policy.

Response: The point of clarification that FTA wishes to convey is that FTA has not issued guidance requiring that predictions of capital costs and project ridership be expressed as ranges, therefore it is not currently in effect. FTA will take into consideration the above comments in any future action developing guidance on this subject.

2. Alternate Ridership and Transportation System User Benefits Estimation Methods for New Starts and Small Starts

In the proposed guidance, FTA reminded project sponsors that regional travel forecasting models are not always required for New Starts or Small Starts predictions of ridership and transportation system user benefit estimates. Under the right circumstances, quality data paired with straightforward analysis can provide a more direct representation of travel than a regional model.

Comment: Two respondents suggested FTA compile and share alternate ridership and user benefits estimation methods best practices. Two other respondents suggested FTA provide additional information on what constitutes adequate data collection approaches.

One other respondent suggested FTA be clear about expectations as a failure to do so could result in a long and confusing cycle of attempts and adjustments with no clear endpoint.

Response: FTA encourages project sponsors to discuss potential modeling approaches and the data collection efforts intended to support those modeling approaches early in the alternatives analysis process. FTA's Office of Planning and Environment is available to discuss the methods used by other project sponsors as well as provide guidance on data collection efforts.

Comment: One respondent asked FTA not to make alternate estimation methods mandatory.

Response: The point of clarification that FTA wishes to convey is its willingness to work with project sponsors on alternate approaches to using regional transportation models in the appropriate circumstances. The clarification to existing policy included in the proposed guidance does not make alternate estimation methods mandatory.

Changes to Internal FTA Practices—Response to Comments

The changes to internal FTA practices described below are not subject to public notice-and-comment per 5 U.S.C. 553(b)(A). However, FTA here presents and responds to comments to clarify the intent of the changes to internal FTA practices. These changes are further discussed below in the section labeled ''Revised Practices for Pre-award Authority and Letters of No Prejudice.''

Expanded Pre-Award Authority and/or Expanded Use of Letters of No Prejudice

The proposed guidance noted that FTA was considering expanding the activities covered by ''automatic'' pre-award authority upon completion of the requirements under the National Environmental Policy Act (NEPA) and/or expanding the circumstances under which FTA will issue letters of no prejudice (LONPs).

Of the 15 comments received, seven expressed general support for the proposal and eight did not directly address the proposal. The comments below either elaborate on the general support or provide specific ideas for expanding the use of pre-award authority and LONPs.

Comments: Two respondents suggest that the expanded use of pre-award authority and LONPs will help mitigate the cost and schedule impacts of delays that can be caused by FTA reviews and approvals. Another suggests that the need to expedite projects far outweighs

any feared consequences of an individual sponsor claiming they thought they had a guarantee.

Response: FTA concurs that expanding pre-award authority should help expedite project delivery.

Comments: One respondent suggested giving pre-award authority for utility work and for project management costs associated with work conducted under pre-award authority. Another respondent suggested granting pre-award authority to all project activities as long as they are covered under a completed NEPA process, including but not limited to the following time-sensitive activities: Land acquisition; vehicle procurement; procurement of design build and construction management/general contractor contracts; demolition; rail and ties or other special equipment; and, critical path construction activities.

Response: As described in the ''Revised Practices for Pre-Award Authority and Letters of No Prejudice'' section below, FTA agrees that pre-award authority for utility relocation and vehicle procurement should be granted following the completion of the NEPA process. FTA already gives pre-award authority for land acquisition following the completion of NEPA. FTA already gives pre-award authority for the management tasks necessary to carry out activities covered by pre-award authority.

FTA believes that pre-award authority for demolition and rails, ties or other special equipment should be granted at entry into final design rather then after the completion of NEPA. Frequently, engineering that has been completed post-NEPA, but before final design, has affected project plans. Furthermore, the costs of rails, ties and/or other special equipment may be difficult to recover if the project were not constructed. Consequently, FTA considers it prudent to grant pre-award authority for demolition and the procurement of rails, ties and/or other special equipment following entry into final design, when more information about the project is available and confidence in the project's implementation is higher.

FTA does not believe that allowing pre-award authority for the procurement of design-build and construction management/general contractor contracts prior to final design will expedite project delivery. These activities are not generally considered to have ''long lead times.''

FTA does not consider it prudent to grant pre-award authority for ''critical path construction'' activities. This term could assume a host of meanings. FTA will consider LONPs for ''critical path construction'' activities by a case-by-case analysis of the specific requests.

Comments: Two respondents suggest allowing a project sponsor to use an LONP where an entire project has been cleared under NEPA and a Record of Decision (ROD) or Finding of No Significant Impact (FONSI) has been published and the project sponsor seeks to construct an initial segment of the project utilizing non-section 5309 funds. The respondents note that the entire project would have to be evaluated, rated, and approved for funding by FTA under the New Starts or Small Starts program, but that this approach would enable local funds to be considered ''local match'' for the segment advanced under the New Starts or Small Starts program.

Response: Under the proposed guidance, FTA sought ways to expedite the delivery of New Starts projects, but did not intend to suggest using LONPs to expedite the delivery of a program of projects.

Comment: One respondent suggested that activities not covered by automatic pre-award authority should be given an LONP upon request with minimal review consisting of determining whether or not the activity is covered under a completed NEPA process and whether the activity would eventually be eligible for 5309 New Starts funds.

Response: FTA generally agrees with this comment, with some reservations. Please see the ''Revised Practices for Pre-Award Authority and Letters of No Prejudice'' section below for a full description of FTA's position on review of requests for LONPs.

Comments: One respondent suggested granting LONPs for some final design activities during the portion of preliminary engineering that occurs prior to the completion of NEPA. Another respondent suggested granting pre-award authority for engineering at any level needed to improve cost estimates or reduce risks to project implementation.

Response: FTA requires project sponsors to ''lock in'' the amount of New Starts funds requested by the project at the end of New Starts preliminary engineering/entry into final design. Consequently, FTA allows project sponsors, during New Starts preliminary engineering, to do the engineering work necessary for the sponsor to arrive at a project scope, schedule and cost estimate sufficiently defined to seek entry into final design.

Comment: One respondent suggested establishing a clock for review of LONP requests, which should improve the predictability of the process, thus improving schedule adherence and expediting project delivery.

Response: Under the procedures discussed in the ''Revised Practices for Pre-Award Authority and Letters of No Prejudice'' section below, pre-award authority will be expanded and, consequently, the need for LONPs will be reduced. In this framework, establishing a clock for all LONPs is difficult. FTA intends to perform limited review of LONP requests of a routine nature, especially of those from experienced project sponsors.

