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Presidential Documents

Title 3—

The President

Proclamation 8434 of October 6, 2009

German-American Day, 2009

By the President of the United States of America

A Proclamation

Comprising the Nation's largest ancestry group, German Americans have contributed to our collective identity since the first settlements were founded in the 17th century. Essential to the growth of America, these farmers, soldiers, entrepreneurs, and patriots gave their strength, determination, and in some circumstances, their lives, so we all may experience a brighter tomorrow. It is in this spirit that German Americans continue to enrich our national character, sharing their proud heritage with new generations from every background. Today, we celebrate German Americans for their remarkable role in our Nation's development.

Our citizens of German descent excel in every discipline and open our minds to the expanses of human possibility. When we drive across a suspension bridge, listen to music played on a Steinway piano, or send a child to kindergarten, their unique traditions and customs surround us. German Americans have influenced our Nation in myriad ways with their industry, culture, and engagement in public life.

Germany and its people have also been active participants in our Nation's history. This year, we celebrate the 60th anniversary of the Federal Republic of Germany, and the 20th anniversary of the fall of the Berlin Wall. These milestones reinforce the German people's dedication to democratic ideals, and we honor the bonds that tie our two nations together.

America is a stronger Nation because of those families who have established longstanding roots in our country, as well as by those who have recently emigrated from abroad. German immigrants, inhabiting every major city, have given much of themselves throughout our history, selflessly expanding the reach of the American Dream. On this day, we celebrate and honor the past, present, and future contributions of German Americans to the rich and textured story of America.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 6, 2009, as German-American Day. I encourage all Americans to learn more about the history of German Americans and to commemorate the many contributions they have made to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, 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. E9–24675
Filed 10–9–09; 8:45 am]
Billing code 3195–W9–P

Presidential Documents

Presidential Determination No. 2009–32 of September 30, 2009

Fiscal Year 2010 Refugee Admissions Numbers And Authorizations of In-country Refugee Status Pursuant To Sections 207 And 101(A)(42), Respectively, of the Immigration And Nationality Act, And Determination Pursuant To Section 2(B)(2) of the Migration And Refugee Assistance Act, As Amended

Memorandum for the Secretary of State

In accordance with section 207 of the Immigration and Nationality Act (the ''Act'') (8 U.S.C. 1157), as amended, and after appropriate consultations with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 80,000 refugees to the United States during Fiscal Year (FY) 2010 is justified by humanitarian concerns or is otherwise in the national interest; provided that this number shall be understood as including persons admitted to the United States during FY 2010 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below.

The 80,000 admissions numbers shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided that the number of admissions allocated to the East Asia region shall include persons admitted to the United States during FY 2010 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members):

Africa	15,500
East Asia	17,000
Europe and Central Asia	2,500
Latin America/Caribbean	5,000
Near East/South Asia	35,000
Unallocated Reserve	5,000

The 5,000 unallocated refugee numbers shall be allocated to regional ceilings, as needed. Upon providing notification to the Judiciary Committees of the Congress, you are hereby authorized to use unallocated admissions in regions where the need for additional admissions arises.

Additionally, upon notification to the Judiciary Committees of the Congress, you are further authorized to transfer unused admissions allocated to a particular region to one or more other regions, if there is a need for greater admissions for the region or regions to which the admissions are being transferred. Consistent with section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

Consistent with section 101(a)(42) of the Act (8 U.S.C.1101(a)(42)), and after appropriate consultation with the Congress, I also specify that, for FY 2010,

the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

a. Persons in Cuba
b. Persons in the former Soviet Union
c. Persons in Iraq
d. In exceptional circumstances, persons identified by a United States Embassy in any location

You are authorized and directed to report this determination to the Congress immediately and to publish it in the *Federal Register*.

THE WHITE HOUSE,
Washington, September 30, 2009.

[FR Doc. E9–24686
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Rules and Regulations

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AI71

[NRC–2009–0349]

List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision 7

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Holtec International (Holtec) HI–STORM 100 dry cask storage system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 7 to Certificate of Compliance (CoC) Number 1014. Amendment No. 7 will modify the CoC to add the HI–STORM 100U system to the HI–STORM 100 cask systems. The HI–STORM 100U system allows for the underground storage of dry spent nuclear fuel (SNF) by utilizing an underground vertical ventilated module (VVM) that can accept certain Holtec multipurpose canisters (MPCs) previously certified for storage of SNF in the aboveground HI–STORM system. The amendment also incorporates a mandatory radiation protection perimeter around the loaded VVMs. In addition, the amendment will reinstate the decay heat limits for damaged fuel and fuel debris in Appendix B, Technical Specification (TS) 2.4, for the aboveground system that had been inadvertently deleted from Amendment Nos. 5 and 6; incorporate separate TS Appendices A and B for the aboveground system (Apps. A and B) and for the HI–STORM 100U system (Apps. A–100U and B–100U); revise Appendix B, TS 3.4.5, to be consistent with the required system thermal boundary conditions, as submitted in the applicant's safety analysis report for a fire accident condition, and with Holtec's original (*i.e.,* initial certificate application or Amendment 0) submittal and the NRC's original safety evaluation report; and revise and add certain definitions in Appendix A, TS 1.1, to include the VVM. The amendment will also incorporate minor editorial corrections in the TS for the aboveground system.

DATES: The final rule is effective December 28, 2009, unless significant adverse comments are received by November 12, 2009. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0349]. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* An electronic copy of the proposed CoC, TS, and preliminary safety evaluation report (SER) can be found under ADAMS Package Number ML091680333.

CoC No. 1014, the TS, the preliminary SER, and the environmental assessment are available for inspection at the NRC PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Neelam Bhalla, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6843, e-mail *Neelam.Bhalla@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Neelam Bhalla, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6843, e-mail *Neelam.Bhalla@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), states that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of SNF in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72, which added a new Subpart K within 10 CFR Part 72, entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241),

that approved the HI–STORM 100 cask design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1014.

Discussion

By letter dated April 27, 2007, and as supplemented on June 5, June 12, July 14, December 19, 2008, January 16, January 21, February 6, April 6, April 22, May 13, and June 23, 2009, Holtec submitted an application to the NRC that requested an amendment to CoC No. 1014. The amendment proposes to add the HI–STORM 100U system to the list of approved HI–STORM 100 cask systems. The HI–STORM 100U system allows for the underground storage of dry spent fuel by utilizing an underground VVM that can accept certain Holtec MPCs previously certified for storage in the Holtec aboveground overpacks. The fixed structure of the vertical storage cavity, identified by Holtec as the ''Cavity Enclosure Container'' (CEC), is made of a cylindrical container shell integrally welded to both a bottom plate and an upper container flange. A continuous weld between the container shell and the bottom plate is done to ensure that the CEC is completely sealed at its base. The constituent parts of the CEC are fabricated out of approximately 1-inch thick low-carbon steel plate and are coated with epoxy paint following fabrication. For installation in highly corrosive soils, the subsurface outer shell of the VVM would be encased in concrete for additional protection against corrosion.

As installed in the subsurface, an individual VVM extends approximately 5.8 meters (19 feet) below the ground surface and rests in a recess on a concrete support foundation of requisite thickness (0.61–0.91 meter) (2 to 3 feet). Engineered backfill surrounds the VVM for most of its subsurface interface. The VVM is capped by a massive steel and concrete ventilated closure lid that sits above the ground surface to about 0.74 meters (approximately 29 inches), and prevents its horizontal shifting during design basis events. Internally, the CEC is equipped with a removable insulated divider shell and MPC bearing pads to help meet cask thermal performance requirements. Air inlets and outlets allow air to circulate naturally through the cavity to cool the MPC interior. All ventilation openings in the VVM are covered with stainless steel wire mesh to preclude the entry of small birds and mammals.

The subterranean steel structure is seal welded to prevent ingress of any groundwater from the surrounding subgrade, and is mounted on a stiff foundation. The surrounding subgrade and a top surface pad provide significant radiation shielding. A loaded MPC is stored within the HI–STORM 100U storage VVM in the vertical orientation.

For the HI–STORM 100U underground system, the amendment also incorporates a mandatory radiation protection perimeter around the loaded VVMs. In Appendix B–100U, TS 3.4.8 requires that prior to an excavation activity contiguous to a Radiation Protection Space (RPS), a seismic evaluation of the Independent Spent Fuel Storage Installation (ISFSI) in the structurally most vulnerable configuration (*i.e.,* maximum amount of earth removed) shall be performed to verify that the stability of the support foundation, the ISFSI pad, and the shielding material within the RPS is maintained. It requires that excavation can only occur at a distance from the RPS greater than 10 times the depth of the planned excavation. The RPS, as defined in TS 5.7.9 of Appendix A–100U, is intended to ensure that the substrate material (such as natural subgrade and engineered fill) remains intact under all service conditions, including during an excavation activity adjacent to the RPS.

For the HI–STORM 100U underground system, Appendix B–100U TS 3.4.5.a. requires that the support foundation rest directly on a bedrock unless the shear wave velocity of the substrate on which the support foundation rests is greater than or equal to 3500 feet/second. As explained in the SER, item 3.1.7 entitled, ''Evaluation of the HI–STORM 100U System Structural Design,'' Holtec must submit an amendment request to CoC No.1014 if there is any deviation from the requirement set forth in Appendix B–100U TS 3.4.5.a. This requirement will ensure that the ISFSI can withstand the design basis seismologic events.

For the HI–STORM 100 aboveground system, the amendment will reinstate the decay heat limits for damaged fuel and fuel debris in TS Appendix B, Section 2.4. These requirements had been inadvertently deleted from Amendment Nos. 5 and 6. Amendment No. 7 does not alter the decay heat limits that were previously approved in the TS Appendix B.

For the aboveground system, the amendment will revise Appendix B, TS 3.4.5, to be consistent with the required system thermal boundary conditions as submitted in the applicant's safety analysis report (SAR) for a fire accident condition. This revision to TS Appendix B does not add any new requirements but makes it consistent with the intent of Holtec's original (*i.e.,* initial certificate application or Amendment 0) submittal and NRC's original SER.

For the aboveground system, the amendment will also revise and add certain definitions in Appendix A, TS 1.1. For example, ''Vertical Ventilated Module'' has been added and defined in the list of terms defined in Appendix A. The revisions and additions to the definitions in Appendix A make these terms usable in Appendices A, B, A–100U, and B–100U. Finally, the amendment will also incorporate minor editorial corrections in Appendices A and B for the aboveground system.

This direct final rule revises the HI–STORM 100 dry storage cask system listing in 10 CFR 72.214 by adding Amendment No. 7 to CoC No. 1014. The amendment consists of the changes described above, as set forth in the revised CoC and TS. The amendment provides separate TS Appendices A and B for the aboveground system, and Appendices A–100U and B–100U for the underground system. As documented in the SER for Amendment No. 7, the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

The amended HI–STORM 100 cask design, when used under the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, entities holding a general license under 10 CFR 72.210 may load SNF into HI–STORM 100 casks that meet the criteria of Amendment No. 7 to CoC No. 1014 under 10 CFR 72.212.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1014 is revised by adding the effective date of Amendment No. 7. This amendment also corrects the CoC expiration date of June 1, 2020, to May 31, 2020. The CoC No. 1014, Amendment 0 (65 FR 25241; May 1, 2000), incorrectly stated an expiration date of June 1, 2020, instead of May 31, 2020.

Procedural Background

This rule is limited to the changes contained in Amendment No. 7 to CoC No. 1014 and does not include other

aspects of the HI–STORM 100 dry storage cask system. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on December 28, 2009. However, if the NRC receives any significant adverse comments on this direct final rule by November 12, 2009, then the NRC will publish a document that withdraws this action and will subsequently address any comment received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

1. The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

a. The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

b. The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

c. The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

2. The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

3. The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the HI–STORM 100 cask design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that contains generally applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES**, above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. This rule will amend the CoC for the HI–STORM 100 cask design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license.

The amendment will modify the CoC 1014 to add the HI–STORM 100U system to the HI–STORM 100 cask systems. The HI–STORM 100U system allows for the underground storage of dry SNF. The amendment also incorporates a mandatory radiation protection perimeter around the loaded VVMs. The environmental impact of interim storage of SNF at an ISFSI has been evaluated in NUREG–1092, ''Environmental Assessment for 10 CFR 72 Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste.'' The environmental assessment provided the basis for allowing deployment of ISFSIs under general licenses at nuclear power reactor sites without the need for additional site-specific approvals, but it did not consider subsurface designs. Because the HI–STORM 100U is an underground storage system, Holtec, under the requirements of 10 CFR 51.41, submitted an environmental report to NRC on June 2, 2008, as a reference document for evaluating the potential environmental impacts of this subsurface design. Holtec also provided supplemental information on December 19, 2008, in response to questions requesting additional information from the NRC staff.

The environmental impacts of the proposed action have been reviewed in accordance with the requirements of 10 CFR Part 51. NRC has determined that the storage of SNF in an underground Holtec HI–STORM 100U cask system array within the controlled area of a licensed reactor site would not significantly affect the quality of the human environment, either incrementally or cumulatively. Therefore, an environmental impact statement is not warranted for the proposed action, and accordingly, a finding of no significant impact is appropriate.

NRC has prepared an environmental assessment to evaluate the potential impacts of construction, operation, and decommissioning of the subsurface ISFSI arrays under a general license for the HI–STORM 100U underground system. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Neelam Bhalla, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6843, e-mail *Neelam.Bhalla@nrc.gov*.

The environmental assessment concludes that there would be no significant radiological or nonradiological environmental impacts from routine operation of the ISFSI. The

ISFSI is a passive facility and no liquid or gaseous effluents would be released from the storage casks. The dose rates from the spent fuel would be limited by the design of both the storage casks and the subsurface VVM. The total occupational dose to workers at any given reactor site may increase slightly due to work associated with loading, transferring, and storing the casks, but all occupational doses must be maintained below the limits specified in 10 CFR Part 20 and must be kept as low as reasonably achievable in accordance with licensee's radiation protection programs. The annual dose to the nearest residents from general license ISFSI activities (which, to date, have utilized aboveground cask systems) has always been significantly below the limits specified in 10 CFR 72.104 and 10 CFR 20.1301(a). The shielding provided by soil is expected to result in a radiation dose from the Holtec HI–STORM 100U system to be the same or lower than the current aboveground systems.

For the aboveground system, the amendment would reinstate the decay heat limits for damaged fuel and fuel debris in Appendix B, TS 2.4, that had been inadvertently deleted from Amendments 5 and 6, and revise Appendix B, TS 3.4.5, to be consistent with the required system thermal boundary conditions as submitted in the applicant's SAR for a fire accident condition. This revision to TS Appendix B does not add any new requirements but makes it consistent with the intent of Holtec's original (*i.e.*, initial certificate application or Amendment 0) submittal and NRC's original SER.

The amendment will also incorporate separate TS Appendices A and B for the aboveground system (Apps. A and B) and for the HI–STORM 100U system (Apps. A–100U and B–100U), and revise and add certain definitions in Appendix A, TS 1.1, to include the VVM.

As such, Amendment No. 7 does not make any changes to the previously approved conditions of the HI–STORM 100 aboveground cask system. The NRC staff believes that the environmental assessments and findings of no significant impact prepared for earlier HI–STORM 100 system amendments continue to be valid and will bound the revisions to the TS.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of SNF under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store SNF if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license (as set forth in 10 CFR 72.212) are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to Part 72 that approved the HI–STORM 100 cask design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. On April 27, 2007, and as supplemented on June 5, June 12, July 14, December 19, 2008, January 16, January 21, February 6, April 6, April 22, May 13, and June 23, 2009, the certificate holder, Holtec, submitted an application to the NRC to amend CoC No. 1014 to add the HI–STORM 100U system to the HI–STORM 100 cask systems. The HI–STORM 100U system allows for the underground storage of dry SNF by utilizing a VVM that can accept certain MPCs previously certified for storage of SNF in the Holtec aboveground HI–STORM 100 system. The amendment also incorporates a mandatory radiation protection perimeter around the loaded VVMs. In addition, the application requested amending CoC No. 1014 to reinstate the decay heat limits for damaged fuel and fuel debris in Appendix B, TS 2.4, for the aboveground system that had been inadvertently deleted from Amendment Nos. 5 and 6, and revise Appendix B, TS 3.4.5, to be consistent with the required system thermal boundary conditions as submitted in the applicant's SAR for a fire accident condition. This revision to TS Appendix B does not add any new requirements but makes it consistent with the intent of Holtec's original (*i.e.*, initial certificate application or Amendment 0) submittal and NRC's original SER.

The amendment will also incorporate separate TS Appendices A and B for the aboveground system (Apps A and B) and for the HI–STORM 100U system (Apps. A–100U and B–100U), and revise and add certain definitions in Appendix A, TS 1.1, to include the VVM. The amendment will also incorporate minor editorial corrections in the TS for the aboveground system.

The alternative to this action is to withhold approval of Amendment No. 7 and to require any Part 72 general licensee, seeking to utilize the Holtec HI–STORM 100U system, to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested Part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec. These entities do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory

Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: July 14, 2008.

Amendment Number 6 Effective Date: August 17, 2009.

Amendment Number 7 Effective Date: December 28, 2009.

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: May 31, 2020.

Model Number: HI–STORM 100 Systems.

* * * * *

Dated at Rockville, MD, this 24th day of September 2009.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E9–24561 Filed 10–9–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0611; Directorate Identifier 2008–NM–165–AD; Amendment 39–16033; AD 2009–20–10]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C–212–CB, C–212–CC, C–212–CD, and C–212–CE Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

Honeywell International, the manufacturer of the SPZ200 autopilot system installed on the EADS–CASA C–212 series aircraft, has identified a series of servo-motors * * * designed for use in the SPZ200 autopilot system, whose failure can lead to a potential unsafe flight condition. * * *

* * * * *

The unsafe condition is failure of the servo-motors, which could result in roll oscillations or possible hard-over failures when the autopilot is engaged. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 17, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 17, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 16, 2009 (74 FR 34520). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Honeywell International, the manufacturer of the SPZ200 autopilot system installed on the EADS–CASA C–212 series aircraft, has identified a series of servo-motors, P/N [part number] 4006719–904 and P/N 4006719–913, designed for use in the SPZ200 autopilot system, whose failure can lead to a potential unsafe flight condition. To address and correct this situation, Honeywell International has published Alert Service Bulletin (ASB) 4006719–22–A0016 (Revised) dated 1 November 2004, that identifies the affected servo-motors by serial number, recommending the removal of these units from the aircraft and including modification instructions to be accomplished prior to reinstallation.

EADS–CASA has determined that the flight safety of the C–212 aircraft is at risk. Consequently, Boletin de Servicio (Service

Bulletin) SB–212–22–16 has been published to advise C–212 operators of this condition and to recommend that the affected servo-motors are modified or replaced with modified units.

For the reasons described above, this EASA AD requires the identification of the affected servo-motors and modification or replacement with modified units.

The unsafe condition is failure of the servo-motors, which could result in roll oscillations or possible hard-over failures when the autopilot is engaged. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This 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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 26 products of U.S. registry. We also estimate that it will take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $10,400, or $400 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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 AD and placed it in the AD docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–20–10 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–16033. Docket No. FAA–2009–0611; Directorate Identifier 2008–NM–165–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 17, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CASA Model C–212–CB, C–212–CC, C–212–CD and C–212–CE airplanes, all serial numbers; certificated in any category; on which autopilot servo-drive actuators (servo-motors) having part number (P/N) 4006719–904 or 4006719–913 are installed.

Subject

(d) Air Transport Association (ATA) of America Code 22: Auto flight.

Reason

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

Honeywell International, the manufacturer of the SPZ200 autopilot system installed on the EADS–CASA C–212 series aircraft, has identified a series of servo-motors, P/N [part number] 4006719–904 and P/N 4006719–913, designed for use in the SPZ200 autopilot system, whose failure can lead to a potential unsafe flight condition. To address and correct this situation, Honeywell International has published Alert Service Bulletin (ASB) 4006719–22–A0016 (Revised) dated 1 November 2004, that identifies the affected servo-motors by serial number, recommending the removal of these units from the aircraft and including modification instructions to be accomplished prior to reinstallation.

EADS–CASA has determined that the flight safety of the C–212 aircraft is at risk. Consequently, Boletin de Servicio (Service Bulletin) SB–212–22–16 has been published to advise C–212 operators of this condition and to recommend that the affected servo-motors are modified or replaced with modified units.

For the reasons described above, this EASA AD requires the identification of the affected servo-motors and modification or replacement with modified units.

The unsafe condition is failure of the servo-motors, which could result in roll oscillations or possible hard-over failures when the autopilot is engaged.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 2 months after the effective date of this AD: Identify affected servo-motors having P/N 4006719–904 and P/N 4006719–913 and modify each unit or replace with a modified unit, in accordance with the instructions of EADS–CASA Service Bulletin SB–212–22–16, dated March 13, 2006.

(2) As of the effective date of this AD, no person may install, on any airplane, a servo-motor having P/N 4006719–904 or 4006719–913, and any affected serial number identified in Honeywell Alert Service Bulletin 4006719–22–A0016, Revision 001, dated November 1, 2004 (referenced in EADS–CASA Service Bulletin SB–212–22–16, dated March 13, 2006, as the source of service information for accomplishing the modification), unless it has been modified in accordance with paragraph (f)(1) of this AD.

Note 1: The 8 digit serial number specified in Honeywell Alert Service Bulletin 4006719–22–A0016, Revision 001, dated November 1, 2004, is a combination date code and serial number. The format is as follows: YYMMXXXX—YY is the year; MM is the month, and XXXX is a sequential manufacturing serial number (*e.g.,* a unit with number 0111XXXX was manufactured in November 2001).

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(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, 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 Airworthiness Directive 2008–0144, dated August 1, 2008; EADS–CASA Service Bulletin SB–212–22–16, dated March 13, 2006; and Honeywell Alert Service Bulletin 4006719–22–A0016, Revision 001, dated November 1, 2004; for related information.

Material Incorporated by Reference

(i) You must use EADS–CASA Service Bulletin SB–212–22–16, dated March 13, 2006; and Honeywell Alert Service Bulletin 4006719–22–A0016, Revision 001, dated November 1, 2004; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. (The revision level of Honeywell Alert Service Bulletin 4006719–22–A0016, Revision 001, dated November 1, 2004, is indicated only on pages 1 and 2 of the document.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; e-mail *MTA.TechnicalService@casa.eads.net;* Internet *http://www.eads.net.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 18, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–23507 Filed 10–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0057; Directorate Identifier 85–ANE–25–AD; Amendment 39–16037; AD 2009–20–14]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–535E4 Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for RR RB211–535E4 series turbofan engines. That AD currently requires initial and repetitive inspections of the outer combustion case for cracks and possible removal if cracks are found. This AD requires the same inspections, but requires using RR Mandatory Service Bulletin (MSB) RB.211–72–7775, Revision 3, dated April 9, 1999. This AD results from the FAA approving Revision 3 to the MSB, which adds an alternative eddy current inspection (ECI) method. We are issuing this AD to prevent an uncontained outer combustion case burst, which could result in damage to the airplane.