Broader Comments on New Starts and Small Starts Program—Response to Comments

FTA received several comments regarding aspects of the New Starts and Small Starts program not explicitly discussed in the proposed guidance.

Comments: One respondent asked FTA to consider rescinding and another asked FTA to rescind the funding recommendation practice generally requiring a ''medium'' cost-effectiveness rating announced in the 2005 ''Dear Colleague'' letter.

Response: The Administration is continuing to review the appropriateness, efficacy, and impact of the ''Dear Colleague'' letter practice.

Comments: One respondent asked FTA to consider, as a new project justification factor, transit trip time as compared to driving time. This respondent also suggested including network connectivity—the degree to which a project increases connections among regional employment centers—as a new project justification factor.

Response: FTA's user benefits measure implicitly compares transit travel time to driving time and reflects the connectivity of regional employment centers.

Comment: One respondent expressed support for a legislative change which would expand the use of early systems work agreements to guarantee Federal match for clearly defined and necessary early work to allow the most efficient and expedited implementation of a New Starts project.

Response: As indicated by the commenter, expanded use of early systems work agreements would require legislative change, which is beyond the scope of FTA's proposed changes in policy guidance.

Comment: One respondent suggested FTA adjust the cost effectiveness index upward by considering the value of Federal investment in the project, or the Federal investment in a program of related projects, particularly for phases of the same project.

Response: FTA will consider this comment, as well as all other comments received, as the agency seeks to further streamline and simplify the New Starts and Small Starts program.

Final Guidance

1. Local Financial Commitment Rating

In 2007, FTA implemented a policy of considering the degree to which a project employs innovative contractual agreements when evaluating local financial commitment. Specifically, FTA increased the operating financial plan rating (from ''medium'' to ''medium-high'' or from ''medium-high'' to ''high'') when project sponsors provided evidence that the operations and maintenance of the project will be contracted out or when there is evidence that an opportunity had been given for contracting out but the project sponsor had substantive reasons for not doing so. FTA has determined that the type of contracting arrangement used or considered by a project sponsor is not useful or appropriate in determining the strength of the overall project. Thus, FTA eliminates a project sponsor's use or consideration of contracting out operations and maintenance when evaluating and rating the operating financial plan.

This change applies to New Starts projects, as well as to any Small Starts or Very Small Starts projects that do not qualify for the streamlined local financial commitment evaluation described in FTA's *Interim Guidance on Small Starts and Very Small Starts.*

2. New Starts and Small Starts Other Factors Criterion

FTA will no longer emphasize specific items that it will consider when determining whether to modify a project's rating based on ''other'' factors pursuant to 49 U.S.C. 5309(d)(3)(K) and 49 U.S.C. 5309(e)(4)(E). Rather, FTA will consider any factors related to the project that it deems appropriate under the discretion granted to it in statute. FTA will consider these ''other'' factors on a project-by-project basis.

Thus, FTA will no longer call out congestion management strategies, with automobile pricing strategies in particular, or the contents of a ''make-the-case'' document as items it will specifically consider or formally rate as ''other'' factors. Under this proposal, project sponsors would be free to submit information on these items voluntarily to assist FTA in its overall evaluation and rating of the project, but would not be required to submit such information. In addition, FTA will not formally and explicitly rate the reliability of information provided on costs and travel forecasts, but will still consider reliability of the information when determining whether the project justification rating should be changed.

3. New Starts Project Planning Horizon Year

Since 2005, FTA has required project sponsors to submit information on ridership, transportation system user benefits, and operations and maintenance costs based on forecasts representing conditions in 2030. Because many metropolitan planning organizations (MPO) have now moved to a horizon year of 2035, FTA will allow project sponsors to submit information consistent with the MPO's adopted planning horizon year, whether it is 2030 or 2035. Project sponsors may use a 2035 planning horizon year only if it has been officially adopted by the MPO.

Because of the timing of this guidance relative to the annual review of projects conducted in support of FTA's *Annual Report on Funding Recommendations*, this policy does not go into effect until March 2010.

This proposed change does not affect potential Small Starts or Very Small Starts projects, as they submit information based on the opening year of the project rather than a forecast year.

Revised Practices for Pre-Award Authority and Letters of No Prejudice

FTA reminds project sponsors and the public that neither pre-award authority nor an LONP has ever been a guarantee of future Federal funding. Moreover, FTA here highlights that contrary to past practice, an LONP no longer serves as an indicator of a project being a promising candidate for a Full Funding Grant Agreement (FFGA) or Project Construction Grant Agreement (PCGA). The following discussion presents a summary of existing and revised practices for pre-award authority and LONPs.

Under existing practice, upon FTA approval to enter preliminary engineering, FTA extends pre-award authority to incur costs for preliminary engineering. Upon FTA approval to enter final design, FTA extends pre-award authority to incur costs for final design. Pre-award authority for each phase is automatic upon FTA's signing of a letter to the project sponsor approving entry into that phase.

Also under existing practice, FTA extends automatic pre-award authority for the acquisition of real property and real property rights for a New Starts or Small Starts project upon completion of the National Environmental Policy Act (NEPA) process for that project. The NEPA process is complete when FTA signs an environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI), or makes a Categorical Exclusion (CE) determination.

Previously, FTA granted pre-award authority for utility relocation upon entry into final design. FTA hereby changes its existing practice by extending pre-award authority for utility relocation upon completion of the NEPA process for New Starts and Small Starts projects.

Previously, an LONP was required for grantees to purchase vehicles. FTA hereby changes existing practice by extending pre-award authority for the procurement of vehicles upon completion of the NEPA process for New Starts and Small Starts projects. FTA cautions grantees that do not currently operate the type of vehicle proposed in the New Starts or Small Starts project about exercising this pre-award authority and encourages these sponsors to wait until later in the project development process when project plans are more fully developed and Federal support for the project is more certain. FTA reminds project sponsors that the procurement of vehicles must comply with all Federal requirements including, but not limited to, competitive procurement practices, the Americans with Disabilities Act, and Buy America. FTA encourages project sponsors to discuss the procurement of vehicles with FTA in regards to Federal requirements prior to exercising pre-award authority.

FTA hereby changes existing practice by extending pre-award authority for non-construction activities upon entry into final design for New Starts projects. The intent is to allow for the procurement of long-lead time items or items for which market conditions play a significant role in the acquisition price. Previously, an LONP was required for these activities. The following list of non-construction activities is illustrative rather than exhaustive. Please contact your FTA Regional Office for a determination of activities not listed here, but which meet the intent described above.

FTA grants pre-award authority upon entry into final design for the following activities: Procurement of rails, ties, and other specialized equipment; the procurement of commodities; and demolition.

Because Small Starts projects are not subject to approval into a final design phase, they must obtain an LONP for the following activities to remain eligible for reimbursement or as credit toward

local match: Procurement of rails, ties, and other specialized equipment; the procurement of commodities; and demolition.

FTA reminds project sponsors and the public that local funds expended by the project sponsor pursuant to and after the date of the pre-award authority are eligible for reimbursement or as credit toward local match only if FTA later makes a grant or grant amendment for the project. Local funds expended by the project sponsor prior to the date of the pre-award authority are not eligible for credit toward local match or reimbursement.

The above changes to automatic pre-award authority are expected to reduce the need for LONPs. FTA will still consider LONPs for activities not covered by automatic pre-award authority. As a change in administrative practice, FTA will, following the completion of the requirements under NEPA, expedite the issuance of LONPs, when appropriate, by no longer performing a detailed review of the cost and scope of the request in every instance. Rather, a limited review will be performed in those cases that are of a more routine nature, especially those involving an experienced sponsor.

This change has the following ramifications. First, an LONP is no longer an indication by FTA that the project is a promising candidate for either an FFGA or PCGA. Second, FTA is transferring more risk to the project sponsor. LONPs allow a project sponsor to incur costs using non-Federal resources, with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible as credit toward the local match only if FTA approves the project for funding at a later date. Federal funding is not implied or guaranteed by an LONP. The reduced level of FTA oversight should expedite the delivery of New Starts and Small Starts projects, but will also require increased diligence on the part of project sponsors to ensure that public funds are expended wisely.

Peter M. Rogoff,

Administrator, Federal Transit Administration.

[FR Doc. E9–21173 Filed 9–1–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 33.70–1, Guidance Material for Aircraft Engine Life-Limited Parts Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 33.70–1, Guidance Material for Aircraft Engine Life-limited Parts Requirements. This AC provides definitions, guidance, and acceptable methods that may be used to demonstrate compliance with the engine life-limited parts integrity requirements of § 33.70 of Title 14 of the Code of Federal Regulations. Section 33.70 contains requirements applicable to the design and life management of propulsion system life-limited parts including high-energy rotating parts.

DATES: The Engine and Propeller Directorate issued AC 33.70–1 on July 31, 2009.

FOR FURTHER INFORMATION CONTACT: The Federal Aviation Administration, Attn: Timoleon Mouzakis, Engine and Propeller Standards Staff, ANE–111, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7114; fax: (781) 238–7199; e-mail: *timoleon.mouzakis@faa.gov.*

We have filed in the docket all substantive comments received, and a report summarizing them. If you wish to review the docket in person, you may go to the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to contact the above individual directly, you can use the above telephone number or e-mail address provided.

How to Obtain Copies: A paper copy of AC 33.70–1 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.faa.gov/regulations_policies* (then click on ''Advisory Circulars'').

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on July 31, 2009.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–21068 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 33–8, Guidance for Parts Manufacturer Approval of Turbine Engine and Auxiliary Power Unit Parts Under Test and Computation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 33–8, Guidance for Parts Manufacturer Approval of Turbine Engine and Auxiliary Power Unit Parts under Test and Computation. This AC provides guidance for developing substantiation data to support the design approval of critical and complex turbine engine and auxiliary power unit (APU) parts produced under parts manufacturer approval. This guidance is for the comparative test and analysis method used to show compliance to the airworthiness requirements under test and computation, per S21.303 of Title 14 of the Code of Federal Regulations (14 CFR). This method supports showing the engine or APU still complies with 14 CFR part 33 and Technical Standard Order (TSO) C77.

DATES: The Engine and Propeller Directorate issued AC 33–8 on August 19, 2009.

FOR FURTHER INFORMATION CONTACT: The Federal Aviation Administration, Attn: Karen M. Grant, Engine and Propeller Standards Staff, ANE–111, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7119; fax: (781) 238–7199; e-mail: *karen.m.grant@faa.gov.*

We have filed in the docket all substantive comments received, and a report summarizing them. If you wish to review the docket in person, you may go to the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to contact the above individual directly, you can use the above telephone number or e-mail address provided.

How to Obtain Copies: A paper copy of AC 33–8 may be obtained by writing to the U.S. Department of

Transportation, Subsequent Distribution Office, DOT Warehouse, SVC 121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.faa.gov.regulations_policies* (then click on ''Advisory Circulars'').

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on August 19, 2009.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–21066 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Request Approval from the Office of Management and Budget of a New Information Collection Activity, Request for Comments; Aeronautical Chart Point of Sale Survey

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 new information collection. Aeronautical Chart Point of Sale Survey data will be used by the Federal Aviation Administration to measure management objectives and analyze customer feedback for ISO–9001.

DATES: Please submit comments by November 2, 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: Aeronautical Chart Point of Sale Survey.

Type of Request: New collection.

OMB Control Number: 2120–XXXX.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 320 Respondents.

Frequency: The information is collected semi-annually.

Estimated Average Burden per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 53 hours annually.

Abstract: Survey data will be used by the Federal Aviation Administration to measure management objectives and analyze customer feedback for ISO–9001.

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 August 24, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–21062 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2009–001–N–22]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than November 2, 2009.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590, or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB Control Number 2130–0525'' and/or ''Comments on OMB Control Number 2130–0529.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Jackson at *nakia.jackson@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for

FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the two currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Certification of Glazing Materials.

OMB Control Number: 2130–0525.

Abstract: The collection of information is set forth under 49 CFR Part 223, which requires the certification and permanent marking of glazing materials by the manufacturer. The manufacturer is also responsible for making available test verification data to railroads and FRA upon request.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 5 Manufacturers

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
223.17—Identification of Equipped Locomotives, Passenger Cars, and Cabooses.	4 Manufacturers	200 stencilings/ metal plates.	15 minutes	50 hours.
223.17—Appendix A—Requests for Glazing Certification Information	5 Manufacturers	10 requests	15 minutes	3 hours.
—Marking Individual Units of Glazing Material	5 Manufacturers	25,000 pieces	480 pieces per hour.	52 hours.
—Testing New Material and Providing Verification Data	5 Manufacturers	1 test	14 hours	14 hours.

Frequency of Submission: On occasion.

Total Responses: 25,211.

Estimated Total Annual Burden: 119 hours.

Status: Extension of a currently approved collection.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Abstract: Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR Part 209, Subpart D, implement the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Form Number(s): N/A.

Affected Public: Railroad Employees.

Respondent Universe: 40,000 Locomotive Engineers.

Total Responses: 3.