DATES: This AD becomes effective November 17, 2009. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 17, 2009.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone: 44 (0) 1332–242424; fax: 44 (0) 1332–249936.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *ian.dargin@faa.gov;* telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 86–07–01, Amendment 39–5273 (51 FR 12511, April 11, 1986), with a proposed AD. The proposed AD applies to RR RB211–535E4 series turbofan engines. We published the proposed AD in the **Federal Register** on February 12, 2009, (74 FR 7002). Airworthiness directive 86–07–01 requires initial and repetitive inspections of the combustor case welds using RR MSB RB.211–72–7775, dated June 28, 1985. The NPRM to supersede AD 86–07–01 proposed to require the same inspections, but proposed to require using RR Mandatory Service Bulletin (MSB) RB.211–72–7775, Revision 3, dated April 9, 1999.

Special Flight Permits Paragraph Removed

The current AD, AD 86–07–01, contains a paragraph pertaining to special flight permits. Even though this final rule does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the airplane to a repair facility to do the work required by this AD. In July 2002, we published a new Part 39 that contains a general authority regarding special flight permits and airworthiness directives; see Docket No. FAA–2004–8460, Amendment 39–9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs, we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office 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 street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Change the Engine Model Designation

Two commenters (RR and The Boeing Company) state that the engine model designation listed in the Applicability is incorrect and the engine models listed are incorrect. The commenters ask us to change RB211–534E4 to RB211–535E4 and to correctly list the engine models.

We agree. We changed the Applicability to correctly list the engine model as RB211–535E4 and changed the models affected to: RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75.

Request To Clarify That Eddy Current Inspection (ECI) Is Alternative to Fluorescent Penetrant Inspection (FPI)

One commenter (RR) asks us to clarify that the ECI is an alternative to the FPI and doesn't replace the FPI.

We agree. We changed the AD to state that ECI is an alternative to FPI.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 300 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 work-hour per engine to perform the required actions, and that the average labor rate is $80 per work-hour. No parts are required. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $24,000.

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

For the reasons discussed above, I certify that this AD:

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

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

(3) 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 39–5273 (51 FR 12511, April 11, 1986) and by adding a new airworthiness directive, Amendment 39–16037, to read as follows:

2009–20–14 Rolls-Royce plc (RR) (Formerly Rolls-Royce Limited): Amendment 39–16037. Docket No. FAA–2009–0057; Directorate Identifier 85–ANE–25–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 17, 2009.

Affected ADs

(b) This AD supersedes AD 86–07–01, Amendment 39–5273.

Applicability

(c) This AD applies to RR models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines that don't incorporate RR Service Bulletin (SB) RB.211–72–8045. These engines are installed on, but not limited to, Boeing 757 and Tupolev Tu204 airplanes.

Unsafe Condition

(d) This AD results from the FAA approving Revision 3 to Mandatory Service Bulletin (MSB) RB.211–72–7775, which adds an alternative eddy current inspection (ECI) method. We are issuing this AD to prevent an uncontained outer combustion case burst, which could result in damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Inspection

(f) Perform an initial inspection of the outer combustion casing. Use the

Accomplishment Instructions paragraph 3.B. or paragraph 3.C. of RR MSB RB.211–72–7775, Revision 3, dated April 9, 1999, and the following compliance schedules:

(1) For cases with 1,500 or fewer cycles-since-new (CSN) on the effective date of this AD, inspect before accumulating 1,500 CSN.

(2) For cases with more than 1,500 CSN on the effective date of this AD, inspect within 50 cycles-in-service (CIS) after the effective date of this AD.

(3) If you detect any cracks of 1.5 inches or more in length, replace the case before further flight.

Repetitive Inspections

(g) Thereafter, inspect cases at the following intervals. Use the Accomplishment Instructions paragraph 3.B. or paragraph 3.C. of RR MSB RB.211–72–7775, Revision 3, dated April 9, 1999.

(1) Inspect within 500 cycles-since-last inspection (CSLI) if you detected no cracks during the last inspection.

(2) Inspect within 100 CSLI if you detected cracks less than or equal to 0.5 inch in length during the last inspection.

(3) Inspect within 50 CSLI if you detected cracks greater than 0.5 inch but less than 1.5 inches in length.

Credit for Previous Inspections

(h) Cases inspected before the effective date of this AD using RB.211–72–7775, Revision 2, dated February 27, 1998, or earlier issue, meet the requirements of this AD for the initial or repetitive inspections specified in paragraphs (f) through (f)(3) and (g) through (g)(3) of this AD.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, FAA, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Civil Aviation Authority airworthiness directive 008–07–85, dated June 19, 1985, also addresses the subject of this AD.

(k) Contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *ian.dargin@faa.gov*; telephone (781) 238–7178; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(l) You must use Rolls-Royce plc Mandatory Service Bulletin RB.211–72–7775, Revision 3, dated April 9, 1999 to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone: 44 (0) 1332–242424; fax: 44 (0) 1332–249936, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on September 22, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–23661 Filed 10–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0429; Directorate Identifier 2007–NM–059–AD; Amendment 39–16038; AD 2009–21–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300 and 737–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–300 and 737–400 series airplanes. This AD requires repetitive inspections to detect cracking of the aft fuselage skin, and related investigative/corrective actions if necessary. This AD results from reports of cracks in the aft fuselage skin on both sides of the airplane. We are issuing this AD to detect and correct cracking in the aft fuselage skin along the longitudinal edges of the bonded skin doubler, which could result in reduced structural integrity of the airplane.

DATES: This AD is effective November 17, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 17, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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 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: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–300 and 737–400 series airplanes. That NPRM was published in the **Federal Register** on May 7, 2009 (74 FR 21278). That NPRM proposed to require repetitive inspections to detect cracking of the aft fuselage skin, and related investigative/corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the three commenters.

Support for the AD

Boeing concurs with the content of the NPRM.

Request To Allow Use of Previous Service Information

Southwest Airlines requests that skin panel replacements accomplished in accordance with Part 3 of Boeing Service Bulletin 737–53–1168, Revision 1, dated August 17, 1995; and Revision 2, dated November 27, 1996; also be considered as terminating action for the inspections specified in paragraph (g) of the NPRM. (We referred to Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006, as the appropriate source of service information for accomplishing the actions specified in paragraph (g) of the NPRM for Model 737–300 series airplanes.)

We agree. We have reviewed the following service bulletins and have determined that these documents are also acceptable for terminating the inspections specified in paragraph (g) of this AD. Therefore, we have revised paragraph (j) of this AD to include these additional documents. Also, for easier

readability, we have added a table in paragraph (j) of this AD to specify the acceptable service documents.

TABLE—ACCEPTABLE SERVICE INFORMATION FOR OPTIONAL TERMINATING ACTION

Model	Document
Model 737–300 series airplanes.	Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1168, dated March 16, 1995.
	Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1168, Revision 1, dated August 17, 1995.
	Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1168, Revision 2, dated November 27, 1996.
Model 737–400 series airplanes.	Part III of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1187, dated November 2, 1995.
	Part III of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1187, Revision 1, dated January 16, 1997.

Request To Publish Effectivity and Compliance Information

The Aviation Group requests that paragraphs 1.E., ''Compliance,'' and 1.A., ''Effectivity,'' of Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006; and Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007; be added to the NPRM, either within the body of the AD or as an incorporated attachment. The commenter asserts that many owners, lessors, or their respective representatives, are routinely denied access to the manufacturer's Web site where the referenced service information is archived, making it very difficult or impossible to evaluate and schedule compliance with this AD.

We do not agree to add the compliance and effectivity sections of Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006; and Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007; to this AD. Due to the length and complexity of the applicability and compliance times required in this AD, we referred directly to the service information to ensure the accuracy of those sections in this AD. We also gave notice for the compliance times in the ''Relevant Service Information'' section of the NPRM. Operators should note that type certificate holders are required under the Federal Aviation Regulations to make available the service information necessary for accomplishing AD requirements to affected operators. All service information that we incorporate by reference in our AD is available to those who operate the product that is the subject of the AD. The necessary service information has also been incorporated by reference in this AD; therefore, this information is also available for review at the FAA or the Office of the Federal Register, as specified in the **ADDRESSES** section and paragraph (n) of this AD. We have made no change to this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects about 516 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection to determine inspection zones	1	$0	$80	516	$41,280.
Repetitive inspections—Option 1	64	0	$5,120, per inspection cycle.	516	Up to $2,641,920.
Repetitive inspections—Option 2	62	0	$4,960, per inspection cycle.	516	Up to $2,559,360.
Internal inspection	5, per inspection zone (3 zones).	0	$1,200	516	$619,200.

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

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) 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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–21–01 Boeing: Amendment 39–16038. Docket No. FAA–2009–0429; Directorate Identifier 2007–NM–059–AD.

Effective Date

(a) This airworthiness directive (AD) is effective November 17, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Boeing Model 737–300 series airplanes as identified in Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006.

(2) Boeing Model 737–400 series airplanes as identified in Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from reports of cracks in the aft fuselage skin on both sides of the airplane. We are issuing this AD to detect and correct cracking in the aft fuselage skin along the longitudinal edges of the bonded skin doubler, which could result in reduced structural integrity of the airplane.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Inspections, Related Investigative and Corrective Actions

(g) At the applicable times specified in Tables 1 and 2 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006 (for Model 737–300 series airplanes); or Table 1 of paragraph 1.E., of Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007 (for Model 737–400 series airplanes); except as provided by paragraph (k) of this AD: Do the applicable inspections and related investigative actions to detect cracks in the aft fuselage skin panels, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006; or Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007; as applicable; including Note (f) of Table 1 of paragraph 1.E. And, do the applicable corrective actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006; or Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007; as applicable; except as provided by paragraphs (h), (i), and (l) of this AD. Repeat the applicable inspections and related investigative actions thereafter at the applicable intervals specified in Tables 1 and 2 of paragraph 1.E. of Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006; or Table 1 of paragraph 1.E. of Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007; as applicable.

(h) If any crack is found during any inspection or corrective action required by this AD, before further flight, repair in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006 (for Model 737–300 series airplanes); or Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007 (for Model 737–400 series airplanes); except, where Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006; or Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007; as applicable; specifies to contact Boeing, before further flight, repair according to a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(i) If any cracking of a repaired area is found during any inspection required by this AD, and Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006 (for Model 737–300 series airplanes); or Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007 (for Model 737–400 series airplanes); specifies contacting Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

Optional Terminating Action

(j) Doing the skin panel replacement before the effective date of this AD, in accordance with the service information specified in Table 1 of this AD, as applicable, terminates the inspection requirements of paragraph (g) of this AD for that skin panel only. As of the effective date of this AD, doing the skin panel replacement, in accordance with Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006; or Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007; as applicable; terminates the inspection requirements of paragraph (g) of this AD for that skin panel only.

TABLE 1—ACCEPTABLE SERVICE INFORMATION FOR OPTIONAL TERMINATING ACTION

Model	Document
Model 737–300 series airplanes.	Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1168, dated March 16, 1995.
	Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1168, Revision 1, dated August 17, 1995.
	Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1168, Revision 2, dated November 27, 1996.
	Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006.
Model 737–400 series airplanes.	Part III of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1187, dated November 2, 1995.
	Part III of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1187, Revision 1, dated January 16, 1997.

TABLE 1—ACCEPTABLE SERVICE INFORMATION FOR OPTIONAL TERMINATING ACTION—Continued

Model	Document
	Part III of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007.

Exception to Service Bulletins

(k) Where Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006 (for Model 737–300 series airplanes); or Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007 (for Model 737–400 series airplanes); specifies compliance times after the release date of those service bulletins, this AD requires that the specified actions be done within the specified compliance times after the effective date of this AD.

No Reporting Required

(l) Although Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006 (for Model 737–300 series airplanes); and Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007 (for Model 737–400 series airplanes); specify to submit information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), 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: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(n) You must use Boeing Service Bulletin 737–53–1168, Revision 3, dated November 28, 2006; or Boeing Service Bulletin 737–53–1187, Revision 2, dated May 9, 2007; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. If you do the optional terminating action specified in this AD, you must use the service information specified in Table 2 of this AD, as applicable, to do the optional terminating action, unless the AD specifies otherwise.

TABLE 2—SERVICE INFORMATION FOR OPTIONAL TERMINATING ACTION

Boeing Service Bulletin—	Revision—	Dated—
737–53–1168	Original	March 16, 1995.
737–53–1168	1	August 17, 1995.
737–53–1168	2	November 27, 1996.
737–53–1168	3	November 28, 2006.
737–53–1187	Original	November 2, 1995.
737–53–1187	1	January 16, 1997.
737–53–1187	2	May 9, 2007.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 25, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–23877 Filed 10–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0231; Airspace Docket No. 09–AAL–6]

Establishment of Class E Airspace; Chuathbaluk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action establishes Class E airspace at Chuathbaluk, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). One Standard Instrument Approach Procedure (SIAP) is being developed for the Chuathbaluk Airport at Chuathbaluk, AK. Also, this action makes a minor correction to the geographic coordinates and text description for the airport. This action establishes Class E airspace upward from 700 feet (ft.) above the surface at Chuathbaluk Airport, Chuathbaluk, AK.

DATES: Effective Date: 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587;

telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Monday, July 6, 2009, the FAA published a notice of proposed rulemaking in the **Federal Register** to establish Class E airspace at Chuathbaluk, AK (74 FR 31899). Subsequent to publication, the FAA found an error in the geographic coordinates and textual description for Chuathbaluk Airport. This action corrects these errors.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule, with corrected coordinates, is adopted as proposed.

The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at the Chuathbaluk Airport, AK. This Class E airspace is established to accommodate aircraft executing a new instrument procedure, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the Chuathbaluk Airport, Chuathbaluk, AK.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, 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 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Chuathbaluk Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Chuathbaluk, AK [New]

Chuathbaluk, Chuathbaluk Airport, AK
(Lat. 61°34′45″ N., long. 159°12′56″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Chuathbaluk Airport, AK, and within 3.5 miles either side of the 286° bearing from the Chuathbaluk Airport, AK, extending from the 7.5 mile radius, to 10.3 miles west of the Chuathbaluk, Airport, AK.

* * * * *

Issued in Anchorage, AK, on September 18, 2009.

Anthony M. Wylie

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–24228 Filed 10–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0554; Airspace Docket No. 09–ANM–8]

Establishment of Class E Airspace; Eastsound, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Eastsound, WA. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Eastsound Orcas Island Airport, Eastsound, WA. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at Eastsound Orcas Island Airport, Eastsound, WA.

DATES: *Effective Date:* 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On August 5, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Eastsound, WA (74 FR 39001). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9T signed August 27, 2009,

and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Eastsound, WA. Controlled airspace is necessary to accommodate IFR aircraft executing a new RNAV (GPS) approach procedure at Eastsound Orcas Island Airport, Eastsound, WA.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Eastsound Orcas Island Airport, Eastsound, WA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WA E2 Eastsound, WA [New]

Eastsound Orcas Island Airport, WA
(Lat. 48°42′29″ N., long. 122°54′38″ W.)

Within a 3.8-mile radius of the Eastsound Orcas Island Airport, and within 3.7 miles each side of the 163° bearing extending from the 3.8-mile radius to 9.2 miles south of the Eastsound Orcas Island Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility directory.

* * * * *

Issued in Seattle, Washington, on September 30, 2009.

Robert E. Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–24340 Filed 10–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 111

[CBP Dec. 09–38]

Customs Broker License Examination Appeals

AGENCY: Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations, which govern the licensing and conduct of customs brokers. The rule specifies the proper CBP official who is authorized to decide the final administrative appeal of a failing grade on the customs broker written examination. The current regulations provide that the final administrative appeal on a failing grade on the broker's exam should be sent in writing to the Secretary of Homeland Security, or her designee. This final rule amends the CBP regulations to specify that examinees should submit final administrative appeals to the Assistant Commissioner, Office of International Trade.

DATES: This final rule is effective on October 13, 2009.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Broker Compliance Branch, Trade Policy and Programs, Office of International Trade, (202) 863–6543.

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930 (Tariff Act), as amended (19 U.S.C. 1641) authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as necessary to protect importers and the revenue of the United States. Specifically, section 641 provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others. In the case of an applicant for an individual broker's license, section 641 states that the Secretary of the Treasury may conduct an examination to determine an applicant's qualifications for a license.

The Homeland Security Act of 2002 (Homeland Security Act) generally transferred the functions of the U.S. Customs Service from the Treasury Department to the Secretary of Homeland Security. 6 U.S.C. 101 *et seq.* Section 412 of the Homeland Security Act (6 U.S.C. 212) provides that the Secretary of the Treasury retains customs revenue functions unless the Secretary of the Treasury delegates the authority to the Secretary of Homeland Security. The regulation of customs brokers is encompassed within the customs revenue functions set forth in section 412 of the Homeland Security Act. On May 15, 2003, the Secretary of the Treasury delegated authority related to the customs revenue functions to the Secretary of Homeland Security subject to certain exceptions. *See* Treasury Order No. 100–16 (Appendix to 19 CFR Part 0). Since the authority to prescribe the rules and regulations related to customs brokers is not listed as one of the exceptions, this authority now

resides with the Secretary of Homeland Security.

Pursuant to section 641 of the Tariff Act, part 111 of title 19 of the Code of Federal Regulations sets forth the conduct and licensing requirements for customs brokers. Section 111.11 sets forth the basic requirements for obtaining a broker's license, including the requirement that the applicant must obtain a passing grade on the written examination within a 3-year period before submitting the application for a broker's license. 19 CFR 111.11.

Section 111.13(f) provides that an examinee can appeal a failing grade on the written examination by first filing a written appeal with Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection (CBP), within 60 calendar days after the date of the written notice of the examination results. 19 CFR 111.13(f). After reviewing the submission, CBP provides the examinee with a written notice setting forth the decision on the appeal. If CBP's decision on the appeal reaffirms the result of the examination, the examinee may subsequently request review of CBP's decision on the appeal by writing to the Secretary of Homeland Security, or her designee, within 60 calendar days after the date of the notice from CBP.

Explanation of Amendment

As noted above, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority to prescribe rules and regulations relating to customs brokers. The Secretary of Homeland Security, in turn, delegated some of this authority to the Commissioner of CBP including the authority to regulate brokers. *See* Delegation Number 7010.3, dated May 11, 2006.

On October 19, 2007, CBP published a final rule in the **Federal Register**, at 72 FR 59166, setting forth technical corrections to the CBP regulations to reflect changes in CBP's organizational structure. Among the many technical changes in that document, consistent with the Homeland Security Act and Treasury Delegation 100–16, CBP amended 19 CFR 111.13(f) to remove the Secretary of the Treasury as the official with the authority to issue the final administrative appeal on a failing grade on the broker's exam and gave the Secretary of Homeland Security or her designee that authority.

Since the publication of the final rule regarding this particular technical amendment, CBP has determined that the Assistant Commissioner in CBP's Office of International Trade is the most appropriate official to issue the final administrative appeal on a failing grade on the written customs broker's exam. This designation is consistent with DHS Delegation Number 7010.3, which delegates the authority to regulate customs brokers to the Commissioner of CBP. In addition, CBP notes that the Office of International Trade is staffed with examination subject matter experts and is uniquely positioned to independently and expeditiously review examination appeals. Accordingly, § 111.13(f) is being amended in this document by removing ''Secretary of Homeland Security, or his designee'' and adding, in its place, ''Assistant Commissioner, Office of International Trade, U.S. Customs and Border Protection.''

Administrative Procedure Act

Since this rule pertains to matters relating to rules of agency organization, procedure, or practice, this rule is not a substantive rule and is exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A). In addition, the delayed effective date requirement of 5 U.S.C. 553(d) does not apply to this rule for these same reasons.

Regulatory Flexibility Act

Because this rule is not subject to the notice and public comment procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866

These amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule.

Signing Authority

This document is being issued by CBP in accordance with § 0.1(b)(1) of the CBP regulations (19 CFR 0.1(b)(1)).

List of Subjects in 19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

■ For the reasons set forth above, part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111) is amended as follows:

PART 111—CUSTOMS BROKERS

■ 1. The general authority citation for Part 111 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

■ 2. In § 111.13, paragraph (f) is revised to read as follows:

§ 111.13 Written examination for individual license.

* * * * *

(f) *Appeal of failing grade on examination.* If an examinee fails to attain a passing grade on the examination taken under this section, the examinee may challenge that result by filing a written appeal with Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20005 within 60 calendar days after the date of the written notice provided for in paragraph (e) of this section. CBP will provide to the examinee written notice of the decision on the appeal. If the CBP decision on the appeal affirms the result of the examination, the examinee may request review of the decision on the appeal by writing to the Assistant Commissioner, Office of International Trade, U.S. Customs and Border Protection, within 60 calendar days after the date of the notice on that decision.

Dated: September 21, 2009.

Janet Napolitano,

Secretary.

[FR Doc. E9–24489 Filed 10–9–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 403 and 408

RIN 1215–AB62

Labor Organization Annual Financial Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Final Rule; Rescission of January 21, 2009 rule.

SUMMARY: This final rule withdraws a rule published in the **Federal Register** on January 21, 2009, which revised the Form LM–2, an annual financial report required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), and established standards and procedures by which the Department can revoke, when

warranted, the authorization for smaller labor organizations to file the Form LM–3, a less detailed annual financial report also required pursuant to the LMRDA. Upon consideration of the comments received following an April 21, 2009 notice of proposed rulemaking (NPRM), the Department withdraws the January 21 rule. The rule is withdrawn because the revisions it made to the Form LM–2 were issued without an adequate review of the Department's experience under the relatively recent revisions to Form LM–2 in 2003, and because the comments received indicate that the Department may have underestimated the increased burden that the rule would place on reporting labor organizations. Additionally, upon consideration of the comments received, the Department withdraws the provisions of the rule pertaining to the revocation of a small union's authorization to file a Form LM–3 report due to delinquency or deficiency in filing such report, because the revocation standards and procedures are not based upon realistic assessments of such a union's ability to file the more complex Form LM–2 and thus are unlikely to achieve the intended goals of greater transparency and disclosure. Moreover, the revocation provisions did not adequately balance the need for transparency with the burden placed upon smaller labor organizations.