Estimated Total Annual Burden: 5 hours.

Status: Extension of a currently approved collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on August 27, 2009.

Donna Alwine,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E9–21203 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Brigham City Municipal Airport, Brigham City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Brigham City Municipal Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before October 2, 2009.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig A. Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado, 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Blake Fonnesbeck, Director of Public Works, Brigham City Municipal Airport, P.O. Box 1005, 20 North Main Street, Brigham City, Utah 84302.

FOR FURTHER INFORMATION CONTACT: Ms. Kristin Hartman, Project Manager, Federal Aviation Administration,

Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Brigham City Municipal Airport under the provisions of the AIR 21.

On July 1, 2009, the FAA determined that the request to release property at the Brigham City Municipal Airport submitted by the City of Brigham, Utah met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than October 1, 2009.

The following is a brief overview of the request:

The Brigham City Municipal Airport requests the release of 1.073 acres of non-aeronautical airport property to Brigham City, Utah. The purpose of this release is to allow the City to exchange the subject land that no longer serves any aeronautical purpose at the airport. The exchange will allow the airport to replace aircraft parking areas that were eliminated due to airport construction.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may inspect the application, notice, and other documents germane to the application in person at the Brigham City Municipal Airport, 20 North Main Street, Brigham City, Utah, 84302.

Issued in Denver, Colorado on July 29, 2009.

Craig A. Sparks,

Manager, Denver Airports District Office.

[FR Doc. E9–21064 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of limitation on claims.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for the Downtown Boise Multimodal Center Project, Boise, Idaho; Ketchikan Shipyard Improvement Project, Ketchikan, Alaska; Colorado Springs Transportation Station, Colorado Springs, Colorado; and Central Corridor Light Rail Transit Project, Minneapolis-St. Paul, Minnesota. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before March 1, 2010.

FOR FURTHER INFORMATION CONTACT: Carl Bausch, Environmental Protection Director, Office of Planning and Environment, 202–366–1626, or Christopher Van Wyk, Attorney-Advisor, Office of Chief Counsel, 202–366–1733. FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m. EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on these projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the project. The final agency environmental decision document—a Record of Decision (ROD) or Finding of No Significant Impact (FONSI)—for each listed project is available online at *http://www.fta.dot.gov/planning/environment/planning_environment_documents.html* or may be obtained by contacting the FTA Regional Office for the metropolitan area where the project is located. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. § 303], section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period of 180 days for challenges of project decisions subject to previous notices published in the **Federal Register**.

The projects and actions that are the subject of this notice are:

1. *Project name and location:* Downtown Boise Multimodal Center Project, Boise Idaho. *Project sponsor:* Valley Regional Transit. *Project description:* The multimodal center will be located on the ½-block site east of North 11th Street, between West Idaho and West Bannock Streets in the western part of the Boise central business district. The multimodal center will include off- and on-street bus bays (12 bays total), a passenger plaza and sheltered waiting areas, transit information kiosks, public restrooms and operator break facilities, bicycle storage, public art, vanpool and carpool drop-off/pick-up areas, a taxi stand and auto drop-off/pick-up area, and retail space. In addition, a planned joint development component of the project would include air space development above the multimodal facility for parking. The parking structure would include approximately 500 parking spaces in a new five- to six-story parking structure. *Final agency actions:* Section 106 finding of no adverse effect; project-level air quality conformity determination; no use of section 4(f) properties; and a FONSI dated July 2009. *Supporting documentation:* Downtown Boise Multimodal Center Environmental Assessment (EA) dated June 2009.

2. *Project name and location:* Ketchikan Shipyard Improvement Project, Ketchikan, Alaska. *Project sponsor:* Alaska Industrial Development and Export Authority (AIDEA). *Project description:* The Ketchikan Shipyard Improvement Project (the Project) in Ketchikan, Alaska will implement planned improvements to the Ketchikan Shipyard, which is used to maintain the Alaska Marine Highway System fleet. These improvements include two new enclosed work halls; a production complex; a steel fabrication shop; improvements to the existing paint and blasting facilities; new operations and business buildings; installation of a new oily water separator and wastewater treatment facility; warehouse and hazardous material storage building expansions; installation of guard shacks, fencing and modifications to existing fencing for security purposes; utilities upgrades; and improvements to traffic flow in and around the facility. The Project would provide a broad mix of repairs of existing facilities and new

construction and would enable the shipyard to meet the needs of the publicly owned marine transit system. *Final agency actions:* Section 106 determination of no historic properties affected, March 27, 2009; no use of section 4(f) property; and FONSI dated July 16, 2009. *Supporting documentation:* EA for the Ketchikan Shipyard Improvement Project signed June 12, 2009.

3. *Project name and location:* Colorado Springs Downtown Transportation Station, Colorado Springs, Colorado. *Project sponsor:* City of Colorado Springs Transit Services Division–Mountain Metropolitan Transit. *Project description:* The project involves the construction of a new downtown transportation station, located southwest of the existing station at South Sierra Madre Street and West Vermijo Avenue, to serve the City's Mountain Metropolitan Transit fixed-route (Metro) service. It will provide access and serve as a convenient multimodal transfer point for the Front Range Express (FREX) commuter bus service, proposed streetcar, proposed Front Range Commuter Rail, and other travel modes. *Final agency actions:* Section 106 determination of no historic properties affected; project-level air quality conformity determination; and FONSI dated July 14, 2009. *Supporting documentation:* EA for the Colorado Springs Downtown Station dated June 1, 2009.

4. *Project name and location:* Central Corridor Light Rail Transit Project, Minneapolis-St. Paul, Minnesota. *Project sponsor:* Metropolitan Council. *Project description:* The project entails the construction of 10.9 miles of light rail transit (LRT) between St. Paul and Minneapolis with service to the University of Minnesota and the State Capitol complex, including 9.7 miles of newly constructed guideway and 1.2 miles shared with the existing Hiawatha LRT. There will be twenty stations along the line including five shared with the existing Hiawatha LRT. The project will be primarily at-grade except for a new aerial structure over Interstate Highway I–35W, the use of existing bridges over Trunk Highway 280 (TH 280) and Interstate Highway I–94, and the existing Washington Avenue Bridge over the Mississippi River. Below grade infrastructure to allow for later construction of three future infill stations will be provided and an operations and maintenance facility will be constructed. The project will also include modifications to the Washington Avenue Bridge over the Mississippi River to improve current bridge conditions and to provide for LRT operations, and conversion of Washington Avenue on the University of Minnesota's East Bank Campus to a transit/pedestrian mall extending from Walnut Street to Pleasant Street. *Final agency actions:* Section 106 Programmatic Agreement dated June 15, 2009; section 4(f) findings; project-level air quality conformity determination; and Record of Decision dated August 18, 2009. *Supporting documentation:* Central Corridor Light Rail Transit Project Final Environmental Impact Statement dated June 18, 2009.

Issued on August 27, 2009.

Susan Borinsky,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. E9–21199 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: September 23, 2009– 9 a.m. to 5 p.m.

Place: Federal Aviation Administration, 800 Independence Avenue, SW., Round Room (10th Floor), Washington, DC 20591.

Purpose: The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at (202) 267–8937 or *gloria.dunderman@faa.gov.* Attendees will have to present picture ID at the security desk and be escorted to the Round Room.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on August 19, 2009.

Barry Scott,

Director, Research & Technology Development.

[FR Doc. E9–21071 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the hi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet October 27, 2009 from 8:30 a.m. to 5 p.m. The Charting Group will meet October 28 and 29, 2009 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be hosted by the FAA's National Aeronautical Charting Office, NACO (soon to be changed to the National Aeronautical Navigation (AeroNav) Services), 1305 East-West Highway. SSMC 4, Silver Spring. MD 20910.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas F. Schneider, FAA, Flight Procedures Standards Branch, AFS–420. 6500 South MacArthur Blvd, P.O. Box 25082, Oklahoma City, OK. 73125; telephone (405) 954–5852; fax: (405) 954–2528.

For information relating to the Charting Group, contact John A. Moore, FAA, National Aeronautical Charting Office, Regulatory Support and Coordination Team, AJW–3521, 1305 East-West Highway, SSMC4–Station 5544, Silver Spring, MD. 20910; telephone: (301) 713–2631, fax: (301)713–1960.

SUPPLEMENTARY INFORMATION: Pursuant to S10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from October 27 through October 29, 2009 from 8:30 a.m. to 5 p.m. at the FAA's National Aeronautical Charting Office, NACO,

1305 East-West Highway, SSMC 4, Silver Spring, MD 20910.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, as well as new aeronautical charting and air traffic control initiatives.

Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by October 9, 2009, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by October 9, 2009. Public statements will only be considered if time permits.

Issued in Washington, DC, August 25, 2009.

John A. Moore,

Co-Chair, Aeronautical Charting Forum.

[FR Doc. E9–21069 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2009–0155]

National Emergency Medical Services Advisory Council (NEMSAC); Notice of Federal Advisory Committee Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT)

ACTION: National Emergency Medical Services Advisory Council (NEMSAC); Notice of Federal Advisory Committee meeting.

SUMMARY: The NHTSA announces a meeting of NEMSAC to be held in the Metropolitan Washington, DC area. This notice announces the date, time and location of the meeting, which will be open to the public. The purpose of NEMSAC is to provide a nationally recognized council of emergency medical services representatives and consumers to provide advice and recommendations regarding Emergency Medical Services (EMS) to the U.S. DOT's NHTSA.

DATES: The meeting will be held on September 29, 2009, from 8 a.m. to Noon, and September 30, 2009, from 8 a.m. to 11:30 a.m. A public comment period will take place on September 29, 2009, between 11 a.m. and 11:30 a.m.

Comment Date: Written comments or requests to make oral presentations must be received by September 22, 2009.

ADDRESSES: The meeting will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202. Persons wishing to make an oral presentation or who are unable to attend or speak at the meeting may submit written comments. Written comments and requests to make oral presentations at the meeting should reach Drew Dawson at the address listed below and must be received by September 22, 2009.

All submissions received must include the docket number, NHTSA–2009–0155, and may be submitted by any one of the following methods: You may submit or retrieve comments online through the Document Management System (DMS) at *http://www.regulations.gov/*under the docket number listed at the beginning of this notice. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded from the **Federal Register's** home page at *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available.

E-mail: drew.dawson@dot.gov or susan.mchenry@dot.gov.

Fax: (202) 366–7149.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., NTI–140, Washington, DC 20590, telephone number (202) 366–9966; e-mail *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*) The NEMSAC will be holding its seventh meeting on Tuesday and Wednesday, September 29 and 30, 2009, at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Agenda of Council Meeting, September 29–30, 2009.

The tentative agenda includes the following:

Tuesday, September 29, 2009

(1) Opening Remarks;

(2) Introduction of Members and all in attendance;

(3) Review and Approval of Minutes of last Meeting;

(4) Committee Reports and Discussion/Action;

(5) Public Comment Period;

(6) New & Emerging Issues.

(**Note:** The NEMSAC Committees will hold their meetings the afternoon of the 29th—these are not part of the larger public meeting.)

Wednesday, September 30, 2009

(1) Introductions and Review of 29 September Discussion;

(2) Future Meetings;

(3) NHTSA and FICEMS Update

(4) H1N1 Flu Panel & Discussion;

(5) Unfinished Business from 29 September;

(6) Next Steps and Adjourn.

A public comment period will take place on September 29, 2009, between 10 a.m. and 10:30 a.m. Public Attendance: The meeting is open to the public. Persons with disabilities who require special assistance should advise Drew Dawson of their anticipated special needs as early as possible. Members of the public who wish to make comments on Tuesday, September 29 between 11 a.m. and 11:30 a.m. are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 3 minutes. For those wishing to submit written comments, please follow the procedure noted above.

This meeting will be open to the public. Individuals wishing to register must provide their name, affiliation, phone number, and e-mail address to Drew Dawson by e-mail at *drew.dawson@dot.gov* or by telephone at (202) 366–9966 no later than September 22, 2009. There will be limited seating, so please register early. Pre-registration is necessary to enable proper arrangements.

Minutes of the NEMSAC Meeting will be available to the public online through the DOT Document Management System (DMS) at: *http://www.regulations.gov* under the docket number listed at the beginning of this notice.

Issued on: August 28, 2009.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. E9–21209 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–21254]

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 7 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 August 13, 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 7 renewal applications, FMCSA renews the Federal vision exemptions for Andrew B. Clayton, Kenneth D. Daniels, Donald M. Jenson, Dean A. Maystead, Donald L. Murphy, Carl V. Murphy, Jr., and Thomas D. Reynolds.

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 August 27, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–21197 Filed 9–1–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35287]

The Indiana Rail Road Company—Trackage Rights Exemption—CSX Transportation, Inc.