DATES: Effective October 13, 2009, the Final Rule published January 21, 2009 amending 29 CFR parts 403 and 408 (74 FR 3678), for which the effective date was delayed on February 20, 2009 (74 FR 7814) and April 21, 2009 (74 FR 18132), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Denise M. Boucher, Director, Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, (202) 693–1185 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This rescission of the January 21, 2009 rule (January 21 rule) is issued pursuant to section 208 of the LMRDA, 29 U.S.C. 438. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions. Section 208 also provides that the Secretary shall ''establish simplified reports for labor organizations or employers for whom [s]he finds that by virtue of their size a detailed report would be unduly burdensome,'' and to revoke this authorization to file simplified reports for any labor organization or employer if the Secretary determines, after such investigation as she deems proper and due notice and opportunity for a hearing, that the purposes of section 208 would be served by revocation. Secretary's Order 01–2008, issued May 30, 2008, and published in the **Federal Register** on June 6, 2008 (73 FR 32424), contains the delegation of authority and assignment of responsibility for the Secretary's functions under the LMRDA to the Assistant Secretary for Employment Standards and permits re-delegation of such authority.

II. Background

A. Introduction

The rescission of the January 21 rule is part of the Department's continuing effort to fairly effectuate the reporting requirements of the LMRDA. The LMRDA's various reporting provisions are designed to empower labor organizations and their members by providing the means and information to ensure a proper accounting of labor organization funds. The Department believes that a fair and transparent government regulatory regime must consider and balance the interests of labor organizations, their members, and the public. Any change to a union's recordkeeping, accounting, and reporting practices must be based on a demonstrated and significant need for additional information, consideration of the burden associated with such reporting and any increased costs associated with reporting additional information.

On January 21, 2009, OLMS published in the **Federal Register** (74 FR 3678) a rule revising the Form LM–2 (used by the largest labor organizations to file their annual financial reports). The rule would require labor unions to report additional information on Schedules 3 (Sale of Investments and Fixed Assets), 4 (Purchase of Investments and Fixed Assets), 11 (All Officers and Disbursements to Officers), and 12 (Disbursement to Employees). The rule also would add itemization schedules corresponding to categories of receipts, and establish a procedure and standards by which the Secretary of Labor may revoke a particular labor organization's authorization to file the simplified annual report, Form LM–3, where appropriate, after investigation, due notice, and opportunity for a hearing. The rule was scheduled to take effect on February 20, 2009, and apply to labor unions whose fiscal years began on or after July 1, 2009.

Consistent with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review'' and the memorandum of January 21, 2009, from the Director of the Office of Management and Budget (OMB), entitled ''Implementation of Memorandum Concerning Regulatory Review,'' on February 3, 2009, the Department's Office of Labor-Management Standards (OLMS) published a request for comments (74 FR 5899) on a proposed 60-day extension of the effective date of the January 21 rule and invited comment on legal and policy questions relating to the rule, including the merits of rescinding or retaining the rule.

On February 20, 2009 (74 FR 7814), OLMS extended the effective date of the January 21 rule until April 21, 2009, to allow additional time for the Department to review questions of law and policy concerning the rule, for the public to comment on the merits of it, and, meanwhile, to permit unions to delay costly development and implementation of any necessary new accounting and recordkeeping systems and procedures pending this further consideration. On March 19, 2009 (74 FR 11700), OLMS published a proposed rule to further extend the effective date until October 19, 2009 and to extend the applicability date until January 1, 2010. The Department published, on April 21, 2009 (74 FR 18132), a final rule delaying the effective date until October 19, 2009, and the applicability date until January 1, 2010.

Upon consideration of the comments received on questions of law and policy raised by the January 21 rule, the Department proposed the rule's withdrawal on April 21, 2009 (74 FR 18172), because we were concerned that it may not have been informed by an adequate review of the Department's experience under the relatively recent revisions to Form LM–2 in 2003, and because the comments indicated that the Department may have underestimated the increased burden that would be placed on reporting labor organizations by the January 21 rule. Finally, the Department concluded, based on the comments received, that the provisions related to the revocation of a small union's authorization to file a simpler form because it has been delinquent or deficient in filing that form are not based upon realistic assessments of such a union's ability to file the more complex form and are unlikely to achieve the intended goals of greater transparency and disclosure.

The Department initially published the NPRM with a 30-day comment period to expire on May 21, 2009. However, in response to comments requesting extension of the comment period, the Department extended the comment period to June 22, 2009. 74 FR 23811.

This final rule addresses the comments received on the NPRM, and withdraws the January 21 rule. This rule takes effect upon publication, thereby relieving labor organizations from complying with the requirements of the January 21 rule and incurring the attendant burden of that rule. By withdrawing the January 21 rule, today's rule operates to continue the Form LM–2 reporting requirements that have been in place since 2003. Delaying the effective date of today's rule would not alter reporting obligations (given that no report would be due under the January 21 rule until the close of a fiscal year beginning on or after January 1, 2010), but could confuse labor organizations about their reporting obligations, add unnecessary planning and recordkeeping burden on these organizations, and potentially delay the submission of Form LM–2 reports.

B. The LMRDA's Reporting Requirements

In enacting the LMRDA in 1959, a bipartisan Congress sought to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers, employees, and representatives. The LMRDA was the direct outgrowth of a Congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee. The LMRDA addressed various ills through a set of integrated provisions aimed at labor-management relations governance and management. These provisions include financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies. See 29 U.S.C. 431–36, 441.

The Department has developed several forms for implementing the LMRDA's union financial reporting requirements. The annual reports required by section 201(b) of the Act, 29 U.S.C. 431(b) (Form LM–2, Form LM–3, and Form LM–4), contain information about a labor organization's assets, liabilities, receipts, disbursements, loans to officers and employees and business enterprises, payments to each officer, and payments to each employee of the labor organization paid more than $10,000 during the fiscal year. The reporting detail required of labor organizations, as the Secretary has established by rule, varies depending on the amount of the labor organization's annual receipts. 29 CFR 403.4.

Forms LM–3 and LM–4 were developed by the Secretary to meet the LMRDA's charge that she develop ''simplified reports for labor organizations and employers for whom [s]he finds by virtue of their size a detailed report would be unduly burdensome,'' 29 U.S.C. 438. A labor organization not in trusteeship that has total annual receipts of less than $250,000 for its fiscal year may elect to file Form LM–3 instead of Form LM–2. See 29 CFR 403.4(a)(1). The Form LM–3 is a five-page document requiring labor organizations to provide particularized information by certain categories, but in less detail than Form LM–2. A labor organization not in trusteeship that has total annual receipts less than $10,000 for its fiscal year may elect to file Form LM–4 instead of Form LM–2 or Form LM–3. 29 CFR 403.4(a)(2). The Form LM–4 is a two-page document that requires a labor organization to report only the total aggregate amounts of its assets, liabilities, receipts, disbursements, and payments to officers and employees.

In 2003, the Department enacted extensive changes to the Form LM–2, the largest regulatory change to that form in the history of the LMRDA (2003 rule, 68 FR 58374 (Oct. 9, 2003)). As a result of the changes, labor organizations with annual receipts of $250,000 or more are required to file a Form LM–2 report electronically and to itemize receipts and disbursements of $5,000 or more, as well as receipts not reported elsewhere from, or disbursements to, a single entity that total $5,000 or more in the reporting year. Such disbursements are required to be reported in specific categories such as ''Representational Activities'' and ''Union Administration.'' The changes eliminated a category entitled ''Other Disbursements'' and, overall, sought much more detailed reporting. Labor organizations were permitted to report sensitive information for some categories that might harm legitimate union or privacy interests with other non-itemized receipts and disbursements, provided the labor organization indicated that it had done so and offered union members access to review the underlying data upon request pursuant to the statute (29 U.S.C. 431(c); 29 CFR 403.8(b)).

The 2003 rule also included schedules for reporting information regarding delinquent accounts payable and receivable, and it required labor organizations to report investments with a book value of over $5,000 that exceed 5% or more of the union's investments. Another new schedule required labor organizations to report the number of members by membership category, and allowed each labor organization to define the categories used for reporting. Finally, the 2003 rule required reporting labor organizations to estimate the proportion of each officer's and employee's time spent and the corresponding percentage of gross salary in each of the functional categories on the Form LM–2 and to report that percentage of gross salary in the relevant schedule.

III. Rescission of the 2009 Changes to the Form LM–2 Reporting Requirements

For the reasons discussed below, the Department withdraws the January 21 rule. Its withdrawal, however, does not affect a labor union's continuing obligation to file detailed annual financial disclosure reports, as prescribed by the 2003 rule for Form LM–2 filers, thereby ensuring disclosure of financial information to union members, the Department, and the public as required under the LMRDA. The Form LM–3 was not changed by the January 21 rule and the existing form, therefore, continues in effect.

A. Background

The January 21 rule modified Form LM–2 by requiring labor organizations to disclose additional information about their financial activities. On the revised form, labor organizations would provide additional information in Schedule 3 (''Sale of Investments and Fixed Assets'') and Schedule 4 (''Purchase of Investments and Fixed Assets''), which the rule justified by stating that the changes would allow verification that these transactions were performed at arm's length and without conflicts of interest. 74 FR at 3684–87. Schedules 11 and 12 were also revised to require reporting of the value of benefits paid to and on behalf of officers and employees. 74 FR at 3687–91. Labor organizations would report on Schedules 11 and 12 travel reimbursements indirectly paid on behalf of labor organization officers and employees. 74 FR at 3687–88. The preamble to the rule stated that these changes would provide a more accurate picture of total compensation received by labor organization officers and employees. 74 FR at 3689. The Form LM–2 changes also included additional schedules corresponding to the following categories of receipts: Dues

and Agency Fees; Per Capita Tax; Fees, Fines, Assessments, Work Permits; Sales of Supplies; Interest; Dividends; Rents; On Behalf of Affiliates for Transmittal to Them; and From Members for Disbursement on Their Behalf. 74 FR at 3691–93. These new schedules would require the reporting of additional information, by receipt category, of aggregated receipts of $5,000 or more. Id.

B. Discussion of Comments and Reasons for Withdrawing the January 21 Rule

In its NPRM proposing rescission of the changes to the Form LM–2, the Department justified its proposed rescission on two grounds. First, the additional reporting requirements were imposed without an adequate review of the Department's experience under the relatively recent revisions to Form LM–2 in 2003, with the result that the Department may have underestimated the increased burden that would be placed on reporting labor organizations and overestimated the additional benefits to union members and the public of the increased data disclosures. 74 FR 18173, 18175. Second, this failure to consider the utility of increased reporting and its attendant burdens may have resulted in a reporting regime that lacks the balance between the need for transparency in union financial reporting and the need to protect unions from excessive burdens attendant with such reporting, a result contrary to the purpose of the LMRDA. Id. After considering carefully the comments received on the proposal to withdraw the January 21 rule, the Department, for the reasons just mentioned and those discussed below, has concluded to withdraw the rule.

The Department received comments from 27 individuals or entities on the proposed withdrawal of the January 21 rule. Four unions and a federation of unions supported the withdrawal of the rule. The remaining 22 commenters opposed rescission, arguing that the rule should be allowed to take effect. Of this total, 18 were submitted by individuals, including nine form letters. An employer trade association, a business federation, two public policy groups, and a Congressman submitted comments. For discussion, the comments and the Department's responses to them have been grouped as follows: the Department's process for withdrawing the January 21 rule, the necessity to balance transparency with burden in setting reporting requirements, and the adequacy of the Department's review of the 2003 Form LM–2 changes as a predicate to the January 21 rule.

1. The Department's Process for Withdrawing the January 21 Rule

A few of the commenters asserted that the Department was mistaken in delaying the effective date of the January 21 rule and proposing its rescission. They asserted that the rule did not raise questions of law or policy of the nature contemplated by the instructions provided Executive Branch agencies. See memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review'' and the memorandum of January 21, 2009, from the Director of OMB, entitled ''Implementation of Memorandum Concerning Regulatory Review.'' The Department disagrees. Agencies were directed to consider extending the effective date of regulations for the purpose of reviewing questions of law and policy raised by the regulations in question. Thus, on February 3, 2009, the Department published a request for comments (74 FR 5899) on a proposed 60-day extension of the effective date of the January 21 rule, inviting comment on legal and policy questions relating to the rule, including the merits of rescinding or retaining the rule.[1] To the extent these commenters may be suggesting that it should have been self evident that the January 21 rule did not pose any questions of policy or law warranting review, the Department disagrees. As noted in the Department's proposal to withdraw the January 21 rule, the rule presented issues warranting the delay of its effective date and ultimately its withdrawal. These issues, which are discussed at length below, rebut any contention that the rule's further review by the Department was unwarranted.

These same commenters assert that the Administrative Procedure Act, 5 U.S.C. 551, (APA) effectively prevents the Department from lawfully withdrawing the January 21 rule. The commenters apparently believe that the Department may not withdraw the rule without first conducting a comprehensive study, including a new burden analysis in place of the analysis perceived as inadequate.[2] A commenter suggested that the withdrawal of the rule operates as prejudgment of the requirements established by the 2009 rule.[3] One commenter asserted that the rulemaking record underlying the January 21 rule fails to support the conclusion that the Department, in promulgating that rule, was remiss in considering the benefits and burdens associated with that rule. As stated below, the Department holds the view, based on its consideration of the January 21 rule and the rulemaking record, that the January 21 rule was promulgated without undertaking a comprehensive review of experience under the 2003 rule. Given this material deficiency, the only logical option is to withdraw the January 21 rule. Any future proposals to change the reporting requirement would be shaped by such review of experience under the 2003 rule. The Department's approach comports fully with the APA.

[1] The guidance identified the following factors to be considered in identifying rules that should be reviewed: (1) Whether the rulemaking process was procedurally adequate; (2) whether the rule reflected proper consideration of all the facts; (3) whether the rule reflected due consideration of the agency's statutory or legal obligations; (4) whether the rule is based on a reasonable judgment about legally relevant policy considerations; (5) whether the rulemaking process was open and transparent; (6) whether objections to the rule were properly considered, including whether interested parties had fair opportunities to present contrary facts and arguments; (7) whether interested parties had the benefit of access to the facts, data, or other analyses on which the agency relied; and (8) whether the final rule found adequate support in the rulemaking record.

[2] The Department disagrees that a review of the 2003 changes is a necessary precursor to this final rule, as the rescission of the January 21 rule preserves the status quo for LM–2 filers and users of Form LM–2 information. This rule does not impose any additional reporting on labor unions, nor does it relieve labor unions from any reporting currently in effect. Similarly, the Department disagrees with the suggestion that the January 21 rule should remain in place until a meaningful review of experience under the 2003 rule has been completed. The Department believes that a better course of action would be to conduct a meaningful review of the 2003 revisions as a first step in proposing any changes to the Form LM–2. In this manner, the Department would be able to articulate the need for any proposed changes, and the public would be able to comment on the Department's review of the 2003 revisions at the same time as they comment on the proposed changes. Continuing to extend the effective and applicability dates of the rule would continue the uncertainty for all stakeholders. Labor organization members and the public would likely not know what information labor organizations were required to report and when that information would be available through DOL disclosure, and Form LM–2 reporting labor organizations would experience confusion with respect to their reporting requirements and any needed modifications to their recordkeeping and accounting systems.

[3] The Department rejects the suggestion that the withdrawal of the January 21 rule will somehow affect any future judgment by the Department about any particular reporting requirement that now exists or may be proposed in the future. In this regard, the Department notes that some of the commenters on the proposed rescission of the January 21 rule have addressed particular aspects of that rule, identified particular benefits or problems with the rule, or suggested additional reporting requirements. The Department has not reached a determination on the merits of these contentions in deciding to withdraw the rule. These comments, along with the other information submitted in connection with the proposed rescission of the January 21 rule, will help inform any future rulemaking.

2. The Necessity for a Balancing of Transparency With Burden

The Department noted that a failure to consider adequately the utility of increased reporting and its attendant burdens on unions may result in reporting requirements at odds with the reporting regime intended by the Congressional authors of the LMRDA. The Department is obliged to ''strike a balance between the dangers of too much and too little legislation in this field.'' 105 Cong. Rec. 816 (daily ed. Jan. 20, 1959) (quoting Senator John F. Kennedy), reprinted in 2 *NLRB Leg. Hist. of the LMRDA,* at 969. The Department pointed out that Congress expressed a preference that ''the major recommendations of the [McClellan] select committee [be implemented] within a general philosophy of legislative restraint.'' S. Rep. No. 187 (1959), reprinted in 1 *NLRB Leg. Hist. of the LMRDA,* at 403). The Department further noted that the January 21 rule failed to take into account an imperative underlying the LMRDA, *i.e.,* that restraint and great care must be taken in regulating union internal affairs so as not to undermine union self governance by union members. 74 FR at 18175. Finally, the Department noted that Congress expressed a preference to avoid impeding legitimate unionism, citing to remarks by Senator Frank Church (105 Cong. Rec. 6024 (daily ed. Apr. 25, 1959), reprinted in 2 *NLRB Leg. Hist. of the LMRDA,* at 1233), and by Senator John F. Kennedy, who observed that Congress intended ''to permit responsible unionism to operate without being undermined by either racketeering tactics or bureaucratic controls.'' 105 Cong. Rec. 816 (daily ed. Jan. 20, 1959), reprinted in 2 *NLRB Leg. Hist. of the LMRDA,* at 969.

Multiple commenters agreed that the Department has an obligation to balance the need for transparency with the need to protect unions from excessive burdens when implementing the LMRDA's reporting and disclosure requirements. A federation of unions stated that the new provisions in the January 21 rule did not have any demonstrated utility that would justify their imposition, nor did the rule provide the information necessary to balance the competing interests.

An international union stated that Congress gave the Secretary the discretion to prescribe the categories and details of the annual financial disclosure reports, in order to ensure that it properly maintains the balance Congress sought between transparency and not overburdening unions. The union asserted that Congress intended a balance, citing the right of members to examine the union's books pursuant to section 201(c) of the Act. Further, it specifically expressed concern over the potential release of ''trade secrets'' to employers and management consultants, such as those related to job targeting, market recovery, and union organizing programs. The union also asserted that detailed reporting requirements are unnecessary because union members are sophisticated enough to seek information about union financial matters from their unions, as well as seek publicly available information, such as that provided by IRS. The union thus concluded that the January 21 rule failed to achieve the balance required by the LMRDA.

Only two commenters who opposed the proposal to rescind the January 21 rule specifically addressed the intent of Congress in this regard. One commenter, a trade association, rejected the Department's conclusions on the need for balancing interests. Another commenter, a business federation acknowledged that the ''Department is certainly obliged to consider the intent of Congress'' but expressed its view that the January 21 rule ''carefully considered the intent of Congress to 'strike a balance between too much and too little legislation in the field.' '' Therefore, although the business federation disagreed with the Department regarding whether or not it conducted an adequate review of the 2003 changes and whether it carefully considered congressional intent in drafting the regulations, it did not disagree with the Department's conclusion that reporting requirements should reflect Congressional desire to ''strike a balance.'' The trade association offered its view that Congress did not evidence an intent to strike a balance between too much and too little legislation in this field, but rather desired to establish union financial transparency, an object it believed to have been achieved by the January 21 rule. The Department disagrees. As stated in the key Senate Report on the legislation that ultimately became the LMRDA:

In acting on this bill, the committee followed [these] principles:

1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.

2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence.

S. Rep. No. 187, reprinted in 2 *NLRB Leg. Hist. of the LMRDA,* at 403.[4]

These principles (which are not referenced in the trade association's comments) show an effort to strike a balance between regulation of union affairs and interference with such affairs, *i.e.,* on the exercise of ''legislative restraint.'' Further, there is nothing in the House Report, H. Rep. No. 741, reprinted in 1 *NLRB Leg. Hist. of the LMRDA,* at 759–33, or other legislative materials suggesting an alternative regulatory approach. Moreover, as a matter of policy, the Department believes that it should achieve the goal of transparency in union financial reporting without imposing unnecessary requirements.

The Department acknowledges the commenter's important observation that the Senate Report recognizes that ''[t]he *members* who are the real owners of the money and property of the organization are entitled to a *full accounting* of all transactions involving their property'' and ''[t]his bill insures that *full information''* concerning the unions' financial operations are ''available to the members of such organizations.'' S. Rep. No. 187, at 8, reprinted in 1 *NLRB Leg. Hist. of the LMRDA,* at 404 (emphasis added). At the same time, this statement in no way suggests that the Department was to achieve transparency in a way that would overburden unions with ''bureaucratic controls.'' Congress provided the members an additional right through section 201(c) of the Act, which permits them to see the underlying documents of the submitted annual financial reports if they provide ''just cause.'' 29 U.S.C. 431(c). The language of that section, which of necessity confers on members a right to receive information unavailable to others, logically imposes bounds on the information available to individuals and entities lacking that status.

[4] The report also identified as a third principle the need to avoid imposing sanctions on the union or its members where officer conduct is at issue. This principle, like the two quoted, evidences a purpose of balance and restraint in regulating union affairs.

In this regard, the Department agrees with the statement of an international union, which argued that Congress never intended that the annual reports designed by the Secretary should disclose to members, much less the general public, every ''bit of probative financial information.'' Rather, section 201(c) of the Act exists to enable the members, and not the general public, to have access to their unions' books if they can show ''just cause.'' The union cited decisions that illustrate that the ''just cause'' requirement is nominal, and that it does ''not pose any barrier to a union member's honest inquiry into the supporting records [of the union].'' *Fruit & Vegetable Packers' Local 760* v. *Morley,* 378 F.2d 738, 743 (9th Cir. 1967). The union also asserted that Congress did not want management agents or consultants to unfairly take advantage of the financial disclosure requirements, relying on the remarks of Senator Javits on the justification for requiring union members to show good cause to examine the data underlying a union's financial reports. See 105 Cong. Rec. 5853–54 (daily ed. Apr. 23, 1959), reprinted at 2 *NLRB Leg. Hist. of the LMRDA,* at 1127–28. The union stated that preventing public disclosure of certain areas of union finances does not deprive union members of this information, but it would prevent employers from exploiting this information in order to prevent workers from organizing or for the employers to otherwise engage in ''union avoidance.'' At the same time, the Department acknowledges, as pointed out by a trade association, that litigation, with the attendant costs of time and money, is sometimes necessary to obtain such information and that a union's refusal to provide the information may not always be reasonable. Nonetheless, Congress established this procedure to protect the interests of both the union and its members and financial reporting cannot be justified on the basis that the protections embodied in section 201(c) may be trumped on the claim that the Department possesses unbounded authority under section 201 to require complete and unlimited disclosure of union financial information.

3. Failure To Conduct a Meaningful Review of the 2003 Form LM–2 Changes

Several commenters expressed support for withdrawing the January 21 rule, agreeing with the Department's observations in the NPRM that the rule was promulgated too soon after the 2003 changes to the Form LM–2 reporting regime and without an adequate review of the benefits and costs of the changes. In support of the proposed rescission, a federation of unions stated that the Department had failed to properly consider the benefits and costs associated with such changes. It referenced earlier comments it had submitted, in which it stated the principle that a regulatory agency's first obligation in establishing and improving financial accounting and reporting is ''to determine that a proposed standard will fill a significant need and that costs imposed to meet that standard, as compared with other alternatives, are justified in relation to the overall benefits of the resulting information.'' FASB, Statement of Financial Accounting Standards No. 117; Financial Statements of Not-for-Profit Organizations (June 1993) Section 38. In the federation's view, the January 21 rule failed this test. It asserted that the Department had ignored the experience under the 2003 rule in imposing additional reporting requirements; instead, it merely relied on the explanation it had offered in support of the 2003 rule. The federation explained that the 2003 rule imposed unprecedented itemization requirements on unions, necessarily requiring the Department at that time to make a speculative assessment of costs and benefits. However, it argued that this approach was an unacceptable substitute four years later when actual data and experience under the 2003 rule was available. Because itemization costs impose the principal recordkeeping and reporting burden on unions, it was imperative, in the federation's opinion, to obtain information on such costs before imposing additional itemization requirements. With respect to the anticipated public benefit of the reporting imposed by the 2003 rule, the federation asserted that the Department's own annual reports failed to show a significant increase in the number of enforcement actions—an expected outcome if the 2003 rule was fulfilling the objective of disclosing financial improprieties. Thus, it concluded that there was no basis for the Department's assessment that additional reporting would achieve the benefits predicted.

One international union recognized that the Department has collected ''vastly increased amounts of information'' from unions since the 2003 changes, but it has not conducted any empirical study of the costs or effects of those revisions. Further, the 2003 changes contained significant ''start-up'' costs, such as revising computer programs and accounting practices and training staff, which the union alleged cost millions of dollars for some unions, as well as more long-term costs regarding ongoing compliance. The union provided as an example the hundreds of additional pages that it filed in 2007 as opposed to 2004, the last year before the 2003 changes became effective. The 2007 report, in its view, was filled with ''financial minutia'' costly to track and without any purpose or benefit. Ultimately, it views the 2003 changes as ''punitive and unnecessary.'' The federation of unions and an international union explicitly supported the Department's assertion that a review of the information received since 2003, as well as an examination of the data regarding burden since 2003, would provide a foundation on which the Department could determine whether or not additional changes are needed. One national union offered several suggestions for calculating the burden on unions following the 2003 rule and the January 21 rule. For example, it asserted that the Department should have considered the increased costs incurred by unions in using outside accountants as opposed to internal ones in complying with Form LM–2 reporting, a practice that this national union and other large ones like it employ.

Other commenters related concerns with regard to the burdens and benefits of the 2003 rule, and opined that such a review would reveal undue burden, and thus militate against any additional reporting requirements such as those imposed by the January 21 rule. These union commenters argued that the Department should rescind the January 21 rule until it can accurately assess both the benefits and burdens of the 2003 rule. One international union referred to the 2003 revisions as ''punitive and excessive'' and urged the Department to examine their impact with a goal of significantly reducing the recordkeeping burden to a ''more rational level, consistent with the LMRDA.'' A national union stressed the ''onerous'' burden that the 2003 rule created for it and its affiliates, in terms of economics and operations, and argued that any additional burdens imposed by the rule are not justified by any meaningful benefits, the existence of which it doubted.

The remainder of the commenters opposed rescission of the January 21 rule. Most emphasized the general importance of union financial reporting and disclosure requirements, some asserting that withdrawal of the rule ran counter to the President's focus upon transparency. Six commenters opposed the rescission of the rule on substantive grounds. One individual, a retired union

associate member, argued in support of the January 21 rule. While commenting on the value of the reports submitted under the 2003 rule, he also expressed the view that the additional reporting by union officials would be beneficial to union members. Three commenters offered several recent examples of union corruption as support for the January 21 rule. An employer trade association referenced several comments from individuals, including union members, who offered support for the January 21 rule. The trade association emphasized its interest in disclosure of union job targeting expenditures. The trade association submitted a study as support for its view that unions significantly underreport the amount they spend on job targeting, a problem recognized and partially addressed by the January 21 rule.[5] In its view, the study also demonstrated that the 2003 rule required additional reporting requirements if union members were to be given a true picture of their unions' financial health and its use of members' funds, especially in reconciling membership and dues numbers.

Another individual commenter opposing rescission of the January 21 rule stressed the Department's enforcement record (*e.g.,* the number of indictments and convictions recorded) over the past eight years as a reason not to reduce the financial disclosure requirements and ''weaken the government's ability to fight'' union corruption. A Congressman cited similar enforcement statistics and highlighted other aspects of the Department's enforcement efforts. He also outlined arguments for the additional reporting obligations—to better understand officer and employee compensation by identifying benefits payable to particular individuals, to allow union members to see the travel and related expenses incurred by the union in connection with an individual's travel and lodging, the itemization of receipts received by unions in excess of $5,000, and the names and other information about the purchase and sale of union assets. He also relied on a 1999 legislative report (as did another commenter) as support for the requirement to disclose all payments made to particular union officials. Subcomm. on Oversight and Inv. of the Comm. on Education and the Workforce, *Report on the Financial Operating and Political Affairs of the International Brotherhood of Teamsters* (1999). The Congressman also summarized the steps taken by the Department in revising its burden estimates, concluding that the estimate reflected the most accurate data available to create a fair and accurate representation of the compliance costs associated with the January 21 rule.

The Department disagrees that rescinding the rule will weaken the agency's ability to fight fraud and embezzlement. The Department has not carefully reviewed the potential deterrent effect, if any, associated with the 2003 revisions to the Form LM–2, and there is no support in the rulemaking record for drawing a reasonable inference about the probable impact of the additional reporting requirements prescribed by the January 21 rule. Indeed, the prior eight-year period of 1993–2000 actually yielded slightly higher results than the eight-year period of 2001–2008, with 1,193 indictments and 1,159 convictions. The year 2000 totals, 204 indictments and 191 convictions, are higher than any of the yearly totals from 2001–2008. Moreover, these results all derive from a period prior to the 2003 changes to the Form LM–2. In making this point, however, the Department does not suggest that previous versions of the Form LM–2 were more effective tools in fighting union corruption, or that there is a link between any specific Form LM–2 data and the overall rate of fraud and embezzlement. These figures are offered solely to show that there is an insufficient record to justify increases or reductions in reporting form data collection by reference to changes in enforcement statistics.

In particular, there has been no review as to whether the 2003 changes resulted in increased indictments or convictions; improved compliance; offered members information needed for self-governance, accountability or fiscal management; or otherwise aided the Department or the public in exposing union fraud or corruption. The Department concurs with commenters who have suggested that before moving forward with the additional reporting requirements imposed by the 2009 final rule, it should have engaged in a meaningful review to assess the benefits, effectiveness, and usefulness of the 2003 changes. The lack of such a review justifies today's rescission of the January 21 rule.

The Department fully recognizes and supports the importance of union reporting and disclosure to the union members and to the public, but it also believes that the LMRDA requires a balancing of transparency with the need to maintain union autonomy without overburdening unions with reporting requirements. The Form LM–2, as established by the January 21 rule, did not adequately consider this balance. In this regard, the Department does not believe that this necessary balancing is possible without a review of the 2003 changes to the Form LM–2, which the rulemaking process that culminated in the January 21 rule did not undertake. The commenters did not provide any contrary reasoning.

In proposing rescission of the January 21 rule, the Department stated that it was a mistake to propose further changes to the Form LM–2 reporting requirements so soon after the 2003 rule without proper consideration of the effects of these changes. Without undertaking such review, the Department could not adequately weigh the merits of the increased disclosure against the associated burdens on the union filers. 74 FR 18175. As there stated, the Department recognized that the January 21 rule did not adequately consider the effects of the 2003 changes, particularly regarding the assumed benefits of the changes. The January 21 rule did not adequately show that the 2003 changes either succeeded or failed in achieving their intended purpose. Further, the Department explained that additional review of the post-2003 reporting history would be beneficial before deciding that additional regulatory changes would facilitate these purposes. Additionally, the Department recognized that financial transparency is necessary to protect against union fraud and corruption, enhance accountability among union officials, and that it is necessary for members to effectively engage in union self-governance. However, it also noted that a review of the usefulness of the information that has been reported since the Form LM–2 was revised in 2003, as well as the burden placed on unions by that revision, would provide a better basis for determining whether additional changes are necessary than the unverified assumptions underlying the January 21 rule. This review would

[5] Armand J. Thieblot, *Job Targeting and Market Recovery Practices of Construction Unions: Their Apparent and Hidden Costs* (2008) (John M. Olin Institute for Employment Practice and Policy, George Mason University). Rescinding the January 21 rule leaves in place the 2003 instructions concerning the reporting of expenses involved in job targeting. The Department takes no position on the observations and conclusions made by this author. It deserves mention, however, that this private study, which focuses primarily on only a small aspect of union financial reporting, involved considerable research and review of reporting data under the 2003 rule, including the review of a considerable number of Form LM–2s. (The study is not part of the January 21 rulemaking record, presumably because it was published after the close of the comment period for that rule). The author describes his research and explains his methodology and the reasoning in arriving at his conclusions. The study highlights the absence of anything comparable in the January 21 rule or its rulemaking record.

permit the Department to properly balance the need for transparency with the need to protect unions from excessive burdens imposed by reporting and disclosure requirements.

In contrast to the Department's assessment that no meaningful review of prior Form LM–2 changes had been undertaken in connection with the January 21 rule, one commenter expressed the view that the rule reflects a ''well reasoned culmination to eight years of solid work'', while another characterized it as a product of the ''expertise'' of Department officials and others in identifying and reviewing areas of the Form LM–2 that could be improved. A business federation stated that the rule is supported by comments that verified the assumptions underlying the 2003 burden estimates and that the Department had made significant changes to improve the methodology for estimating burden and improve the accuracy of its burden estimates.

After carefully considering the competing points of view among the commenters, the Department continues to hold the opinion that the Department failed to conduct an adequate analysis of the effects of the 2003 Form LM–2 revisions before it developed the additional reporting requirements adopted in the January 21 rule. Although the Department justified the January 21 rule, in part, on experience under the 2003 rule, see 74 FR 3681–82, that experience was neither documented not comprehensively analyzed. The informal, anecdotal information on which the Department relied was simply inadequate for the task. It was no substitute for a more comprehensive review such as, for example, a survey of all Department investigators or a documented review of the thousands of filings received by Department under the 2003 rule. See 74 FR at 3681 (referring to ''opportunity to review thousands of forms and to tap the experience gained by its staff in investigating Form LM–2 issues and from their dialogue with union officials and union members while providing Form LM–2 compliance assistance to them''); 74 FR 3684 (citing to ''OLMS experience over years of auditing and investigating union financial activities''). While such experience is valid, it is a poor substitute for a comprehensive review of experience under the 2003 rule.[6] It is the Department's opinion that, as a matter of policy, the regulated community and the public should have the benefit of the Department's best analysis of its regulatory experience before it proposes to place additional burdens on unions. Despite ''the benefit of three cycles of reviewing forms,'' the Department did not undertake a comprehensive review of the 2003 changes, and it did not provide any assessment in the January 21 rule of benefits obtained from such changes. 74 FR 3681. Instead, it merely provided arguments as to why further reporting changes were needed, rather than addressing the impact of the previous changes in terms of benefits and burdens. See 74 FR 3681–84.

The Department attempted to partially account for the absence of appropriate review by characterizing the January 21 rule as ''incremental'' reform to the Form LM–2. 74 FR at 3681. Indeed, the 2008 NPRM proposing the January 21 rule stated that the 2003 changes to the Form LM–2 ''helped to fulfill the LMRDA's reporting mandate.'' 73 FR 27348. However, the NPRM provided no indication that this conclusion was based on a comprehensive review of experience under the 2003 rule. Only when the Department has engaged in such review can it determine if ''incremental'' changes to the 2003 Form LM–2 reporting regime, such as those implemented in the January 21 rule, are justified in light of the need to balance competing interests. While increased disclosure provides beneficial information to members, it is by no means clear that such benefits outweigh the institutional cost to unions and the members themselves by disclosing information, in some instances comparable to trade secrets, to the general public. Thus, a review of experience under the 2003 rule should include an assessment of the burden that such increased reporting imposes on unions, not merely in terms of cost but also in terms of its impact on the unions' ability to represent its members. Yet the January 21 rule fails altogether to account for this cost to unions and their members. The Department, therefore, disagrees with the business federation's assertion that the Department evidenced ''a meaningful and adequate review'' in its January 21 rulemaking. A general reference in the preamble to the January 21 rule—to ''the benefit of three cycles of reviewing forms * * * to assess the utility of the form and to identify areas in which improvement was needed''—falls short of a meaningful review of the benefits of the form to the reader or the burden to the filer. Such analysis simply cannot be completed within the four corners of the filed reports.

The same commenter asserted that the Department in revising its initial burden estimates for the January 21 rule had taken into account ''actual costs and data that were identified by labor organizations in their comments and other data sources.'' On the contrary, the Department expressly rejected the concept of using actual post-2003 costs. See 74 FR 3703. In the burden analysis to the January 21 rule, the Department conceded that ''after considering the comments regarding actual costs associated with the LM–2 revision in 2003, the Department has decided to retain the approach adopted in the NPRM and use the costs *estimates developed in 2003* as a baseline for the costs associated with this [2009] revision.'' 74 FR 3703 (emphasis added). A Congressman, commenting on this issue, acknowledged that ''the 2009 burden estimates were based on 2003 estimates which were applied to actual data taken from 2007 Form LM–2s.''

The business federation asserted that the Department provided for comment its 2006 publication of its paperwork burden package in the **Federal Register**, and that no comments were received from any union or anyone else indicating that there were any problems or issues with the Department's 2003 burden hour estimates or the methodology used to calculate those estimates (OMB ICR Reference No. 200609–1215–016). In the Department's view, the absence of comments does not excuse the failure to undertake a proper review of reporting burdens. The Department believes that there is a need for a meaningful review of the consequences of the 2003 changes, a review that has not yet been performed, and such a review is necessary to determine the actual benefits and burdens of the 2003 changes.

In the course of this rulemaking, the Department received comments from labor organizations regarding burden issues that merit review. Even though such comments would be helpful in gauging the 2003 rule's impact on union members, information from a much larger sample of union members would be needed to provide a reasonable benchmark for considering changes in the reporting regimen. Review of such experience, among other lines of inquiry, might include the effects of the 2003 changes in such areas as the detection, prosecution, and deterrence of fraud and corruption; compliance assistance; the aiding of members in exercising their rights to view additional materials under section 201(c); the support of members in utilizing their

[6] Although the rulemaking record contains support for the various examples used to illustrate a concern about a particular aspect of Form LM–2 reporting, the record does not allow an inference to be drawn about the frequency at which the circumstances described occur.

rights under the trusteeship, election, and other provisions of the LMRDA in furthering union accountability, fiscal management, and self-governance; the provision to the public of tools that advance labor-management transparency and union democracy; or in ascertaining the actual, as opposed to estimated, costs to unions in reshaping and maintaining their recordkeeping and accounting systems to comply with the 2003 changes. Therefore, the Department does not know the extent to which the need of union members and the public for transparency has been met by the 2003 rule, or whether the rule appropriately balances that need for transparency without overburdening unions.

The failure to conduct appropriate review as a predicate for the new reporting requirements in the January 21 rule is compounded by the weaknesses in the 2003 data that was used to estimate the compliance burden. A national union asserted, based on its experience, that the 2003 burden estimates were ''grossly underestimated.'' This union estimates that the 2003 rule resulted in a 40–45% increase in its initial compliance costs, which were substantially larger than the Department's estimates in 2003, and the union offered similar data for its annual cost to comply with the 2003 changes, which it alleges are also multiple times higher than the Department's estimates. The commenter expressed fear that these errors led to equally erroneous calculations in the January 21 rule. As an example, the union states that the itemization for interest and dividends will result in substantially greater costs than estimated, because its accounting system does not maintain information on payment sources, payment amounts, payment dates, or payment purposes.

The Department agrees with the comments that the Department, in fashioning the January 21 rule, effectively overlooked the problem of relying on the necessarily speculative estimates for costs associated with the itemization of substantial disbursements, as required by the 2003 rule. In crafting that rule, the Department had no real cost experience to draw on in making the estimates. Indeed, as the Department's own explanation makes plain, see 74 FR at 3704–05, the Department had to substantially revise its own estimates of the burden associated with the 2003 rule, based on comments it received from labor organizations.

The Department agrees with a national union's comments regarding the necessity to review the post-2003 data in terms of the perceived benefits of the 2003 changes in such areas as protecting unions against fraud and corruption, assisting the Department in enforcing compliance, and providing meaningful information to union members so they can engage in self-governance. The union asserted that no evidence exists as to whether those objectives have been met by the 2003 changes. It shared its own experience under the 2003 rule: no instances of fraud or embezzlement have been uncovered; the new schedules have had no impact on the governance of the union; and no questions or issues related to the information reported on the new schedules have been raised by any member of the union, as evidenced by a review of correspondence from the members to the union's president, as well as member meetings attended by the president. As noted above, these issues need to be considered in reviewing the costs and benefits associated with the 2003 rule and that such review is a necessary predicate to any proposal to revise the 2003 reporting requirements.

For the reasons articulated above, the Department disagrees with a business federation's defense of the process and conclusions leading up to the January 21 rule, suggesting that the review was adequate and that at best the proposed rescission was merely a ''policy disagreement'' with the past Administration. Regardless of whether the Department agrees or disagrees with the January 21 rule, the rescission is based primarily on the Department's failure to undertake meaningful review of experience under the 2003 rule, including the benefits and burdens associated with the rule, leaving the Department unable to assess whether the reporting requirements achieve the balance intended by Congress.

A public policy group requested the Department to engage in a burden analysis, viewing the absence of a new burden analysis for the January 21 rule as fatal to the proposed rescission of that rule. Such analysis is not required for this action, as the Department is not proposing any changes to the existing Form LM–2 but, rather, is rescinding the changes made on January 21, 2009.

Additionally, the Department disagrees with the contention of a commenter that it was an improper use of government resources to engage in further rulemaking on the Form LM–2. The Department believes that resources spent on rescinding a poorly-justified rule are well-spent. Moreover, the burden on the public and the Department from permitting the January 21 rule to go into effect far outweigh the costs of rescinding them.

The Department's current view is that before implementing additional financial reporting requirements, a more comprehensive review of the experience under the 2003 rule should have been completed, along with engagement in a meaningful dialogue with labor unions and public policy groups interested in union financial reporting. The parties with a particular interest in financial reporting should be able to fully understand the Department's support for its proposals and, as appropriate, to comment on its sufficiency as rulemaking begins. In promoting transparency and accountability—purposes served by the disclosure and reporting provisions of the LMRDA—the Department must share with the public all the information it relies on in support of a proposed rule change.

IV. Rescission of the Procedure To Revoke the Form LM–3 Filing Authorization

A. Background

The January 21 rule established standards and procedures for revoking the simplified report filing authorization provided by 29 CFR 403.4(a)(1) for those labor organizations that are delinquent in their Form LM–3 filing obligation, fail to cure a materially deficient Form LM–3 report after notification by OLMS, or where other situations exist where revoking the Form LM–3 filing authorization furthers the purposes of LMRDA section 208.

Under the revocation procedure, where there appear to be grounds for revoking a labor organization's authorization to file the Form LM–3, the Department could conduct an investigation to confirm the facts relating to the delinquency or other possible basis for revocation. If the Department after investigation finds grounds for revocation, the Department could send the labor organization a notice of the proposed Form LM–3 revocation stating the reason for the proposed revocation and explaining that revocation, if ordered, would require the labor organization to file the more detailed Form LM–2. The letter would provide notice that the labor organization has the right to a hearing if it chooses to challenge the proposed revocation, and that the hearing would be limited to written submissions due within 30 days of the date of the notice.

In its written submission, the labor organization would be required to present relevant facts and arguments that address whether (1) the report was delinquent or deficient or other grounds for the proposed revocation exist; (2) the deficiency, if any, was material; (3) the

circumstances concerning the delinquency or other grounds for the proposed revocation were caused by factors reasonably outside the control of the labor organization; and (4) any factors exist that mitigate against revocation.

After review of the labor organization's submission, the Secretary would issue a written determination, stating the reasons for the determination, and, as appropriate based on neutral criteria, inform the labor organization that it is required to file the Form LM–2 for such reporting periods as she finds appropriate.

B. Reasons for Rescission of the Revocation Standards and Procedure

In proposing to rescind the Form LM–3 standards and procedure for revocation, the Department justified its proposal on two grounds. First, the Department stated that the January 21 rule did not adequately assess the burden placed on smaller labor organizations by the standards and revocation procedure. The Department also stated its belief that, in light of that burden, there was no realistic likelihood that the standards and procedure would accomplish the intended results of increased transparency and more disclosure. The Department explained that there is no realistic likelihood that most small unions would have the information or means to file the more detailed Form LM–2. 74 FR 18176–77. Second, the Department explained, as discussed above, that the LMRDA requires a balancing of transparency and union autonomy, a balance that the January 21 rule failed to achieve. Id.

After having considered the comments received on this issue, the Department remains of the view that the standards and procedure for revocation should be withdrawn. As discussed below, the January 21 rule predicted that less than 100 labor unions per year would suffer revocation. Nevertheless, many times this number of unions would be drawn into the process, requiring the expenditure of time and effort without any demonstrated showing that Form LM–3 filers subject to revocation will be able to properly file a Form LM–2. Furthermore, as discussed below, the Act requires a balancing of transparency and union autonomy, and the January 21 rule did not take this mandate into account in formulating the standards for revocation (*i.e.,* delinquency or deficiency in filing, which it argued indicated a greater need for transparency, as those unions were more likely to experience financial corruption). There is nothing in the preamble to establish what percentage of filers delay their filings or file incomplete reports for ''benign,'' as distinct from more culpable reasons, and nothing to suggest that a significant number of filers delay their filings or submit incomplete reports because they have reason to conceal financial information. For these reasons, the Department is not persuaded that the approach crafted in the January 21 rule ensures the required balance or is likely to improve compliance. Instead, this approach seems less likely to achieve compliance than establishing cooperative arrangements between the Department and national/international unions to assist smaller unions with fulfilling their reporting obligations

The January 21 rule establishing the standards and procedure for revocation stated that unions that are deficient or delinquent in their Form LM–3 filings are more likely to experience financial corruption and, therefore, are in greater need of increased financial transparency through Form LM–2 reporting. 74 FR at 3697. However, as stated in the April 21 NPRM, the Department reevaluated the efficacy of the standards and procedure in achieving this end. 74 FR at 18176–77. In coming to this view, the Department determined that the January 21 rule did not adequately assess the burden on smaller unions in filing a Form LM–2 report and, therefore, misjudged the effectiveness of the revocation as a means to increase transparency. As stated in the proposal to rescind the January 21 rule, the revocation provisions of the rule are counter-intuitive and the rule fails to demonstrate that Form LM–3 filers required to file the more detailed and complicated Form LM–2 reports are likely to submit timely, complete, and accurate Form LM–2 reports. 74 FR at 18176. Moreover, the Department stated that there was insufficient support in the rule for the conclusion that revocation will reduce delinquency and deficiencies in reporting. Id.