Pursuant to a written trackage rights agreement entered into between CSX Transportation, Inc. (CSXT), and The Indiana Rail Road Company (INRD), CSXT has agreed to grant non-exclusive, limited overhead trackage rights to INRD over CSXT's line of railroad between the connection of CSXT and INRD trackage at Sullivan, IN, at approximately CSXT milepost OZA 204.5, and the connection between CSXT's line and tracks leading to the Oaktown Fuels Mine No. 1, LLC loading facility (Oaktown facility) at Oaktown, IN, at approximately CSXT milepost OZA 219.05, a distance of approximately 14.5 miles (Line).[1] According to INRD, the trackage rights will be used to permit INRD to move loaded coal trains and empty hopper trains: (1) between the Oaktown facility, located on the Line at approximately milepost OZA 219.05, and INRD's interchange with Indiana Southern Railroad Company (ISRR) at Beehunter, IN, to the Vectren power plant at Culley, IN, and to the Indianapolis Power & Light's (IP&L) power plant at Petersburg, IN, and (2) between the Oaktown facility and IP&L's Harding Street power plant in Indianapolis, IN, located on INRD's line.

The transaction is schedule to be consummated on September 17, 2009.

The purpose of the trackage rights is to permit INRD to move loaded coal trains and empty hopper trains in single-line service between the Oaktown facility and INRD's interchange with ISRR at Beehunter for onward movement to the power plants at Culley and Petersburg, and also between the Oaktown facility and the power plant in Indianapolis, thus enhancing operational efficiency.[2]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by September 9, 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

[1] A portion of the subject line is also at issue in STB Finance Docket No. 35137, *The Indiana Rail Road Company—Trackage Rights Exemption—CSX Transportation, Inc.,* which pertains to CSXT's grant of non-exclusive, limited local trackage rights to INRD between mileposts OZA 204.5 and OZA 214.5. A revocation proceeding is pending.

[2] The trackage rights at issue here were set forth as a supplemental agreement to a May 15, 2008 agreement between INRD and CSXT. *See* Exhibit 2 of INRD's verified notice of exemption.

Docket No. 35287, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John Broadley, John H. Broadley & Associates, P.C., 1054 31st Street, NW., Suite 200, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 26, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–21077 Filed 9–1–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 27, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before October 2, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2011.

Type of Review: Extension.

Title: Certification of Intent to Adopt a Pre-approved Plan.

Description: Use Form 8905 to treat an employer's plan as a pre-approved plan and therefore eligible for the six-year remedial amendment cycle of Part IV of Revenue Procedure 2005–66, 2005–37 I.R.B. 509. This form is filed with other document(s).

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 110,490 hours.

OMB Number: 1545–0239.

Type of Review: Extension.

Form: 5754.

Title: Statement by Person(s) Receiving Gambling Winnings.

Description: Section 3402(q)(6) of the IRC requires a statement by the person receiving certain gambling winnings when that person is not the winner or is one of a group of winners. It enables the payer to properly apportion the winnings and withheld tax on Form W–2G. We use the information on Form W–2G to ensure that recipients are properly reporting their income.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 40,800 hours.

OMB Number: 1545–0025.

Type of Review: Extension.

Form: 851.

Title: Affiliations Schedule.

Description: Form 851 provides IRS with information to ascertain (1) The names and identification numbers of the members of the affiliated group included in the consolidated return, (2) taxes paid by each member of the group, and (3) stock ownership; changes in stock ownership and other information to determine that each corporation is a qualified member of the affiliated group as defined in section 1504 of the Code.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 51,040 hours.

OMB Number: 1545–1426.

Type of Review: Extension.

Title: INTL–21–91 (Temporary and Final) Section 6662—Imposition of the Accuracy-Related Penalty.

Description: These regulations provide guidance about substantial and gross valuation misstatements as defined in sections 6662(e) and 6662(h). They also provide guidance about the reasonable cause and good faith exclusion. The regulations apply to taxpayers who have transactions between persons described in section 482 and not section 482 transfer price adjustments.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 20,125 hours.

OMB Number: 1545–1973.

Type of Review: Extension.

Form: Schedule C–EZ (Form 1040).

Title: Net Profit from Business.

Description: Schedule C–EZ (Form 1040) is used by individuals to report their employment taxes. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,027,515 hours.

OMB Number: 1545–0495.

Type of Review: Revision.

Form: 4506A.

Title: Request for Public Inspection or Copy of Exempt or Political Organization IRS Form.

Description: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under section 50(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 20,200 hours.

OMB Number: 1545–1800.

Type of Review: Extension.

Form: 8886.

Title: Reportable Transaction Disclosure Statement.

Description: Regulation section 1.6011–4 requires certain taxpayers to disclose reportable transactions in which they directly or indirectly participated.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 8,904 hours.

OMB Number: 1545–0771.

Type of Review: Extension.

Title: EE–63–88 (Final and temporary regulations) Taxation of Fringe Benefits and Exclusions from Gross Income for Certain Fringe Benefits; IA–140–86 (Temporary) Fringe Benefits; Listed Property.

Description: EE–63–88. This regulation provides guidance on the tax treatment of taxable and nontaxable fringe benefits and general and specific rules for the valuation of taxable fringe benefits in accordance with Code sections 61 and 132. The regulation also provides guidance on exclusions from gross income for certain fringe benefits. IA–140–86. This regulation provides guidance relating to the requirement that any deduction or credit with respect to business travel, entertainment, and gift expenses be substantiated with adequate records in accordance with Code section 274(d).

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 37,922,688 hours.

OMB Number: 1545–1131.

Type of Review: Extension.

Title: INTL–485–89 (Final) Taxation of Gain or Loss from Certain

Nonfunctional Currency Transactions (Section 988 Transactions).

Description: Sections 988(c)(1)(D) and (E) require taxpayers to make certain elections which determine whether section 988 applies. In addition sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 3,333 hours.

OMB Number: 1545–2008.

Type of Review: Extension.

Form: 8907.

Title: Nonconventional Source Fuel Credit.

Description: Form 8907 will be used to claim a credit from the production and sale of fuel created from nonconventional sources. For tax years ending after 12/31/05 fuel from coke or coke gas can qualify for the credit, and the credit becomes part of the general business credit.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 171,160 hours.

OMB Number: 1545–0195.

Type of Review: Extension.

Form: 5213.

Title: Election to Postpone Determination as to whether the Presumption applies that an activity is engaged in for profit.

Description: This form is used by individuals, partnerships, estates, trusts, and S corporations to make an election to postpone an IRS determination as to whether an activity is engaged in for profit for 5 years (7 years for breeding, training, showing, or racing horses). The data is used to verify eligibility to make the election.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 2,762 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–21213 Filed 9–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Executive Committee to the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will meet October 16–17, 2009. On October 16, the session will be in Room 630, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC, from 8 a.m. to 4:30 p.m. On October 17, the session will be at the Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to Noon. The meeting is open to the public.