As explained in the NPRM, the January 21 rule projected that 96 filers would be required to file the Form LM–2 and calculated the associated burden on that projection. This burden is necessarily understated due to the fact that some associated burden applies to all Form LM–3 filers, not merely those whose right to file a Form LM–3 is revoked. In order to file a Form LM–2, steps must be taken at the start of the fiscal year. Accounting systems and procedures must be in place that will track and maintain the data required by the Form LM–2. Therefore, as explained in the NPRM, the Department concluded that there is no realistic likelihood that most small unions would have the information or the means to file the more detailed Form LM–2, and that the revocation standards and procedure established by the rule will be unlikely to result in more disclosure. Id.

As stated in the NPRM, the Department agreed with comments that had previously been submitted that advocated a compliance assistance approach, particularly one drawing upon the cooperative efforts of national and international unions, rather than a revocation procedure. As stated in the NPRM, a revocation procedure is not likely to improve delinquency and deficiencies in Form LM–3 reporting, and it could actually contribute to continuing non-compliance since filers may have greater difficulty successfully meeting the Form LM–2 reporting requirements. The Department explained that a compliance assistance approach is more likely to increase proper reporting than a revocation approach that is counter-intuitive and likely to damage compliance assistance efforts. Id.

In response to the NPRM, four union commenters expressed specific support for the Department's proposal to rescind the revocation standards and procedure. A federation of unions stated that with outreach and compliance assistance, it would be a rare event that a small union would not comply with its Form LM–3 filing obligation, noting that in such instances it would be appropriate to use the enforcement mechanism provided by the LMRDA. The federation also referenced its earlier comments where it stated ''[t]here is no reason to believe that a small labor organization that was not set up to fil[e] a timely or complete Form LM–2 report would be able to meet the enormous burden of retroactively adjusting its accounting system in a manner sufficient to file Form LM–2 reports.''

A national union offered specific evidence in support of the notion that smaller unions would not be able to file the Form LM–2, and it noted that the retroactive nature of the revocation procedure particularly impacted Form LM–3 filers. This union also felt that the ''enormous financial strain'' that revocation would cause could lead to further compliance problems, and it therefore stressed compliance assistance in its place. An international union expressed similar concerns, noting that Form LM–2 preparation requires electronic accounting and the professional assistance that will not be available to small unions. Another union concurred with the view expressed in the NPRM that the Department did not adequately consider

the burden on smaller unions to file the Form LM–2 in place of the Form LM–3, and went further to propose that the Department consider raising the threshold for Form LM–2 filers from the current $250,000 in annual receipts due to the burden on smaller unions. Finally, an international union agreed that the revocation is unlikely to achieve its intended goals, and instead promoted the idea of devoting the Department's resources to education of the regulated community.

The Department received three comments that specifically opposed the proposal to rescind the Form LM–3 revocation standards and procedure. Only one commenter, a business federation, addressed the Department's concerns, as outlined in the NPRM, that the January 21 rule failed to adequately assess the burden the procedure would impose on the smaller labor organizations and the likelihood that, in light of that burden, the rule would accomplish the intended results of increased transparency and more disclosure. This commenter argued that the rulemaking record illustrated that smaller unions could file the Form LM–2, and cited Form LM–3 filers who ordinarily have less than $250,000 in annual receipts, but due to the sale of an asset or other reason, finish a fiscal year with greater than $250,000 in receipts and, therefore, must file a Form LM–2 report. The business federation also cited unions in trusteeship, for which a Form LM–2 must be filed on their behalf, regardless of the annual receipts of the union in trusteeship. Additionally, this commenter challenged the NPRM's reference to the ''counter-intuitive'' nature of the revocation procedure, explaining its view that the approach outlined in the January 21 rule was a sensible one that augmented other enforcement tools such as criminal enforcement and voluntary compliance.

The Department disagrees with those commenters questioning the NPRM's conclusions pertaining to the burden on smaller unions. The Department continues to believe that revocation is unlikely to result in the increased transparency and greater disclosure intended by the January 21 rule in view of the Form LM–2 burden it places on Form LM–3 filers. Initially, the Department notes that its argument is not that all Form LM–3 filers are unable to file a Form LM–2, but that those that do not properly or timely file a Form LM–3 are not likely to properly or timely file a Form LM–2, particularly given the retroactive nature of the revocation procedure, as several commenters noted. The Department finds the revocation procedure's steps of notification and voluntary cooperation only reinforce this notion, as unions that have difficulty properly filing a Form LM–3 are unlikely to properly submit a written statement contesting the revocation of the Form LM–3 filing authorization and unions that do not properly file a Form LM–3 after these efforts would seem less likely to properly file a Form LM–2.

Moreover, assuming that the revocation procedure is a tool available to the Department to address delinquent and deficient reporting, the problem remains that the revocation procedure is a poorly designed, burdensome method of resolving this problem. In fact, the stated goal of the revocation standards and procedure was to increase transparency in unions with reporting deficiencies and delinquencies, which the January 21 rule concluded were in need of greater disclosure. However, the Department, on its review of the rule, does not believe that increased transparency is likely through the revocation provisions, because it is unreasonable to expect delinquent and deficient Form LM–3 filers to properly and timely file the more complicated Form LM–2. No commenter adequately refuted this assertion.

In response to comments referencing those Form LM–3 filers that, under the 2003 rule and certain conditions, must file a Form LM–2 report, the Department stresses the statutory distinction between the requirement for the Secretary to establish simplified reports for certain smaller unions and the discretionary authority to revoke such authorization for simplified reports under certain conditions. The fact that some Form LM–3 filers during occasional fiscal years are required to alter their reporting procedures and file a Form LM–2 does not negate the fact that the burden placed on Form LM–3 filers by revocation makes the goal of increased transparency unlikely to be met. Indeed, as commenters have attested, their experience demonstrates that even smaller Form LM–2 filers, those only marginally exceeding the $250,000 filing threshold, have a great deal of difficulty meeting their requirements, thus justifying the mandate for simplified forms for smaller unions. Further, the Department recognizes that nonexistent records cannot be created retroactively. In this regard, the Department notes that section 206 of the Act, 29 U.S.C. 436, requires ''[e]very person required to file any *report* under this title'' to ''maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which *the documents filed with the Secretary may be verified* * * *.'' (emphasis added). Therefore, each person required to file a report under LMRDA Title II must keep sufficient records for the matters required to be reported in the particular report that such person must file. Thus, a Form LM–3 filer would not ordinarily be required to maintain records sufficient to complete a Form LM–2 report, and only acquires such an obligation upon reaching $250,000 in annual receipts for a given fiscal year. Moreover, the union that places the subordinate union in trusteeship is obliged to file the Form LM–2, not the union placed in trusteeship. The trustee union, which generally will be larger than the union in trusteeship, likely will possess the experience, resources and information necessary to file a Form LM–2.

In its NPRM proposing the rescission of the January 21 rule, the Department also defended its proposal to withdraw the revocation standards and procedure by arguing that the LMRDA requires a balancing of transparency and union autonomy, a balance that the January 21 rule failed to achieve. All three of the commenters opposing rescission of the standards and procedure, asserted, in essence, that the Secretary possesses ''clear and unambiguous'' authority under section 208 to establish the revocation procedure. Two of these commenters contend that section 208 is self-operative, asserting that the Secretary retains the authority to revoke the simpler filing authorization even if the rule is rescinded. According to their view, the regulations merely ''flesh[] out'' the necessary procedures to implement the existing authority. As explained by one of commenters, the language of section 206 of the LMRDA (requiring covered unions to maintain records underlying required reports) prevents the Department from finding that ''there is no realistic likelihood that most small unions would have the information'' necessary to complete the Form LM–2.

The Department is not persuaded that section 208 is self-operating. As the commenters themselves point out, section 208 contemplates that the Department follow required procedures, the details of which are not prescribed. Thus, it is necessary for the Department to establish procedures as a condition for rescinding a filer's authorization to file a Form LM–3. In proposing rescission, the Department noted both that section 208 specifically mandates that the Secretary must issue simplified reports for labor organizations for which she finds that ''by virtue of their size a

detailed report would be unduly burdensome,'' and that she is permitted to revoke such filing authorization if ''the purposes of this section would be served thereby.'' Therefore, consistent with the language of section 208 and the required balance between disclosure and unnecessary burden, the ''purposes'' of section 208 must include ensuring that a more detailed report for a smaller union would not be ''unduly burdensome'' by virtue of its size.

The third commenter opposing rescission also addressed the Secretary's authority under section 208. This commenter stressed the ''unambiguous authority'' granted to the Secretary and argued that section 208 thus does not require the Department to ''balance'' the need for financial transparency with burden. Further, the commenter emphasized that revocation was just one ''tool'' that the Secretary has to ensure compliance with the statute, and that the ''purpose'' of the section is preventing the ''circumvention or evasion'' of the Act's reporting requirements, not ensuring that the requirements are not unduly burdensome. The Department rejects these arguments, as it notes that section 208 grants the Secretary authority to rescind only if she determines that the ''purposes'' of the section would be served. The Department maintains that section 208 explicitly intends, among other purposes, that smaller labor organizations should not be subject to ''unduly burdensome'' reporting requirements.

Section 208 requires the Department to properly balance the size of the union and its burden to file the Form LM–2 with the need of greater transparency for that union. An international union asserted that revoking the Form LM–3 filing authorization for smaller unions merely because of delinquency or deficiency in their Form LM–3 reporting is ''overkill,'' constituting ''collective punishment.'' As such, it asserted that the Department had failed to properly balance these concerns, noting that the rule failed even as a ''prophylactic'' means to detect a ''lack of sophistication and awareness'' or ''the rare instances'' of financial corruption. The union stated that the root causes of delinquent and deficient reporting are ''honest mistakes'' and other ''benign reasons'' such as ''over-worked, under-trained, part-time, officials often lacking both technical expertise in union administration and any institutional knowledge base from which to draw,'' and not ''the rare instances'' of financial corruption. An international union predicted that if small unions were required to file the Form LM–2 local officials likely would quit their positions.

The Department concurs with these assertions, as it does not believe that the purpose of balancing the need for transparency without overburdening smaller unions is met by standards for revocation (delinquency or deficiency in reporting) that are so sweeping in nature, *i.e.,* revoking the Form LM–3 filing authorization for potentially any delinquent or deficient smaller unions, even though most are not plagued by financial corruption. The standards established by the January 21 rule potentially increase the filing burden for all Form LM–3 filers, a result that is not justified by the ''relatively benign'' (see the January 21 rule at 74 FR 3696) causes of most delinquent or deficient reporting. Therefore, they do not properly balance the size of the unions and reporting burden with the need for greater transparency for such smaller unions. Indeed, for those unions that are delinquent or deficient in their filing as a result of ''relatively benign'' reasons, there is no justification for more stringent reporting requirements.

Additionally, instead of risking the loss of union officials who may quit rather than assume the burden associated with the revocation procedure, an international union urged the Department to address the root causes of delinquent reporting by educating smaller unions. The union noted that where education and voluntary compliance efforts are unsuccessful, criminal investigations and prosecutions are effective tools to address financial corruption in smaller unions. The Department agrees with these comments. As stated in the proposal to rescind the January 21 rule, the Department, as a matter of policy, does ''not intend to encourage or discourage the participation of union members from running and serving in union office, nor does it otherwise desire to unnecessarily interfere in the internal affairs of unions.'' 74 FR at 18176–77. The Department further stated that it intends to implement the LMRDA with as little interference as possible, with an overarching goal of empowering members to govern their unions democratically. It also addressed other possibly detrimental consequences of the revocation procedure, such as the diversion of union officials from grievance handling and other core business, and stated its view that revocation cannot be justified by merely lessening or downplaying the acknowledged increased burden imposed by the Form LM–2 reporting requirements. Id. Compliance assistance is a vital aspect of this approach, as are audit and enforcement options, and both are better approaches than a revocation procedure that is viewed as punitive to Form LM–3 filers. The unions commented that criminal investigations and prosecutions are better used in addressing financial corruption in smaller unions. The Department agrees that the selective use of criminal investigation and enforcement is preferable to the approach in the January 21 rule because it is doubtful that the Department will discover embezzlements and other corruption through revocation (which theoretically would result in the filing of a Form LM–2), since the procedure is unlikely to result in increased reporting.

Finally, the Department disagrees with the commenter that suggested that, even if the revocation procedure is now deemed to be overly burdensome, the Department should not rescind the rule without first establishing a replacement procedure. In its view, section 208 requires the Department to have a published revocation procedure available in case it is needed. The commenter stated that if the Department is dissatisfied with the procedure in the rule, it should have proposed a procedure based on a ''realistic assessment'' of the ability of smaller unions to complete a Form LM–2, with the goal of preventing the circumvention or evasion of section 208. The Department believes that, for the reasons stated above, the revocation procedure and standards established by the regulations are flawed and, therefore, rescinds them. The Department retains the authority under section 208 to propose a new revocation procedure and standards, based upon a necessary balancing of transparency with union autonomy as required by the section and the Act, if it decides that such an action is necessary and appropriate.

V. Regulatory Procedures

Executive Order 12866

This rule is considered to be a significant regulatory action within the meaning of Executive Order 12866, and was submitted to OMB for review before publication, because the proposed rule may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting

regulations that will have a significant impact on a substantial number of small entities. The Department does not believe that this rule will have a significant economic impact on a substantial number of small entities, as the rule relieves the additional burden imposed upon labor organizations through the rescission of the regulations published on January 21, 2009. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Secretary has certified this conclusion to the Chief Counsel for Advocacy of the Small Business Administration.

Unfunded Mandates Reform

This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

This rule contains no new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). If the January 21 rule had gone into effect, it would have increased the burden of reporting under OMB No. 1215–0188. Under the January 21 rule, the total burden hours per Form LM–2 respondent would have increased by approximately 60.06 hours, and the total burden hours would have increased by 274,539. The average cost per Form LM–2 respondent would have been increased by $1,939 and the total cost would have increased by $8,863,038. Since this rule rescinds the January 21 rule, the increases in reporting burden under OMB No. 1215–0188 will not occur. The Department will seek OMB approval of any revisions of the existing information collection requirements, in accordance with the PRA.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Part 403

Labor unions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Final Rule published January 21, 2009 amending 29 CFR parts 403 and 408 (74 FR 3678), for which the effective date was delayed on February 20, 2009 (74 FR 7814) and April 21, 2009 (74 FR 18132) is withdrawn.

Signed in Washington, DC, this 7th day of October 2009.

Shelby Hallmark,

Acting Assistant Secretary for Employment Standards.

John Lund,

Deputy Assistant Secretary for Labor-Management Programs.

[FR Doc. E9–24571 Filed 10–9–09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 155 and 157; 46 CFR Part 162

[Docket No. USCG–2004–18939]

RIN 1625–AA90

Pollution Prevention Equipment

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing its January 16, 2009, interim rule establishing oil pollution prevention equipment requirements with one minor amendment to the rule's effective date for vessels with equipment installed on or after January 1, 2005. The rule harmonizes Coast Guard regulations with new International Maritime Organization (IMO) guidelines and specifications issued under the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex I. It implements these MARPOL Annex I regulations and, ultimately, is intended to reduce the amount of oil discharged from vessels and eliminate the use of ozone-depleting solvents in equipment tests. All vessels replacing or installing oily-water separators and bilge alarms must install equipment that meets these revised standards. Newly constructed vessels carrying oil in bulk must install monitoring systems that meet the revised standards.

DATES: This final rule is effective November 12, 2009, except that paragraphs 33 CFR 155.350(a)(3), 155.360(a)(2), and 155.370(a)(4) are effective October 13, 2009. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on November 12, 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–2004–18939 and are 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2004–18939 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Wayne Lundy, Systems Engineering Division (CG–5213), Office of Design and Engineering Standards, U.S. Coast Guard, telephone 202–372–1379, e-mail *Wayne.M.Lundy@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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I. Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR **Federal Register**
IMO International Maritime Organization
IOPP International Oil Pollution Prevention
ISO International Organization for Standardization
MARPOL International Convention for the Prevention of Pollution from Ships
MEPC Marine Environment Protection Committee
NEPA National Environmental Policy Act
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act

OMB Office of Management and Budget
OWS Oily-Water Separator
PPM Parts Per Million
§ Section symbol
U.S.C. United States Code

II. Regulatory History

On November 3, 2005, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Pollution Prevention Equipment'' in the **Federal Register** (70 FR 67066).[1] We received 17 letters containing 80 comments on the proposed rule. The comments did not request a public meeting and none was held.

On January 16, 2009, the Coast Guard published an interim rule (74 FR 3364) that updated references for the international standard for pollution prevention equipment from the International Maritime Organization's Marine Environment Protection Committee resolution, MEPC.60(33) to the new international standard in MEPC.107(49) and addressed the 80 comments on the NPRM. With the interim rule we also sought comment on three paragraphs: 33 CFR 155.350(a)(3), 155.360(a)(2), and 155.370(a)(4), which proposed requiring any pollution prevention equipment installed on or after January 1, 2005, that does not comply with MEPC.107(49), which became an international requirement on January 1, 2005, to be replaced with pollution prevention equipment that does comply with the MEPC.107(49) standard. These three paragraphs were not included in the NPRM, and we solicited public comment on them in the interim rule. We received five comments, which are discussed below in *IV. Discussion of Comments and Changes.*

The interim rule, with the exception of the three paragraphs, became effective on March 17, 2009. Under the interim rule, the three paragraphs regarding equipment installed on or after January 1, 2005, were set to become effective on October 13, 2009. Under this final rule, however, the three paragraphs as amended by the final rule are effective October 13, 2009. The Coast Guard is making these paragraphs effective less than 30 days after publication in the **Federal Register** in accordance with 5 U.S.C. 553(d)(1) and (3) because the three paragraphs relieve a restriction otherwise imposed by the interim rule that would take effect within 30 days of publication of this final rule. Specifically, the three paragraphs relieve the burden on ship owners with equipment installed on or after January 1, 2005, from having to comply with the rule's requirements by October 13, 2009, and instead add a compliance date tied to the vessel's drydock or vessel survey schedule, as applicable. Requiring ship owners to comply with these requirements on October 13, 2009, until an effective date thirty days after the publication of this final rule would cause unnecessary burdens and confusion and, therefore, would be impracticable and contrary to the public interest. As such, the Coast Guard has determined that it has good cause for immediate implementation of these three paragraphs. The remaining provisions of this final rule become effective 30 days after publication in the **Federal Register**.

III. Background and Purpose

The discussion of the background that follows largely repeats the discussion of the background and purpose set forth in the interim rule.

This final rule will implement international standards for oil pollution prevention equipment designed for ships and oil tankers. These standards address the testing, certification, and approval for oil pollution prevention equipment, including discharge monitors, which will help prevent oily discharges from a ship into the water.

A. Types of Equipment

There are three types of equipment involved in this rulemaking that deal with oil, water, and other substances:

A *bilge separator* (also referred to as oily-water separator), is designed to produce an effluent from the bilge of ships with oil content of 15 parts per million (ppm) or less; and

A *bilge alarm* is designed to activate an automatic stopping device when the oil content concentration of an effluent exceeds 15 ppm, and thus stop any discharge overboard of oily mixtures with an oil content exceeding 15 ppm.

An *oil content meter* (hereinafter ''*meter*'') is a piece of equipment in an oil discharge monitoring and control system (hereinafter ''monitoring system'') on an oil tanker. The system processes oil-tanker ballast and tank-washing water and monitors the discharge into the sea of oily ballast or other oil-contaminated water effluent from the cargo tank areas. The meter measures the oil content of the effluent in ppm.

B. Authority

Under the Act to Prevent Pollution from Ships, Public Law 96–478, sections 2 and 4, 94 Stat. 2297, 2298 (Oct. 21, 1980), 33 U.S.C. 1901 and 1903, the Secretary of the Department in which the Coast Guard is operating is authorized to prescribe any necessary or desired regulations to carry out the provisions of the Act and of Annex I (Regulations for the prevention of pollution by oil) of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention (MARPOL 73/78). Under the Act of August 26, 1983, Public Law 98–89, 97 Stat. 500, 504, 522, subtitle II of title 46 of the U.S. Code (46 U.S.C.), specifically 46 U.S.C. 3703, the Secretary of the Department in which the Coast Guard is operating is authorized to issue equipment regulations, and related maintenance and training regulations for vessels carrying liquid bulk dangerous cargo, including oil. Authority under both of these acts has been delegated to the Coast Guard under Department of Homeland Security Delegation No. 0170.1 II(77) and (92)(b).

C. International Standards Being Implemented

This rulemaking implements revisions to the international oil pollution prevention standards for ships in MARPOL Annex I, specifically regulations 14, 18, and 31. Under Article 38 of the Convention on the International Maritime Organization (IMO), the IMO Marine Environment Protection Committee (Committee) is designated to consider IMO matters involving the prevention and control of marine pollution from ships.

In 1992, during its 33rd session, the Committee adopted a resolution, MEPC.60(33), containing guidelines and specifications for pollution prevention equipment for machinery space bilges of ships. In 2003, recognizing the advancement of technology since 1992, the Committee adopted resolution MEPC.107(49), which contained new guidelines and specifications that superseded those adopted in 1992.

The MEPC.107(49) changed the fluids used to test pollution prevention equipment so they would more closely represent the bilge wastes encountered on vessels. Emulsified oil in water, surfactants (for example, detergents), and other contaminants are typically found in bilge water. Under MEPC.107(49), the bilge separator must be capable of separating the oil from the

[1] On December 15, 2005, the Coast Guard published a correction notice in the **Federal Register** (70 FR 74259). The NPRM, as published, contained the phrase ''must be limited'' at two points, once in the preamble and once in the regulatory text. We deleted that phrase because it was inserted by error and could have confused readers.

emulsion to produce an effluent with an oil content not exceeding 15 ppm.

The MEPC.107(49) also changed the method by which oil content is measured in effluent samples during the approval process. Past methods permitted the use of ozone-depleting solvents, specifically carbon tetrachloride and Freon 113 (CFC 113). Both an international treaty and United States laws call for phasing out the use of these solvents. See the Montreal Protocol on Substances that Deplete the Ozone Layer, (''Montreal Protocol''), Sept. 16, 1987, 26 I.L.M. 1550, and Title VI of the Clean Air Act, 42 U.S.C. 7671–7671q. Accordingly, MEPC.107(49) specifies a different test method that does not use ozone-depleting solvents.

The MEPC.107(49) guidelines and specifications were incorporated into Annex I after the 2004 adoption of resolution MEPC.117(52), which led to the revision of MARPOL Annex I. On January 1, 2007, the revised Annex I came into force. Resolution MEPC.107(49) is incorporated into Regulation 14 (Oil filtering equipment) of the revised Annex I.

Additionally, in 2003, the Committee also adopted resolution MEPC.108(49), which revised guidelines and specifications for oil discharge monitoring and control systems for oil tankers constructed after 2004. These new guidelines and specifications were incorporated into Regulations 18 (Segregated Ballast Tanks) and 31 (Oil discharge monitoring and control system) of the revised Annex I and apply to oil content meters as part of oil discharge monitoring and control systems installed on tankers constructed after 2004.

The new MEPC.108(49) guidelines and specifications call for:

- Only one category of a monitoring system to apply to all tankers of 150 gross tonnage and above;
- The monitoring system to be able to record position (latitude and longitude) from a vessel-position indicating device, allowing more accurate input of speed parameters;
- Greater control of oil mixture discharges by tightening the accuracy requirements for both the oil content meter and the flow meter; and
- A more objective specification for identifying crude oils: simply by number and assigned characteristics and parameters—such as density, viscosity, and cloud point—rather than geographical denominations used in Resolution A.586(14). See IMO Subcommittee on Ship Design and Equipment Report to the Maritime Safety Committee, DE 46/32 at 12 & 13 (April 4, 2003).

IV. Discussion of Comments and Changes

In response to our request for comments on the three paragraphs—33 CFR 155.350(a)(3), 155.360(a)(2), and 155.370(a)(4)—in the interim rule, we received five comments from three commenters. One comment was submitted jointly by two commenters who generally agree with the interim rule, but suggest that the Coast Guard adopt a pollution standard stricter than the 15 ppm set forth in MARPOL Annex I. While the Coast Guard appreciates the support for the interim rule, the commenters' suggestion to adopt a maximum oil discharge limit lower than 15 ppm is outside the jurisdiction of the Coast Guard.

The four remaining comments came from a manufacturer, and one of his comments specifically addressed 33 CFR 155.350(a)(3), one of the three delayed-effective date paragraphs on which we sought public comment in the interim rule. The three other comments sought clarification to other aspects of the interim rule. The Coast Guard provided the below responses to these four comments in direct communications to the manufacturer, unless noted otherwise. A summary and the substance of those communications are available in the docket where indicated under **ADDRESSES**.

Regarding 33 CFR 155.350(a)(3), the commenter asked for clarification on when ship owners would have to comply with the requirement set forth in paragraph (a)(3), which will become effective on October 13, 2009. The commenter noted that it appears this paragraph requires all equipment installed after 2004 to be supplied or upgraded to satisfy these new international standards in MEPC.107(49), and asked if this needs to be accomplished by October 13. The Coast Guard's initial response in a direct communication to the manufacturer, which is included in the docket, deferred addressing this comment until the close of the comment period.

The Coast Guard recognizes that it may not be feasible for ship owners to comply with the requirements in § 155.350(a)(3) by October 13, and in response to this comment, we are adding an implementation period to allow ship owners to budget and plan for the work required to comply. Under revised paragraph (a)(3), a vessel owner must install equipment meeting the new requirements in MEPC.107(49) by one of two dates, as set forth in new paragraphs (a)(3)(i) and (a)(3)(ii): either the date of the vessel's first drydock following October 13, 2009, or for those vessels going into international service for the first time since January 2005, the date of its first survey prior to receiving its International Oil Pollution Prevention (IOPP) certificate. The Coast Guard is making the same change to paragraphs 155.360(a)(2) and 155.370(a)(4).

The manufacturer's second comment requested clarification on the interim rule's affect on his backlog of equipment that complies with the older international standard, MEPC.60(33), and is ordered but not yet installed. The commenter noted that the interim rule may preclude the installation of any MEPC.60(33) equipment after March 17, 2009.

The Coast Guard's response to this comment is that equipment that has not been physically installed must comply with the current regulations, i.e., the MEPC.107(49) standard.

The commenter's third comment asked for clarification of whether, under the interim rule, bilge alarms replaced after March 17, 2009, on separators installed prior to January 1, 2005, must be replaced with bilge alarms complying with the revised 46 CFR 162.050 specifications. The Coast Guard notes this comment concerns what is meant by the term ''good working order.''

After March 17, 2009, if a bilge alarm approved to MEPC.60(33) needs to be replaced, then it may be replaced by a bilge alarm approved to MEPC.60(33), but only for separators approved to MEPC.60(33) that were installed on the ship prior to January 1, 2005. This is allowed in recognition of the need for compatibility between the separator and bilge alarm, as well the relative ease to replace a bilge alarm. Separators approved to MEPC.60(33) that were installed on the ship prior to January 1, 2005, may continue to be used as long as they are maintained in good working order, which includes basic or routine maintenance and repair of such separators as well as replacement of components and consumables. If, however, a separator approved to MEPC.60(33) needs to be replaced, regardless of when it was installed on the ship, then it must be replaced with a separator approved to MEPC.107(49). In this case, the separator approved to MEPC.107(49) must also have a bilge alarm approved to MEPC.107(49).

Finally, the commenter's fourth comment sought confirmation that the definition of the term ''expired'' as used in the preamble to the interim rule (74 FR 3375) has the same meaning as ''expired'' on the United States Coast Guard Maritime Information Exchange Web site, Approved Equipment

Definitions. *http://cgmix.uscg.mil/Equipment/Definitions.aspx.*[2]

The Coast Guard response to this comment is that a bilge alarm or separator installed on a ship on or after January 1, 2005, but not having approval under MEPC.107(49), is subject to the requirements of 33 CFR 155.350, 155.360, and 155.370, (see 74 FR 3363 and 74 FR 6358), namely the requirement to be replaced by equipment approved under MEPC.107(49) unless it is determined to be unreasonable or impracticable. Bilge alarms and separators installed prior to January 1, 2005, having a Certificate of Approval issued by the Coast Guard, can remain installed on the ship as long as they are maintained in good working order. Please note: A Certificate of Approval is issued by the Coast Guard to a manufacturer usually for a period of five years. This five-year period primarily affects the manufacturer and not the ship. Equipment of a type approved by the Coast Guard that is manufactured during this five year period in accordance with the terms of the certificate may be installed on a ship in order to meet the applicable requirements for approved equipment. There is no requirement, however, that equipment be removed when the Certificate of Approval expires.

Discussion of Final Rule

This rule finalizes the amendments set forth in the interim rule. A full discussion of the provisions of this rule may be found in the ''Discussion of Interim Rule'' section of the interim rule. 74 FR 3364, at 3375. We are making only one minor change to the interim rule in the final rule by adding implementation periods in 33 CFR 155.350(a)(3), 155.360(a)(2), and 155.370(a)(4), as discussed above.

V. Incorporation by Reference

The Director of the Federal Register has approved the material in 33 CFR 157.02 and 46 CFR 162.050–4 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in 33 CFR 157.02 and 46 CFR 162.050–4.

VI. Regulatory Analyses

We developed this final 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.

A. 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.

Public comments on the interim rule are summarized in Part IV of this preamble. The Coast Guard received no public comments, and have made no changes, that would alter our assessment of impacts in the interim rule. We have found no additional data or information that would change our findings in the interim rule. We have adopted the assessment in the interim rule as final. A summary follows.

We estimated 176 existing vessels and 46 new vessels annually will be affected by this rule and incur additional costs for installing OWS and bilge alarms.

We estimated the annual costs of the OWS and bilge alarms combined range from $9,000 to $19,000, depending on vessel type and size for both existing and new vessels: $9,000 for vessels below 400 gross tons; $13,000 for vessels 400 gross tons or more and less than 10,000 gross tons; and, $19,000 for vessels 10,000 gross tons and over.

We estimated non-discounted annual costs for existing vessels at approximately $2.3 million and approximately $550,000 for new vessels, or about $2.9 million combined. We estimated the total 10-year present value cost of the rule to be $21 million or $25 million based on a seven or three percent discount rate (all values rounded).

The benefits of this rule are improved environmental conditions from the use of PPE, which meets higher standards of pollution prevention. The new OWS equipment will better handle the separation of emulsified oils, surfactants, and contaminants from water. These pollutants will no longer be released into the environment because of these standards. See the assessments in the interim rule and the NPRM for additional details.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule has 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.

In the interim rule, we certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities. We have found no additional data or information that would change our findings in the interim rule. We have adopted the certification in the interim rule for this final rule. See the ''Small Entity'' sections of the interim rule and the NPRM for additional details.

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

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Wayne Lundy, Office of Systems Engineering (CG–5213), Office of Design and Engineering Standards, U.S. Coast Guard, telephone 202–372–1379, e-mail *Wayne.M.Lundy@uscg.mil.* 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.

D. 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). The paperwork burden associated with the manufacture, laboratory testing, approval tests, and marking of pollution prevention equipment is addressed in the existing collection of information, OMB #1625–0035, entitled ''Title 46 CFR Subchapter Q: Lifesaving, Electrical and Engineering Equipment; Construction and Materials.'' The Office of Management and Budget renewed its approval of this collection of information on May 27, 2009. It will expire after the 3-year approval period ends on May 31, 2012, unless renewed again.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

[2] ''EXPIRED—Product's approval has expired, and the approval holder has not notified us whether it should be extended or terminated. Pending resolution of its status, the product is no longer approved for production. Items manufactured prior to expiration of the approval are considered APPROVED.''

effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).)

The pollution prevention equipment regulations promulgated in this rule are within the field foreclosed from regulation by the States, and therefore preemption under E.O. 13132 is not an issue.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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 final rule uses the following consensus standards that are not voluntary standards:

- IMO Assembly Resolution A.393(X)—Recommendation on International Performance and Test Specifications for Oily-Water Separating Equipment and Oil Content Meters;
- IMO Assembly Resolution A.496(XII)—Guidelines and Specifications for Oil Discharge Monitoring and Control Systems for Oil Tankers;
- IMO Assembly Resolution A.586(14)—Revised Guidelines and Specifications for Oil Discharge Monitoring and Control Systems for Oil Tankers;
- IMO Marine Environment Protection Committee Resolution MEPC.13(19)—Guidelines for Plan Approval and Installation Survey of Oil Discharge Monitoring and Control Systems for Oil Tankers and Environmental Testing of Control Sections Thereof;
- IMO Marine Environment Protection Committee Resolution MEPC.108(49)—Revised Guidelines and Specifications for Oil Discharge Monitoring and Control Systems for Oil Tankers;
- International Organization for Standardization Standard ISO 8217 (2005) Petroleum products—Fuels (class F)—Specification of marine fuels;
- International Organization for Standardization Standard ISO 9377–2 (2000), Water Quality—Determination of hydrocarbon oil index—Part 2: Method Using solvent extraction and Gas Chromatography.

They are used because the United States is party to MARPOL Annex I and we must use these standards to effectively implement MARPOL Annex I regulations. The sections that reference these standards and the locations where these standards are available are listed in 33 CFR 157.02 and 46 CFR 162.050–4.

M. 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 a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(d) of the Instruction and under section 6(b) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy,'' (67 FR 48243, July 23, 2002), from further environmental documentation. This regulation fits within these categorical exclusions because it concerns equipment approval and carriage requirements and implements regulations designed to protect the environment. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 157

Cargo vessels, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Incorporation by reference, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

■ Accordingly, the interim rule amending 33 CFR parts 155 and 157 and 46 CFR part 162, which was published at 74 FR 3377 on January 16, 2009, as amended by the correction published at 74 FR 6358 on February 9, 2009, is adopted as a final rule with the following changes:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

■ 1. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Section 155.490 also issued under section 4110(b) of Public Law 101–380. Sections 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 40, 150, 151, and 153.

■ 2. In § 155.350, revise paragraph (a)(3) to read as follows:

§ 155.350 Oily mixture (bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of less than 400 gross tons.

(a) * * *

(3) For equipment installed after 2004 to be approved under paragraph (a)(2) of this section, it must meet current standards in 46 CFR part 162, subpart 162.050 by the date set forth in paragraphs (a)(3)(i) and (a)(3)(ii) of this section, unless the equipment is installed on a ship constructed before 2005 and it would be unreasonable or impracticable to meet those current standards.

(i) A ship entering international service for the first time since 2004, must comply with the requirements of paragraph (a)(3) of this section by the date of its initial survey prior to receiving its International Oil Pollution Prevention (IOPP) certificate.

(ii) Any ship, other than a ship described in paragraph (a)(3)(i) of this section, must comply with the requirements of paragraph (a)(3) of this section by the date of the ship's first drydock after October 13, 2009.

* * * * *

■ 3. In § 155.360, revise paragraph (a)(2) to read as follows:

§ 155.360 Oily mixture (bilge slops) discharges on oceangoing ships of 400 gross tons and above but less than 10,000 gross tons, excluding ships that carry ballast water in their fuel oil tanks.

(a) * * *

(2) For equipment installed after 2004 to be approved under paragraph (a)(1) of this section, it must meet current standards in 46 CFR part 162, subpart 162.050 by the date set forth in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, unless the equipment is installed on a ship constructed before 2005 and it would be unreasonable or impracticable to meet those current standards.

(i) A ship entering international service for the first time since 2004, must comply with the requirements of paragraph (a)(2) of this section by the date of its initial survey prior to receiving its International Oil Pollution Prevention (IOPP) certificate.

(ii) Any ship, other than a ship described in paragraph (a)(2)(i) of this section, must comply with the requirements of paragraph (a)(2) of this section by the date of the ship's first drydock after October 13, 2009.

* * * * *

■ 4. In § 155.370, revise paragraph (a)(4) to read as follows:

§ 155.370 Oily mixture (bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of 10,000 gross tons and above and oceangoing ships of 400 gross tons and above that carry ballast water in their fuel oil tanks.

(a) * * *

(4) For equipment installed after 2004 to be approved under paragraph (a) of this section, it must meet current standards in 46 CFR part 162, subpart 162.050 by the date set forth in paragraphs (a)(4)(i) and (a)(4)(ii) of this section, unless the equipment is installed on a ship constructed before 2005 and it would be unreasonable or impracticable to meet those current standards.

(i) A ship entering international service for the first time since 2004, must comply with the requirements of paragraph (a)(4) of this section by the date of its initial survey prior to receiving its International Oil Pollution Prevention (IOPP) certificate.

(ii) Any ship, other than a ship described in paragraph (a)(4)(i) of this section, must comply with the requirements of paragraph (4) of this section by the date of the ship's first drydock after October 13, 2009.

* * * * *

Dated: October 7, 2009.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 370

[Docket No. RM 2008–7]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are issuing final regulations for the delivery and format of reports of use of sound recordings for the statutory licenses set forth in sections 112 and 114 of the Copyright Act.

DATES: *Effective Date:* November 12, 2009.

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SUPPLEMENTARY INFORMATION:

I. Background

On October 6, 2006, the Copyright Royalty Judges (''Judges'') issued interim regulations published in the **Federal Register** for the delivery and format of reports of use of sound recordings for the statutory licenses set forth in sections 112 and 114 of the Copyright Act. 71 FR 59010. The goal of those interim regulations was to establish format and delivery requirements for reports of use so that royalty payments to copyright owners pursuant to section 112 and 114 licenses could be made from April 1, 2004,

forward based upon actual data on the sound recordings transmitted by digital audio services. During the interval since the Judges issued the interim regulations, the Judges have monitored the operation of these regulations as well as developments in recordkeeping requirements agreed upon by parties to various settlements relating to the use of section 112 and 114 licenses. Subsequently, on December 30, 2008, the Judges published a notice of proposed rulemaking (''NPRM'') setting forth proposed revisions to the interim regulations adopted in October 2006. 73 FR 79727. The most significant revision proposed by the Judges was to expand the reporting period to implement year-round census reporting. Further, on April 8, 2009, the Judges published a notice of inquiry (''NOI'') to obtain additional information concerning the likely costs and benefits stemming from the adoption of the proposed census reporting provision as well as information on any alternatives to the proposal that might accomplish the same goals as the proposal in a less burdensome way, particularly with respect to small entities. 74 FR 15901. With the issuance of today's regulations, the Judges establish requirements for census reporting for all but those broadcasters who pay no more than the minimum fee for their use of the license. The Judges are adopting these regulations substantially as proposed in the NPRM with minor modifications in response to comments received. These final regulations establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings and under which records of use shall be kept and made available by entities of all sizes performing sound recordings. *See, e.g.,* 17 U.S.C. 114(f)(4)(A). As with the interim regulations adopted in 2006, today's final regulations represent baseline requirements. In other words, digital audio services are free to negotiate other formats and technical standards for data maintenance and delivery and may use those in lieu of regulations adopted by the Judges, upon agreement with the Collective. We have no intention of codifying these negotiated variances in the future unless and until they come into such standardized use as to effectively supersede the existing regulations.

II. This Proceeding

The Judges' December 30, 2008, NPRM set forth proposed revisions to the regulations governing the format and delivery requirements for reports of use of sound recordings that provided for three potential categories of change. First, the Judges proposed eliminating obsolete provisions of the interim regulations. Second, the Judges proposed placing definitions that were duplicated in various sections of the interim regulations into a new single definition section applicable throughout Part 370 unless otherwise defined in a specific section. Third, the Judges proposed expanded reporting to implement year-round census reporting. In connection with this expanded census reporting, the Judges proposed eliminating the aggregate tuning hours (''ATH'') approach previously available for nonsubscription services and requiring that such services now report actual total performances (''ATP''). However, the Judges proposed allowing pre-existing satellite digital audio radio services, new subscription services and business establishment services to achieve census reporting by continuing their use of the ATH option if technological impediments existed which thwarted the measurement of actual listenership. 73 FR 79727. In addition to these specific proposals, the Judges also solicited comments on technological developments which might warrant additional revisions to rules governing the method of reporting specific data elements and/or the delivery mechanism employed for reporting.

In response to the NPRM, the Judges received 43 comments from various categories of interested parties: (1) Representatives of copyright owners and performers, including SoundExchange, the Collective charged with collecting and distributing royalties; (2) copyright users and/or their representatives, including the National Association of Broadcasters (''NAB''), College Broadcasters Inc. (''CBI''), Intercollegiate Broadcasting System (''IBS''), various radio broadcasters affiliated with educational institutions, a noncommercial religious broadcaster, and an operator of radio and Internet stations featuring Christian programming; an Internet service that simulcasts the over-the-air and Internet-only broadcasts of primarily noncommercial terrestrial radio stations; and (3) several software providers of recordkeeping solutions to radio stations and Webcasters.

Most of the comments received from interested parties centered on the proposed move to full census ATP reporting. Comments focused on the technological reporting capabilities of small entities or less intensive users (particularly, users associated with educational institutions), as well as on various assertions about the costs and benefits of moving to full census ATP reporting for such users. Consequently, the Judges' April 8, 2009, NOI sought to obtain additional, more concrete information concerning the likely costs and benefits stemming from the adoption of the proposed census reporting provision as well as information on any alternatives to the proposal that might accomplish the same goals as the proposal in a less burdensome way, particularly with respect to small entities. 74 FR 15901.

In response to the NOI, the Judges received 14 comments and 6 reply comments from the following categories of interested parties: (1) Representatives of copyright owners and performers, including SoundExchange; (2) copyright users and/or their representatives and allied interested parties, including the NAB, CBI, IBS, the National Federation of Community Broadcasters (''NFCB''), various radio broadcasters affiliated with educational institutions, the American Council on Education (''ACE''); and (3) a software provider of recordkeeping solutions to radio stations and Webcasters.

III. Obsolete Provisions and General Definitions

Obsolete provisions proposed for deletion by the Judges in their December 30th NPRM raised no concerns for commenting parties. Similarly, the deletion of duplicative definitions for nine common terms that appeared in various sections of the interim regulation and their replacement by a single definition for each of the nine terms in a new General Definitions section at the head of the proposed regulation [1] proved noncontroversial. Therefore, given the efficiency gains these changes will bring users, the Judges adopt the changes as proposed in the December 30, 2008, NPRM at 73 FR 79728.

IV. Reports of Use Content and Reporting Period; Census Reporting

Current requirements for the data to be included in reports of use and the frequency of reporting still largely reflect interim regulations adopted on March 11, 2004 (69 FR 11515) by the Copyright Office during an earlier phase of the recordkeeping rulemaking process that predated the transfer of rulemaking

[1] These terms include: (1) Notice of Use, (2) Service, (3) Preexisting Subscription Service, (4) New Subscription Service, (5) Nonsubscription Transmission Service, (6) Preexisting Satellite Digital Audio Radio Service, (7) Business Establishment Service, (8) Collective and (9) Report of Use. In the interest of administrative efficiency, the Judges proposed a new § 370.1, General Definitions, to provide definitions for these nine terms that would apply generally throughout Part 370, unless otherwise specifically indicated.

authority to the Judges pursuant to the Copyright Royalty and Distribution Reform Act of 2004. The Copyright Office in its interim regulations determined to phase in the new reporting process by requiring periodic reporting of sound recording performances, although the Copyright Office noted that: ''[O]nce final regulations are implemented, year-round census reporting is likely to be the standard measure rather than the periodic reporting that will now be permitted on an interim basis.'' 69 FR 11526. Such census reporting provides a more complete record on which to base payments for the use of sound recordings compared to periodic reporting.[2] After providing users with ample time—some five years—to familiarize themselves with the methods of acquiring and keeping the necessary data for compliance, the Judges now adopt a final regulation adopting census reporting for all but the lowest intensity users of sound recordings in a single category of users—broadcasters typically engaged in simulcasting their over-the-air broadcasts on the Web. All other nonsubscription services, such as pure play Webcasters, are required to provide full reporting of the actual total performances of the sound recording for each reporting period during the year.[3] To the extent that technological impediments to measuring actual listenership continue to hamper actual listenership measurement with respect to each sound recording for preexisting satellite digital audio radio services, new subscription services or business establishment services, the alternative of census reporting by means of a construct utilizing aggregate tuning hours[4] is maintained for such services.[5]

A number of the most intensive users of the 114 and 112 licenses are already reporting on a census basis according to SoundExchange. *See* Comments of SoundExchange, Docket No. RM 2008–7 at 5–6 (January 29, 2009); Comments of SoundExchange, Docket No. RM 2008–7 at 15–20 (May 26, 2009). Further, the fact that many of the largest commercial Webcasters and other intensive users such as satellite radio have not filed comments in this proceeding clearly indicates an absence of controversy among more intensive users concerning the Judges' proposed census reporting regulations. Rather, many of the comments focused on the impact of the NPRM on less-intensive users such as a number of noncommercial broadcasters affiliated with educational institutions.