The Committee, comprised of sixty-four national voluntary organizations, advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The Executive Committee consists of twenty representatives from the NAC member organizations.

On October 16, agenda topics will include: NAC goals and objectives, review of minutes from May 2009 NAC annual meeting, VAVS update on the Voluntary Service program's activities, Parke Board update, evaluations of the 2009 NAC annual meeting, and plans for 2010 NAC annual meeting.

On October 17, agenda topics will include: Recommendations from the 2009 NAC annual meeting, subcommittee reports, review of standard operating procedure revisions, 2010 NAC annual meeting plans, VA Volunteer Orientation presentation, and new business.

No time will be allocated at this meeting for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Committee. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Ms. Laura Balun, Designated Federal Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Balun can be contacted by phone at (202) 461–7300.

Dated: August 27, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–21150 Filed 9–1–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
September 2, 2009

Part II

The President

Proclamation 8404—National Historically Black Colleges and Universities Week, 2009

Proclamation 8405—To Adjust the Rules of Origin Under the North American Free Trade Agreement and for Other Purposes

Federal Register
Vol. 74, No. 169
Wednesday, September 2, 2009

Presidential Documents

Title 3—

The President

Proclamation 8404 of August 30, 2009

National Historically Black Colleges and Universities Week, 2009

By the President of the United States of America

A Proclamation

For generations, education has opened doors to untold opportunities and bright futures. Through quality instruction and a personal commitment to hard work, young people in every part of our Nation have gone on to achieve success. Established by men and women of great vision, leadership, and clarity of purpose, Historically Black Colleges and Universities (HBCUs) have provided generations of Americans with opportunity, a solid education, and hope.

For more than 140 years, HBCUs have released the power of knowledge to countless Americans. Pivotal in the Civil Rights Movement, HBCUs offer us a window into our Nation's past as well as a path forward. Graduates of HBCUs have gone on to shape the course of American history—from W.E.B. DuBois and Booker T. Washington, to Langston Hughes and Thurgood Marshall. Today, in twenty States, the District of Columbia, and the U.S. Virgin Islands, these colleges and universities are serving hundreds of thousands of students from every background and have contributed to the expansion of the African American middle class, to the growth of local communities, and to our Nation's overall economy.

This week, we celebrate the accomplishments of HBCUs and look to the future with conviction and optimism. These institutions will play a key role in reaching our ambitious national education goals, including having the highest proportion of college graduates in the world by 2020. As our Nation strives toward this goal, we invite HBCUs to employ new, innovative, and ambitious strategies to help the next generation of Americans successfully complete college and prepare themselves for the global economy. During National Historically Black Colleges and Universities Week, we recommit ourselves to never resting until equality is real, opportunity is universal, and all citizens can realize their dreams.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 30 through September 5, 2009, as National Historically Black Colleges and Universities Week. I call upon public officials, educators, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities that acknowledge the tremendous contributions these institutions and their graduates have made to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of August, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–21327
Filed 9–1–09; 8:45 am]
Billing code 3195–W9–P

Presidential Documents

Proclamation 8405 of August 31, 2009

To Adjust the Rules of Origin Under the North American Free Trade Agreement and for Other Purposes

By the President of the United States of America

A Proclamation

1. In Presidential Proclamation 8097 of December 29, 2006, pursuant to the authority provided in section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3006(a)) (the ''1988 Act''), the President modified the Harmonized Tariff Schedule of the United States (HTS) to reflect amendments to the International Convention on the Harmonized Commodity Description and Coding System (the ''Convention'').

2. Presidential Proclamation 6641 of December 15, 1993, implemented the North American Free Trade Agreement (NAFTA) with respect to the United States and, pursuant to the North American Free Trade Agreement Implementation Act (Public Law 103–182) (the ''NAFTA Implementation Act''), incorporated in the HTS the schedule of duty reductions and rules of origin necessary or appropriate to carry out the NAFTA.

3. In order to ensure the continuation of the staged reductions in rates of duty under the NAFTA for originating goods of Mexico in HTS tariff categories that were modified to reflect amendments to the Convention, Presidential Proclamation 8097 made modifications to the HTS that the President determined were necessary or appropriate to carry out the duty reductions proclaimed in Proclamation 6641.

4. Canada and Mexico are parties to the Convention. Because the substance of changes to the Convention are reflected in slightly differing form in the national tariff schedules of the parties to the NAFTA, the rules of origin set out in that Agreement must be changed to ensure that the tariff and certain other treatment accorded under the NAFTA to originating goods will continue to be provided under the tariff categories that were modified in Proclamation 8097. The NAFTA parties, the United States, Canada, and Mexico, have agreed to make these changes.

5. Section 202 of the NAFTA Implementation Act (19 U.S.C. 3332) provides rules for determining whether goods imported into the United States originate in the territory of a NAFTA party and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim, as part of the HTS, the rules of origin set out in the NAFTA and to proclaim any modifications to such previously proclaimed rules of origin, including those necessary to implement an agreement with NAFTA countries under paragraph 2 of section 7 of Annex 300-B of the NAFTA, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)).

6. The NAFTA parties have agreed to modify certain NAFTA rules of origin. Modifications to the NAFTA rules of origin reflected in general note 12 to the HTS are therefore necessary to ensure the continuation of tariff and certain other treatment accorded under the NAFTA to originating goods in tariff categories modified in Proclamation 8097 and to carry out the duty reductions proclaimed in Proclamation 6641. The consultation and

layover requirements of section 103(a) of the NAFTA Implementation Act were met December 10, 2007, with respect to the proposed modifications.

7. I have determined that the modifications to the HTS proclaimed in this proclamation pursuant to section 202 of the NAFTA Implementation Act are necessary to implement an agreement with the NAFTA parties under paragraph 2 of section 7 of Annex 300-B of the NAFTA. In addition, I have determined that the modifications pursuant to section 1206(a) of the 1988 Act are in conformity with the obligations of the United States under the Convention and do not run counter to the national economic interest of the United States.

8. Certain necessary modifications to the HTS to conform it to the Convention were inadvertently omitted from Proclamation 8097. I have determined that technical corrections to the HTS are necessary to conform the HTS to the Convention.

9. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (USIFTA), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the ''USIFTA Implementation Act'') (19 U.S.C. 2112 note).

10. Section 4(b) of the USIFTA Implementation Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties as the President determines to be required or appropriate to carry out the Agreement.

11. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (the ''2004 Agreement''). On December 10, 2008, the United States entered into an agreement with Israel to extend the 2004 Agreement through December 31, 2009, in order to allow for additional time to negotiate a successor arrangement to the 2004 Agreement.

12. In Presidential Proclamation 7826 of October 4, 2004, consistent with the 2004 Agreement, the President determined, pursuant to section 4(b) of the USIFTA Act, that it was necessary in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel.

13. In Presidential Proclamation 8334 of December 31, 2008, the President determined that it was necessary in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA to extend such duty-free treatment through December 31, 2009. I have determined that a modification to the HTS is necessary to provide the intended tariff treatment.

14. Section 604 of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other Acts, affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction. Section 1206(c) of the 1988 Act, as amended (19 U.S.C. 3006(c)), provides that any modifications proclaimed by the President under section 1206(a) of that Act may not take effect before the thirtieth day after the date on which the text of the proclamation is published in the *Federal Register*.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 1206(a) of the 1988 Act, section 202 of the NAFTA Implementation Act, section 4(b) of the USIFTA Implementation Act, and section 604 of the 1974 Act, do proclaim that: (1) In order to reflect in the HTS the modifications to the rules of origin under the NAFTA, general note 12 to the HTS is modified as provided in Annexes I and II of Publication 4095 of the United States International Trade Commission entitled, ''Modifications to the Harmonized Tariff Schedule of the United States to Adjust Rules of Origin Under the North American Free Trade Agreement,'' which is incorporated by reference into this proclamation.

(2) In order to make technical corrections to the HTS necessary to conform it to the Convention, the HTS is modified as provided in Annex III of Publication 4095.

(3) In order to provide the intended duty treatment under the 2004 Agreement as extended through December 31, 2009, the HTS is modified as provided in Annex IV of Publication 4095.

(4) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(5) The modifications to the HTS set forth in Annexes I and II of Publication 4095 shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the later of (i) October 1, 2009, or (ii) the thirtieth day after the date of publication of this proclamation in the *Federal Register*.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–21335
Filed 9–1–09; 8:45 am]
Billing code 3195–W9–P

Presidential Documents

Memorandum of August 31, 2009

Designation of Officers of the United States Section, International Boundary and Water Commission, United States and Mexico To Act As the Commissioner of the United States Section

Memorandum for the Commissioner of the United States Section, International Boundary and Water Commission, United States and Mexico

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this memorandum, the following officials of the United States Section, International Boundary and Water Commission, United States and Mexico, in the order listed, shall act as and perform the functions and duties of the office of the Commissioner of the United States Section, International Boundary and Water Commission, United States and Mexico (Commissioner), during any period in which the Commissioner has died, resigned, or otherwise become unable to perform the functions and duties of the office of Commissioner, until such time as the Commissioner is able to perform the functions and duties of that office:

(a) United States Section Principal Engineer—Operations Department; and

(b) United States Section Principal Engineer—Engineering Department.

Sec. 2. *Exceptions.*

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Commissioner pursuant to this memorandum.

(b) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Commissioner.

Sec. 3. This memorandum is intended to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 4. You are authorized and directed to publish this memorandum in the *Federal Register*.

[FR Doc. E9–21296
Filed 9–1–09; 8:45 am]
Billing code 7010–01–M

Reader Aids

Federal Register

Vol. 74, No. 169

Wednesday, September 2, 2009

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

45093–45304 1
45305–45534 2

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8404 45527
8405 45529

Administrative Orders:
Memorandums:
Memorandum of August 31, 2009 45533

7 CFR

210 45305
220 45305

12 CFR

370 45093

14 CFR

1 45307
23 45100
33 45307
39 45311

Proposed Rules:
23 45133
39 ..... 45135, 45139, 45381
71 45142

15 CFR

Proposed Rules:
806 45383

16 CFR

1119 45101

Proposed Rules:
1119 45133

22 CFR

Proposed Rules:
62 45385

24 CFR

206 45311

29 CFR

1956 45107

30 CFR

944 45116

33 CFR

165 ..... 45120, 45318, 45323

39 CFR

111 45325
3020 45327

40 CFR

180 45330
300 45335

Proposed Rules:
52 45387
81 45387

44 CFR

64 45122

47 CFR

73 45126
74 45126

48 CFR

Proposed Rules:
8 45394
12 45394
15 45394
42 45394
49 45394

49 CFR

234 45336

Proposed Rules:
571 45143

50 CFR

20 45343
226 45353
648 45131
679 ..... 45131, 45378, 45379

Proposed Rules:
17 45396

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 774/P.L. 111–50

To designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the ''Geraldine Ferraro Post Office Building''. (Aug. 19, 2009; 123 Stat. 1979)

H.R. 987/P.L. 111–51

To designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the ''John Scott Challis, Jr. Post Office''. (Aug. 19, 2009; 123 Stat. 1980)

H.R. 1271/P.L. 111–52

To designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the ''Elijah Pat Larkins Post Office Building''. (Aug. 19, 2009; 123 Stat. 1981)

H.R. 1275/P.L. 111–53

Utah Recreational Land Exchange Act of 2009 (Aug. 19, 2009; 123 Stat. 1982)

H.R. 1397/P.L. 111–54

To designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the ''Caroline O'Day Post Office Building''. (Aug. 19, 2009; 123 Stat. 1989)

H.R. 2090/P.L. 111–55

To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the ''Frederic Remington Post Office Building''. (Aug. 19, 2009; 123 Stat. 1990)

H.R. 2162/P.L. 111–56

To designate the facility of the United States Postal Service located at 123 11th Avenue South in Nampa, Idaho, as the ''Herbert A Littleton Postal Station''. (Aug. 19, 2009; 123 Stat. 1991)

H.R. 2325/P.L. 111–57

To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the ''Laredo Veterans Post Office''. (Aug. 19, 2009; 123 Stat. 1992)

H.R. 2422/P.L. 111–58

To designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the ''Kile G. West Post Office Building''. (Aug. 19, 2009; 123 Stat. 1993)

H.R. 2470/P.L. 111–59

To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the ''Lieutenant Commander Roy H. Boehm Post Office Building''. (Aug. 19, 2009; 123 Stat. 1994)

H.R. 2938/P.L. 111–60

To extend the deadline for commencement of construction of a hydroelectric project. (Aug. 19, 2009; 123 Stat. 1995)

H.J. Res. 44/P.L. 111–61

Recognizing the service, sacrifice, honor, and professionalism of the Noncommissioned Officers of the United States Army. (Aug. 19, 2009; 123 Stat. 1996)

S.J. Res. 19/P.L. 111–62

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Aug. 19, 2009; 123 Stat. 1998)

Last List August 14, 2009

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