Both commercial and noncommercial broadcasters that are low-intensity users who typically simulcast over the Web appear to share a common technological characteristic–anachronistic systems or procedures that are not designed for easily reporting data on sound recordings simultaneously played as a Webcast. *See, e.g.,* Comments of the National Association of Broadcasters, Docket No. RM 2008–7 at 8–9 (January 29, 2009); Comments of the National Association of Broadcasters, Docket No. RM 2008–7 at 5 (May 26, 2009). For example, in some cases, the manual play of music without the aid of a computer hampers the effective collection of information on the usage of sound recordings. *See, e.g.,* Comments of the National Association of Broadcasters, Docket No. RM 2008–7 at 9 (January 29, 2009); Comments from Tom Worster and Spinitron, Docket No. RM 2008–7 at 3–4 (January 29, 2009); Reply Comments of the American Council on Education, Docket No. RM 2008–7 at 2 (June 8, 2009).

While the absence of automated playlists represents one particular approach followed by some broadcasters for a variety of reasons-sometimes creative, sometimes pedagogical, and sometimes financially driven (*See, e.g.,* Comments of the National Association of Broadcasters, Docket No. RM 2008–7 at 8–9 (January 29, 2009); Comments of the National Association of Broadcasters, Docket No. RM 2008–7 at 4–5 (May 26, 2009); Comments of University of California NCE Broadcast Radio Stations and Associated College and University Broadcasters Who Simulcast, Docket No. RM 2008–7 at 3 (May 26, 2009); Comments of WSOU–FM, Docket No. RM 2008–7 at 3–4 (May 26, 2009))—these reasons do not necessarily overlap. For example, some low-intensity simulcasters who maintain partial or fully manual playlists may well be affiliated with large, financially well-endowed educational institutions and those institutions may claim to be training future broadcasters irrespective of the broadcast industry trend toward the adoption of automated programming; yet, they may choose to continue manual programming to allow their students more room to pursue a more creative approach to playing music either as part of a structured learning experience or as part of a less structured extracurricular experience. Thus, even in those instances where an educational institution's financial resources appear fully capable of providing for more investment in newer technology for proper recordkeeping and reporting under the Copyright Act, the educational institution may have little incentive to make such investments given the relatively unimportant stature of the activity in its overall mission. As a result, from the user's standpoint in such situations, there may appear to be a reasonable relationship between the low intensity use of Webcasting and the amount of resources the noncommercial broadcasting entity is willing to invest in the effort.

Some parallel exists in a commercial setting where small broadcasters with limited resources may engage small numbers of listeners through simulcasts on the Web of their over-the-air programming, but may not find such listenership sufficiently rewarding to make an immediate investment in adapting their old technology to permit easier recordkeeping. Here again, from the user's standpoint, there may be a reasonable relationship between the very low intensity use of Webcasting and the amount of resources the broadcasting entity is willing to invest in the effort. However, in the commercial case, broadcasters who do not adapt in the long run will fail as commercial entities to achieve the critical mass necessary to justify their presence on the Web. Therefore, they ultimately have a strong financial incentive to become more than very low intensity users, adapt their technology, ultimately achieve the same capabilities as their competitors on the Web and, in the process, attain comparable capabilities for full census reporting. Indeed, this process has been

[2] Currently, services must provide the total number of performances of each sound recording during the relevant reporting period. However, the relevant reporting period is limited to two periods of seven consecutive days for each calendar quarter of the year. This results in an estimate of the use of a sound recording rather than a report of actual use.

[3] The final rule eliminates the aggregate tuning hours approach to reporting previously available to nonsubscription services. It should be noted that the aggregate tuning hours payment alternative to the per performance rate available to certain Webcasters was phased out at the end of the 2007 calendar year. *Digital Performance Right in Sound Recordings and Ephemeral Recordings Final Rule,* 72 FR 24096 n.33.

[4] This alternative requires an estimate of census reporting by means of reporting the following data for each reporting period: Aggregate tuning hours, channel or program name and play frequency.

[5] It should be noted that in the recent preexisting satellite digital audio radio service (''SDARS'') ratemaking proceeding, the collective (SoundExchange) requested that the recordkeeping regulations be amended to require census reporting and the services did not object to census reporting in general so long as the reporting exceptions currently found in § 370.3(b)(8)(i)–(iii) were retained. *Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services Final Rule and Order,* 73 FR 4101 (January 24, 2008). The Judges' final recordkeeping rule retains those exceptions in the new § 370.4(b)(3)(i)–(iii) adopted today.

recognized by the NAB and SoundExchange in their recent settlement pursuant to the Webcaster Settlement Act of 2008 (Pub. L. 110–435, 122 Stat. 4974), where they agreed to reporting requirements applicable to commercial broadcasters [6] that require census reporting for all but a small group of low-intensity users that qualify for a ''small broadcaster'' status.[7] *See* 74 FR 9301 (March 3, 2009). Such ''small broadcasters'' are not subject to the full census reporting applicable to other broadcasters in recognition of the ''unique business and operational circumstances currently existing with respect to these entities'' and are granted this exception to the general rule ''on a transitional basis for a limited time.'' 74 FR 9301. Some of the operating circumstances that differentiate low-intensity commercial broadcasters from other low-intensity commercial Webcasters include the former's continued use of disparate systems not designed in the first instance to provide sound recording performance data and their inability as small entities to quickly pay for the costs of renovating such systems.[8] *See* Comments of the National Association of Broadcasters, Docket No. RM 2008–7 at 4–5 (May 26, 2009).

By contrast, many low-intensity noncommercial broadcasters do not have similarly pressing financial incentives or, indeed, may only be secondarily motivated by financial considerations as noted above. Therefore, for low-intensity noncommercial broadcasters, the transition from old technological equipment and approaches may well proceed at a slower pace until such time as the activity in question generates more support in terms of its relative position in the overall mission of the affiliated institution. This is not to say that a permanent exception to the census reporting rule for low-intensity noncommercial broadcasters is in order. Clearly, the failure to report the full actual number of performances of a sound recording is at odds with the purpose of the recordkeeping requirement to the extent that, as a result, many sound recordings are under-compensated or not compensated at all from the section 114 and 112 royalties. Yet, at the same time, the low-intensity noncommercial broadcaster, by definition, does not enjoy the same pecuniary benefit from the use of the sound recordings at issue in this proceeding as does the low-intensity commercial broadcaster. Aggregate payments owed by low-intensity noncommercial broadcasters are dwarfed by payments by other users. Therefore, the tension between the relative cost of potential undercompensation to copyright owners and the relative cost of replacing outmoded systems employed by the low-intensity noncommercial broadcaster appears best resolved by allowing low-intensity noncommercial broadcasters to continue to report estimated usage on a quarterly basis in the same manner as under previous requirements until such time as either a reasonably priced technological solution is developed to facilitate census reporting under their current operational configurations and practices [9] or where such noncommercial broadcasters finally move to more state-of-the art technology and practices.

Despite recognizing that there may be situations in which some low-intensity noncommercial broadcasters are not in a position to provide census reporting, SoundExchange nonetheless urges the adoption of census reporting as the default rule in this proceeding. The Judges decline to do so for this narrow class of users. While the rate of progress toward achieving census reporting capabilities among low-intensity noncommercial broadcasters is frustratingly slow, it would be unreasonable to adopt a regulation that may well reduce the ability of such users to submit reports beyond even their current level of effort. Such an action may also raise the transactions costs for both users and the Collective. Neither of these two results would inure to the benefit of copyright owners.

Most educationally affiliated noncommercial broadcasters and/or their representatives initially urged the Judges to allow them to continue to report two weeks out of every quarter and to continue to use ATH as a reporting alternative to ATP. *See, e.g.,* Comments of University of California NCE Broadcast Radio Stations and Associated College and University Broadcasters Who Simulcast, Docket No. RM 2008–7 at 3 (January 28, 2009); Supplemental Comments of Harvard Radio Broadcasting Company, Docket No. RM 2008–7 at 22 (May 26, 2009). In particular, many of these comments urged the continuation of the two-week sampling approach with ATH reporting ''for educational stations paying only the minimum fee''—i.e., for the lowest intensity users. *See, e.g.,* Comments of Collegiate Broadcasters, Inc., Docket No. RM 2008–7 at 29 (May 26, 2009). However, some subsequent comments urged the Judges to consider, at least in the alternative, rolling back even the current two-week sampling requirement in favor of a complete reporting exemption for minimum fee users willing to pay an additional $100 ''data proxy fee'' annually. *See, e.g.,* Reply Comments of Collegiate Broadcasters, Inc., Docket No. RM 2008–7 at 11, 16 (June 8, 2009). Supplemental Reply Comments of Harvard Radio Broadcasting Company, Docket No. RM 2008–7 at 20 (June 8, 2009).

We do not agree that an additional data proxy fee in lieu of *any* reporting obligation represents a reasonable alternative to the continuation of the two-week sampling approach with ATH reporting for educational stations paying only the minimum fee. The data proxy fee alternative as proposed here represents a step backward in achieving better accuracy in reporting. As a result, it makes undercompensation stemming from inaccurate reporting even more problematic, inasmuch as it is the low-intensity educational station user that both such users and the Collective agree plays more diverse sound recordings. *See, e.g.,* Supplemental Reply Comments of Harvard Radio Broadcasting Company, Docket No. RM 2008–7 at 20 (June 8, 2009). Because of such greater diversity, many more sound recording copyright owners may well forfeit a distribution of earned royalties when their use is not reported at all. *See, e.g.,* Reply Comments of SoundExchange, Inc., Docket No. RM 2008–7 at 2 (June 8, 2009) (''These services do not pay very much in royalties, but what they pay may be the only statutory royalties earned by the copyright owners and performers of many obscure recordings.''). In short, it is hardly reasonable to propose a complete exemption from even the

[6] Broadcasters, as used in the NAB-SoundExchange settlement, do not include noncommercial Webcasters as they are defined in 17 U.S.C. 114(f)(5)(E)(i).

[7] ''Small Webcasters'' in the NAB-SoundExchange settlement generally refers to those broadcasters who make eligible transmissions of less than 27,777 aggregate tuning hours in a given year. This level of actual transmissions in a given year, under the rate provisions of the settlement, appears likely to be largely covered by the credit obtained by the broadcaster towards usage upon payment of the $500 per channel minimum fee under the settlement. In other words, where usage clearly exceeds the minimum fee credit, census reporting typically applies.

[8] No comments were received from any pure commercial Webcaster claiming to be similarly situated.

[9] The Corporation for Public Broadcasting (''CPB'') in its recent settlement with SoundExchange, pursuant to the Webcaster Settlement Act of 2008, has agreed on behalf of its covered entities to ''cooperate in good faith with efforts by SoundExchange to develop and test a technological solution that facilitates reporting.'' *See* 74 FR 9298 (March 3, 2009).

existing sample-based recordkeeping requirements, for even if the current requirements produce results that are less than perfectly accurate as collected, observed and administered, they at least provide some rational basis for royalty distribution to owners and performers who would otherwise be completely shut out of the royalty distribution process notwithstanding the use of their works.

The expanded scope of census reporting adopted in the final regulation also gave rise to two ancillary changes. One is a minor, noncontroversial change to harmonize references to the frequency of report delivery with the reporting period. That is, in those instances where monthly reports of use are required, the corresponding reporting period is defined as one month; and, in those cases where quarterly reports of use are maintained as the requirement, the corresponding reporting period is defined as one quarter. Second, a change to the previously existing rate category codes was required in the new § 370.4(d)(2)(ii) adopted today so as to prevent inconsistencies with different categories used during prior reporting periods. SoundExchange proposed the use of a new list of category codes with the addition of language indicating that the Collective ''may from time to time publish an updated list of categories then applicable under the Webcaster Settlement Act or regulations, and Services shall identify the most specific category then applicable to them.'' *See* Comments of SoundExchange, Docket No. RM 2008–7, Proposed Regulations Exhibit A at 6 (January 29, 2009). On the other hand, another proposal instead recommends obsoleting and reserving the 2006 codes which would be no longer used going forward, while maintaining the same 2006 codes for categories which have not changed. *See* Comments from Tom Worster and Spinitron, Docket No. RM 2008–7 at 7 (January 29, 2009). The Spinitron proposal is supported by the NAB as promoting more clarity for users. *See* Comments of the National Association of Broadcasters, Docket No. RM 2008–7 at 6, (May 26, 2009). Because the Judges agree that this latter approach makes clear that anyone previously reporting under one of the obsolete codes must choose another one, we adopt the proposal put forward by Tom Worster on behalf of Spinitron as part of this final regulation.

V. Additional Revisions Proposed by the Parties

In addition to the specific recordkeeping regulatory changes proposed by the Judges in the December 2008 NPRM, the Judges solicited comments on any technological developments that pointed to the need for further adjustment of the rules either in terms of the method of reporting specific data elements or with respect to the delivery mechanism employed for reporting. For example, the Judges specifically inquired as to what further improvements to the reporting regulations could be made in light of recent technological developments since the promulgation of the interim regulation, the new availability of reporting software or the advent of substantially reduced costs for certain delivery mechanism alternatives.

While approximately 18 proposals for additional regulatory changes beyond those proposed in the December 30, 2008 NPRM were submitted by SoundExchange, users and other interested parties, a number of the additional proposals went beyond the scope of the Judges' specific inquiry. That is, such proposals did not reflect technological developments which might warrant additional revisions to rules governing the method of reporting specific data elements and/or the delivery mechanism being employed for reporting. For example, SoundExchange proposed the addition of late fees for incomplete or tardy reports of use; or, as another example, Frederick Wilhelms III proposed the addition of various detail to the Collective's annual report requirements. *See* Comments of SoundExchange, Docket No. RM 2008–7 at 30–32 (January 29, 2009); Comments of Frederick Wilhelms III, Docket No. RM 2008–7 at 8–9 (January 27, 2009).

Other proposals, such as SoundExchange's request for the delineation of a separate certification form provided by SoundExchange to accompany the report of use (*See* Comments of SoundExchange, Docket No. RM 2008–7 at 30–32 (January 29, 2009)) generated significant controversy concerning the design process and/or contents of the proposed new form, indicating that such proposals not only were likely beyond the scope of the Judges' specific technological change inquiry, but also not yet likely ripe for determination. *See, e.g.*, Comments of National Association of Broadcasters, Docket No. RM 2008–7 at 5–6 (May 26, 2009); Reply Comments of SoundExchange, Docket No. RM 2008–7 at 13 (June 8, 2009). Similarly, SoundExchange's proposal to require nonsubscription services to provide copyright owner information in exactly the same form as it appears in the commercially released product met with objections as to practicality for some users that merit more detailed consideration than the focus of this proceeding permits. *See, e.g.*, Comments of National Association of Broadcasters, Docket No. RM 2008–7 at 6–7 (May 26, 2009).

A proposal that syndicated programming that is simulcast by broadcasters should be exempted from recordkeeping requirements (*See* Comments of the National Association of Broadcasters, Docket No. RM 2008–7 at 8 (May 26, 2009)) raises serious issues concerning the recordkeeping obligations of users and, at the same time, offers no solution for improving reports of actual use to facilitate owners receiving more accurate payment distributions. Moreover, inasmuch as the interim reporting regulation in place has functioned for some time without such an exemption, albeit with less frequent quarterly reporting requirements, it is not at all clear that the adoption of the final regulation proposed in the NPRM merits rethinking at this juncture.[10] Indeed, the Collective suggests that any reporting problems for broadcasters associated with syndicated programming have been adequately addressed going forward in their recently completed NAB-SoundExchange Webcaster settlement agreement. *See* Reply Comments of SoundExchange, Docket No. RM 2008–7 at 14 (June 8, 2009). In short, the syndication exemption proposal has not been sufficiently developed for the Judges' consideration in this proceeding.

Similarly, SoundExchange's proposal to authorize the Collective to distribute royalties based on a reasonable proxy when sufficient reports of use have not been filed within one year after receiving payment has been insufficiently developed in this proceeding. *See* Comments of SoundExchange, Docket No. RM 2008–7 at 4–5 (May 26, 2009). It was raised for the first time in this proceeding in response to the April 8, 2009 NOI and even SoundExchange admits to originally contemplating making this request in a subsequent petition. *Id.* at 4 n.7.

Still other proposals, such as the proposal that the Collective be required to provide confirmation of the receipt of reports of use within a time certain (*See, e.g.*, Comments of Tom Worster and Spinitron, Docket No. RM 2008–7 at 7 (January 29, 2009)), might arguably fit

[10] For example, there will be no differential impact on low-intensity, minimum fee broadcasters since the interim reporting regulation remains unchanged in the final regulation for such users.

within a very broad view of the Judges' specific technological change inquiry, but were not addressed by the Collective in terms of either technological feasibility or costs of adoption (if any).

In short, some of the proposals included in comments received by the Judges in this proceeding may merit further examination in a future rulemaking. However, they are not ripe for either adoption or rejection at the present time.

As a result, only a small number of proposals put forward in the parties' comments have been adopted in the final regulations. Some of these proposals relate to clarifying the final regulations as a result of changes made to the frequency reporting rule and are described herein above in connection with that rule. Of the remaining three party proposals adopted by the Judges, one adopted proposal reflects recent technological developments, another adopted proposal reflects a physical change of address for the Collective, and the remaining adopted proposal corrects an inconsistency in the delineation of the use of report dates in the NPRM. No controversy was raised by any of the commenting parties concerning these three proposals.

The change in the final regulation adopted from comments received by the Judges that is directly related to technological developments is the elimination of the delivery of reports of use by means of floppy diskette.[11] *See* Comments of SoundExchange, Docket No. RM 2008–7 at 25 (January 29, 2009). We agree with SoundExchange that the use of floppy diskettes has been rendered obsolete by recent technological developments and that it is not technologically efficient for the Collective to maintain old disk drives and equipment applicable only to such physical media. Moreover, delivery by means of CD–ROM is readily available and maintained in the final regulation for any license user needing a physical media delivery alternative.

The remaining two changes adopted by the Judges from comments submitted by the parties are: (1) a correction in the e-mail address for the Collective to *reports@soundexchange.com* and (2) the consistent reference to dates of a reporting period throughout the final regulation in the format ''year, month and day.'' *See* Comments of SoundExchange, Docket No. RM 2008–7 at 29–30 (January 29, 2009). These changes adopted by the Judges will add clarity and consistency to the final regulation for reporting and delivery.

[11] Under the interim regulation, SoundExchange supported four methods of delivery for electronic data files: File Transfer Protocol (''FTP''); electronic mail attachment; CD–ROM delivery; and floppy diskette delivery. The final regulation eliminates floppy diskette delivery.

List of Subjects in 37 CFR Part 370

Copyright, Sound recordings.

Final Regulation

■ For the reasons set forth in the preamble, the Copyright Royalty Judges revise 37 CFR part 370 to read as follows:

PART 370—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

Sec.
370.1 General definitions.
370.2 Notice of use of sound recordings under statutory license.
370.3 Reports of use of sound recordings under statutory license for preexisting subscription services.
370.4 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.
370.5 Designated collection and distribution organizations for reports of use of sound recordings under statutory license.

Authority: 17 U.S.C. 112(e)(4), 114(f)(4)(A).

§ 370.1 General definitions.

For purposes of this part, the following definitions apply:

(a) A *Notice of Use of Sound Recordings Under Statutory License* is a written notice to sound recording copyright owners of the use of their works under section 112(e) or 114(d)(2) of title 17, United States Code, or both, and is required under this part to be filed by a Service in the Copyright Office.

(b) A *Service* is an entity engaged in either the digital transmission of sound recordings pursuant to section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code or both. The definition of a Service includes an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2). A Service may be further characterized as either a preexisting subscription service, preexisting satellite digital audio radio service, nonsubscription transmission service, new subscription service, business establishment service or a combination of those.

(c) A *Preexisting Subscription Service* is defined in 17 U.S.C. 114(j)(11).

(d) A *New Subscription Service* is defined in 17 U.S.C. 114(j)(8).

(e) A *Nonsubscription Transmission Service* is a service that makes noninteractive nonsubscription digital audio transmissions that are not exempt under section 114(d)(1) of title 17 of the United States Code and are made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including transmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

(f) A *Preexisting Satellite Digital Audio Radio Service* is defined in 17 U.S.C. 114(j)(10).

(g) A *Business Establishment Service* is a service that makes ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code and is exempt under section 114(d)(1)(C)(iv) of title 17 of the United States Code.

(h) A *Collective* is a collection and distribution organization that is designated under one or both of the statutory licenses by determination of the Copyright Royalty Judges.

(i) A *Report of Use* is a report required to be provided by a Service that is transmitting sound recordings pursuant to the statutory license set forth in section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to the statutory license set forth in section 112(e) of title 17 of the United States Code, or both.

§ 370.2 Notice of use of sound recordings under statutory license.

(a) *General.* This section prescribes rules under which copyright owners shall receive notice of use of their sound recordings when used under either section 112(e) or 114(d)(2) of title 17, United States Code, or both.

(b) *Forms and content.* A Notice of Use of Sound Recordings Under Statutory License shall be prepared on a form that may be obtained from the Copyright Office Web site or from the Licensing Division, and shall include the following information:

(1) The full legal name of the Service that is either commencing digital transmissions of sound recordings or

making ephemeral phonorecords of sound recordings under statutory license or doing both.

(2) The full address, including a specific number and street name or rural route, of the place of business of the Service. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(3) The telephone number and facsimile number of the Service.

(4) Information on how to gain access to the online Web site or homepage of the Service, or where information may be posted under this section concerning the use of sound recordings under statutory license.

(5) Identification of each license under which the Service intends to operate, including identification of each of the following categories under which the Service will be making digital transmissions of sound recordings: Preexisting subscription service, preexisting satellite digital audio radio service, nonsubscription transmission service, new subscription service or business establishment service.

(6) The date or expected date of the initial digital transmission of a sound recording to be made under the section 114 statutory license and/or the date or the expected date of the initial use of the section 112(e) license for the purpose of making ephemeral phonorecords of the sound recordings.

(7) Identification of any amendments required by paragraph (e) of this section.

(c) *Signature.* The Notice shall include the signature of the appropriate officer or representative of the Service that is either transmitting the sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Notice and by the date of the signature.

(d) *Filing notices; fees.* The original and three copies shall be filed with the Licensing Division of the Copyright Office and shall be accompanied by the filing fee set forth in § 201.3(e) of this title. Notices shall be placed in the public records of the Licensing Division. The Notice and filing fee shall be sent to the Licensing Division at either the address listed on the form obtained from the Copyright Office or to: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557–6400. A Service that, on or after July 1, 2004, shall make digital transmissions and/or ephemeral phonorecords of sound recordings under statutory license shall file a Notice of Use of Sound Recordings under Statutory License with the Licensing Division of the Copyright Office prior to the making of the first ephemeral phonorecord of the sound recording and prior to the first digital transmission of the sound recording.

(e) *Amendment.* A Service shall file a new Notice of Use of Sound Recordings under Statutory License within 45 days after any of the information contained in the Notice on file has changed, and shall indicate in the space provided by the Copyright Office that the Notice is an amended filing. The Licensing Division shall retain copies of all prior Notices filed by the Service.

§ 370.3 Reports of use of sound recordings under statutory license for preexisting subscription services.

(a) *General.* This section prescribes the rules for the maintenance and delivery of reports of use for sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, by preexisting subscription services.

(b) *Delivery.* Reports of Use shall be delivered to Collectives that are identified in the records of the Licensing Division of the Copyright Office as having been designated by determination of the Copyright Royalty Judges. Reports of Use shall be delivered on or before the forty-fifth day after the close of each month.

(c) *Posting.* In the event that no Collective is designated under the statutory license, or if all designated Collectives have terminated collection and distribution operations, a preexisting subscription service transmitting sound recordings under statutory license shall post and make available online its Reports of Use. Preexisting subscription services shall post their Reports of Use online on or before the forty-fifth day after the close of each month, and continue to make them available thereafter to all sound recording copyright owners for a period of 90 days. Preexisting subscription services may require use of passwords for access to posted Reports of Use, but must make passwords available in a timely manner and free of charge or other restrictions. Preexisting subscription services may predicate provision of a password upon:

(1) Information relating to identity, location and status as a sound recording copyright owner; and

(2) A ''click-wrap'' agreement not to use information in the Report of Use for purposes other than royalty collection, royalty distribution, and determining compliance with statutory license requirements, without the express consent of the preexisting subscription service providing the Report of Use.

(d) *Content.* A ''Report of Use of Sound Recordings under Statutory License'' shall be identified as such by prominent caption or heading, and shall include a preexisting subscription service's ''Intended Playlists'' for each channel and each day of the reported month. The ''Intended Playlists'' shall include a consecutive listing of every recording scheduled to be transmitted, and shall contain the following information in the following order:

(1) The name of the preexisting subscription service or entity;

(2) The channel;

(3) The sound recording title;

(4) The featured recording artist, group, or orchestra;

(5) The retail album title (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the preexisting subscription service for purchase of the sound recording);

(6) The marketing label of the commercially available album or other product on which the sound recording is found;

(7) The catalog number;

(8) The International Standard Recording Code (ISRC) embedded in the sound recording, where available and feasible;

(9) Where available, the copyright owner information provided in the copyright notice on the retail album or other product (*e.g.*, following the symbol (P), that is the letter P in a circle) or, in the case of compilation albums created for commercial purposes, in the copyright notice for the individual sound recording;

(10) The date of transmission; and

(11) The time of transmission.

(e) *Signature.* Reports of Use shall include a signed statement by the appropriate officer or representative of the preexisting subscription service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the preexisting subscription service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Report, and by the date of signature.

(f) *Format.* Reports of Use should be provided on a standard machine-readable medium, such as diskette, optical disc, or magneto-optical disc, and should conform as closely as possible to the following specifications:

(1) ASCII delimited format, using pipe characters as delimiter, with no headers or footers;

(2) Carats should surround strings;

(3) No carats should surround dates and numbers;

(4) Dates should be indicated by: YYYY/MM/DD;

(5) Times should be based on a 24-hour clock: HH:MM:SS;

(6) A carriage return should be at the end of each line; and

(7) All data for one record should be on a single line.

(g) *Confidentiality*. Copyright owners, their agents and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the preexisting subscription service providing the Report of Use.

(h) *Documentation*. All compulsory licensees shall, for a period of at least three years from the date of service or posting of the Report of Use, keep and retain a copy of the Report of Use.

§ 370.4 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.

(a) *General*. This section prescribes rules for the maintenance and delivery of reports of use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, by nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services.

(b) *Definitions*. (1) *Aggregate Tuning Hours* are the total hours of programming that a nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service has transmitted during the reporting period identified in paragraph (d)(3) of this section to all listeners within the United States over the relevant channels or stations, and from any archived programs, that provide audio programming consisting, in whole or in part, of eligible nonsubscription service, preexisting satellite digital audio radio service, new subscription service or business establishment service transmissions, less the actual running time of any sound recordings for which the service has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. For example, if a nonsubscription transmission service transmitted one hour of programming to 10 simultaneous listeners, the nonsubscription transmission service's Aggregate Tuning Hours would equal 10. If 3 minutes of that hour consisted of transmission of a directly licensed recording, the nonsubscription transmission service's Aggregate Tuning Hours would equal 9 hours and 30 minutes. If one listener listened to the transmission of a nonsubscription transmission service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the nonsubscription transmission service's Aggregate Tuning Hours would equal 10.

(2) An *AM/FM Webcast* is a transmission made by an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2).

(3) A *minimum fee broadcaster* is a nonsubscription service that meets the definition of a broadcaster pursuant to § 380.2(b) of this chapter and the service's payments for eligible transmissions do not exceed the annual minimum fee established for licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114.

(4) A *performance* is each instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or retransmission (*e.g.*, the delivery of any portion of a single track from a compact disc to one Listener) but excluding the following:

(i) A performance of a sound recording that does not require a license (*e.g.*, the sound recording is not copyrighted);

(ii) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and

(iii) An incidental performance that both:

(A) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(B) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(5) *Play frequency* is the number of times a sound recording is publicly performed by a Service during the relevant period, without respect to the number of listeners receiving the sound recording. If a particular sound recording is transmitted to listeners on a particular channel or program only once during the reporting period, then the play frequency is one. If the sound recording is transmitted 10 times during the reporting period, then the play frequency is 10.

(c) *Delivery*. Reports of Use shall be delivered to Collectives that are identified in the records of the Licensing Division of the Copyright Office as having been designated by determination of the Copyright Royalty Judges. Reports of Use shall be delivered on or before the forty-fifth day after the close of each reporting period identified in paragraph (d)(3) of this section.

(d) *Report of Use*. (1) *Separate reports not required*. A nonsubscription transmission service, preexisting satellite digital audio radio service or a new subscription service that transmits sound recordings pursuant to the statutory license set forth in section 114(d)(2) of title 17 of the United States Code and makes ephemeral phonorecords of sound recordings pursuant to the statutory license set forth in section 112(e) of title 17 of the United States Code need not maintain a separate Report of Use for each statutory license during the relevant reporting periods.

(2) *Content*. For a nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service that transmits sound recordings pursuant to the statutory license set forth in section 114(d)(2) of title 17 of the United States Code, or the statutory license set forth in section 112(e) of title 17 of the United States Code, or both, each Report of Use shall contain the following information, in the following order, for each sound recording transmitted during the reporting periods identified in paragraph (d)(3) of this section:

(i) The name of the nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service making the transmissions, including the name of

the entity filing the Report of Use, if different;

(ii) The category transmission code for the category of transmission operated by the nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service:

(A) For eligible nonsubscription transmissions other than broadcast simulcasts and transmissions of non-music programming;

(B) For eligible nonsubscription transmissions of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming;

(C) For eligible nonsubscription transmissions of non-music programming reasonably classified as news, talk, sports or business programming;

(D) [Reserved].

(E) [Reserved].

(F) [Reserved].

(G) [Reserved].

(H) For transmissions other than broadcast simulcasts and transmissions of non-music programming made by an eligible new subscription service;

(I) For transmissions of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming made by an eligible new subscription service;

(J) For transmissions of non-music programming reasonably classified as news, talk, sports or business programming made by an eligible new subscription service; and

(K) For eligible transmissions by a business establishment service making ephemeral recordings;

(iii) The featured artist;

(iv) The sound recording title;

(v) The International Standard Recording Code (ISRC) or, alternatively to the ISRC, the:

(A) Album title; and

(B) Marketing label;

(vi) For a nonsubscription transmission service except those qualifying as minimum fee broadcasters: The actual total performances of the sound recording during the reporting period.

(vii) For a preexisting satellite digital audio radio service, a new subscription service, a business establishment service or a nonsubscription service qualifying as a minimum fee broadcaster: The actual total performances of the sound recording during the reporting period or, alternatively, the

(A) Aggregate Tuning Hours;

(B) Channel or program name; and

(C) Play frequency.

(3) *Reporting period*. A Report of Use shall be prepared:

(i) For each calendar month of the year by all services other than a nonsubscription service qualifying as a minimum fee broadcaster; or

(ii) For a two-week period (two periods of 7 consecutive days) for each calendar quarter of the year by a nonsubscription service qualifying as a minimum fee broadcaster and the two-week period need not consist of consecutive weeks, but both weeks must be completely within the calendar quarter.

(4) *Signature*. Reports of Use shall include a signed statement by the appropriate officer or representative of the service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Report, and by the date of the signature.

(5) *Confidentiality*. Copyright owners, their agents and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, without consent of the service providing the Report of Use.

(6) *Documentation*. A Service shall, for a period of at least three years from the date of service or posting of a Report of Use, keep and retain a copy of the Report of Use.

(e) *Format and delivery*. (1) *Electronic format only*. Reports of use must be maintained and delivered in electronic format only, as prescribed in paragraphs (e)(2) through (8) of this section. A hard copy report of use is not permissible.

(2) *ASCII text file delivery; facilitation by provision of spreadsheet templates*. All report of use data files must be delivered in ASCII format. However, to facilitate such delivery, SoundExchange shall post and maintain on its Internet Web site a template for creating a report of use using Microsoft's Excel spreadsheet and Corel's Quattro Pro spreadsheet and instruction on how to convert such spreadsheets to ASCII text files that conform to the format specifications set forth below. Further, technical support and cost associated with the use of spreadsheets is the responsibility of the service submitting the report of use.

(3) *Delivery mechanism*. The data contained in a report of use may be delivered by File Transfer Protocol (FTP), e-mail, or CD–ROM according to the following specifications:

(i) A service delivering a report of use via FTP must obtain a username, password and delivery instructions from SoundExchange. SoundExchange shall maintain on a publicly available portion of its Web site instructions for applying for a username, password and delivery instructions. SoundExchange shall have 15 days from date of request to respond with a username, password and delivery instructions.

(ii) A service delivering a report of use via e-mail shall append the report as an attachment to the e-mail. The main body of the e-mail shall identify:

(A) The full name and address of the service;

(B) The contact person's name, telephone number and e-mail address;

(C) The start and end date of the reporting period;

(D) The number of rows in the data file. If the report of use is a file using headers, counting of the rows should begin with row 15. If the report of use is a file without headers, counting of the rows should begin with row 1; and

(E) The name of the file attached.

(iii) A service delivering a report of use via CD–ROM must compress the reporting data to fit onto a single CD–ROM per reporting period. Each CD–ROM shall be submitted with a cover letter identifying:

(A) The full name and address of the service;

(B) The contact person's name, telephone number and e-mail address;

(C) The start and end date of the reporting period;

(D) The number of rows in the data file. If the report of use is a file using headers, counting of the rows should begin with row 15. If the report of use is a file without headers, counting of the rows should begin with row 1; and

(E) The name of the file attached.

(4) *Delivery address*. Reports of use shall be delivered to SoundExchange at the following address: SoundExchange, Inc., 1121 14th Street, NW., Suite 700, Washington, DC 20005; (Phone) (202) 640–5858; (Facsimile) (202) 640–5859; (E-mail) *reports@soundexchange.com*. SoundExchange shall forward electronic copies of these reports of use to all other collectives defined in this section.

(5) *File naming*. Each data file contained in a report of use must be given a name by the service followed by the start and end date of the reporting period. The start and end date must be separated by a dash and in the format of year, month, and day (YYYYMMDD). Each file name must end with the file type extension of ''.txt''. (*Example:* AcmeMusicCo20050101–20050331.txt).

(6) *File type and compression*. (i) All data files must be in ASCII format.

(ii) A report of use must be compressed in one of the following zipped formats:

(A) .zip—generated using utilities such as WinZip and/or UNIX zip command;

(B) .Z—generated using UNIX compress command; or

(C) .gz—generated using UNIX gzip command.

(iii) Zipped files shall be named in the same fashion as described in paragraph (e)(5) of this section, except that such zipped files shall use the applicable file extension compression name described in this paragraph (e)(6).

(7) *Files with headers.* (i) If a service elects to submit files with headers, the following elements, in order, must occupy the first 14 rows of a report of use:

(A) Name of service;

(B) Name of contact person;

(C) Street address of the service;

(D) City, state and zip code of the service;

(E) Telephone number of the contact person;

(F) E-mail address of the contact person;

(G) Start of the reporting period (YYYYMMDD);

(H) End of the reporting period (YYYYMMDD);

(I) Report generation date (YYYYMMDD);

(J) Number of rows in data file, beginning with 15th row;

(K) Text indicator character;

(L) Field delimiter character;

(M) Blank line; and

(N) Report headers (Featured Artist, Sound Recording Title, etc.).

(ii) Each of the rows described in paragraphs (e)(7)(i)(A) through (F) of this section must not exceed 255 alphanumeric characters. Each of the rows described in paragraphs (e)(7)(i)(G) through (I) of this section should not exceed eight alphanumeric characters.

(iii) Data text fields, as required by paragraph (d) of this section, begin on row 15 of a report of use with headers. A carriage return must be at the end of each row thereafter. Abbreviations within data fields are not permitted.

(iv) The text indicator character must be unique and must never be found in the report's data content.

(v) The field delimiter character must be unique and must never be found in the report's data content. Delimiters must be used even when certain elements are not being reported; in such case, the service must denote the blank data field with a delimiter in the order in which it would have appeared.

(8) *Files without headers.* If a service elects to submit files without headers, the following format requirements must be met:

(i) ASCII delimited format, using pipe (|) characters as delimiters, with no headers or footers;

(ii) Carats (^) should surround strings;

(iii) No carats (^) should surround dates and numbers;

(iv) A carriage return must be at the end of each line;

(v) All data for one record must be on a single line; and

(vi) Abbreviations within data fields are not permitted.

§ 370.5 Designated collection and distribution organizations for reports of use of sound recordings under statutory license.

(a) *General.* This section prescribes rules under which reports of use shall be collected and distributed under section 114(f) of title 17 of the United States Code, and under which reports of such use shall be kept and made available.

(b) *Notice of Designation as Collective under Statutory License.* A Collective shall file with the Licensing Division of the Copyright Office and post and make available online a ''Notice of Designation as Collective under Statutory License,'' which shall be identified as such by prominent caption or heading, and shall contain the following information:

(1) The Collective name, address, telephone number and facsimile number;

(2) A statement that the Collective has been designated for collection and distribution of performance royalties under statutory license for digital transmission of sound recordings; and

(3) Information on how to gain access to the online Web site or home page of the Collective, where information may be posted under this part concerning the use of sound recordings under statutory license. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557–6400.

(c) *Annual Report.* The Collective will post and make available online, for the duration of one year, an Annual Report on how the Collective operates, how royalties are collected and distributed, and what the Collective spent that fiscal year on administrative expenses.

(d) *Inspection of Reports of Use by copyright owners.* The Collective shall make copies of the Reports of Use for the preceding three years available for inspection by any sound recording copyright owner, without charge, during normal office hours upon reasonable notice. The Collective shall predicate inspection of Reports of Use upon information relating to identity, location and status as a sound recording copyright owner, and the copyright owner's written agreement not to utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use. The Collective shall render its best efforts to locate copyright owners in order to make available reports of use, and such efforts shall include searches in Copyright Office public records and published directories of sound recording copyright owners.

(e) *Confidentiality.* Copyright owners, their agents, and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use.

(f) *Termination and dissolution.* If a Collective terminates its collection and distribution operations prior to the close of its term of designation, the Collective shall notify the Licensing Division of the Copyright Office, the Copyright Royalty Board and all Services transmitting sound recordings under statutory license, by certified or registered mail. The dissolving Collective shall provide each such Service with information identifying the copyright owners it has served.

Dated: October 7, 2009.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

[FR Doc. E9–24556 Filed 10–9–09; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0620; FRL–8956–9]

Revisions to the California State Implementation Plan, San Diego Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Diego Air Pollution Control District portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from cold

solvent cleaning and vapor degreasing operations. We are approving two local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 14, 2009 without further notice, unless EPA receives adverse comments by November 12, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0620, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. E-mail: *steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4125, *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SDAPCD	67.6.1	Cold Solvent Cleaning and Stripping Operations	05/23/07	03/07/08
SDAPCD	67.6.2	Vapor Degreasing Operations	05/23/07	03/07/08

On April 17, 2008, EPA determined that the submittal for SDAPCD Rules 67.6, 67.6.1, and 67.6.2 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

SDAPCD Rule 67.6 was approved into the SIP on December 13, 1994 (59 FR 64132). It was locally rescinded by SDAPCD on May 23, 2008 and replaced by Rules 67.6.1 and 67.6.2. There are no previous versions of Rules 67.6.1 and 67.6.2. The SDAPCD adopted these rules on May 23, 2007, and CARB submitted them to us on March 7, 2008.

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. The revised rules limit VOC emissions from cold solvent cleaning and vapor degreasing operations. EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). The SDAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rules 67.6.1 and 67.6.2 must fulfill RACT.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''Control Techniques Guidelines: Industrial Cleaning Solvents'' EPA 453/R06–001, September 2006.
4. ''Determination of Reasonable Available Control Technology and Best Available Retrofit Control Technology for Organic Solvent Cleaning and Degreasing Operations,'' CARB, July 18, 1991.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA recommendations to further improve the rules

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public comment and final action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by November 12, 2009, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 14, 2009. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 14, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: August 21, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraph (c) (354)(i)(F) to read as follows:

52.220 Identification of plan.

* * * * *

(c) * * *

(354) * * *

(i) * * *

(F) San Diego Air Pollution Control District.

(1) Rule 67.6.1, ''Cold Solvent Cleaning and Stripping Operations,'' adopted May 23, 2007.

(2) Rule 67.6.2, ''Vapor Degreasing Operations,'' adopted May 23, 2007.

* * * * *

[FR Doc. E9–24456 Filed 10–9–09; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 74, No. 196

Tuesday, October 13, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2009–0349]

RIN 3150—AI71

List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision 7

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage cask regulations by revising the Holtec International (Holtec) HI–STORM 100 dry storage cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 7 to Certificate of Compliance (CoC) Number 1014. Amendment No. 7 would modify the CoC to add the HI–STORM 100U system to the HI–STORM 100 cask system. The HI–STORM 100U system allows for the underground storage of dry spent nuclear fuel (SNF) by utilizing an underground vertical ventilated module (VVM) that can accept certain multipurpose canisters (MPCs) previously certified for storage of SNF in the Holtec aboveground HI–STORM system. In addition, the amendment would reinstate the decay heat limits for damaged fuel and fuel debris in Appendix B, Technical Specification (TS) 2.4, for the aboveground system that had been inadvertently deleted from Amendment Nos. 5 and 6; incorporate separate TS Appendices A and B for the aboveground system (Apps. A and B) and for the HI–STORM 100U system (Apps. A–100U and B–100U); revise Appendix B, TS 3.4.5, to be consistent with the required system thermal boundary conditions, as submitted in the applicant's safety analysis report for a fire accident condition, and with Holtec's original (i.e., initial certificate application or Amendment 0) submittal and the NRC's original safety evaluation report; and revise and add certain definitions in Appendix A, TS 1.1, to include the VVM. The amendment will also incorporate minor editorial corrections in the TS for the aboveground system.

DATES: Comments on the proposed rule must be received on or before November 12, 2009.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0349 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0349. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–415–1677)

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

You can access publicly available documents related to this proposed rule using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Federal Rulemaking Web site: Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2009–0349.

FOR FURTHER INFORMATION CONTACT: Neelam Bhalla, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6843, e-mail *Neelam.Bhalla@nrc.gov.*

SUPPLEMENTARY INFORMATION: For additional supplementary information, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 7 to CoC No. 1014 and does not include other aspects of the HI–STORM 100 design. Because NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule in the Rules and Regulations section of this **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on December 28, 2009. However, if the NRC receives significant adverse comments on the direct final rule by November 12, 2009 then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a

subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

1. The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

a. The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

b. The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

c. The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

2. The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

3. The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended, and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.
Initial Certificate Effective Date: May 31, 2000.
Amendment Number 1 Effective Date: July 15, 2002.
Amendment Number 2 Effective Date: June 7, 2005.
Amendment Number 3 Effective Date: May 29, 2007.
Amendment Number 4 Effective Date: January 8, 2008.
Amendment Number 5 Effective Date: July 14, 2008.
Amendment Number 6 Effective Date: August 17, 2009
Amendment Number 7 Effective Date: December 28, 2009.
SAR Submitted by: Holtec International.
SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.
Docket Number: 72–1014.
Certificate Expiration Date: May 31, 2020.
Model Number: HI–STORM 100 System.

* * * * *

Dated at Rockville, Maryland, this 24th day of September 2009.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E9–24562 Filed 10–9–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0906; Directorate Identifier 2009–NM–075–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 747 series airplanes. This proposed AD would require replacing the power control relays for the main tank fuel boost pumps and jettison pumps, and the center tank scavenge pump, as applicable, with new relays having a ground fault interrupt (GFI) feature. The proposed AD also would require revising the maintenance program to incorporate Airworthiness Limitations (AWLs) No. 28–AWL–23 (for Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SP, and 747SR series airplanes), and Nos. 28–AWL–28 and 28–AWL–29 (for Model 747–400, 747–400D, and 747–400F series airplanes). This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent damage to the fuel pumps caused by electrical arcing that could introduce an ignition source in the fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by November 27, 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.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590.

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–2009–0906; Directorate Identifier 2009–NM–075–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

As part of SFAR 88 analysis, Boeing determined that the power control relays for the main tank fuel boost pumps and jettison pumps and the center tank scavenge pump should be replaced with new relays having a ground fault interrupt (GFI) feature. The relays are located in the P414, P415, and P52 panels. The GFI feature is intended to protect the fuel pumps from damage caused from electrical arcing by removing electrical power from the pump if a ground fault is detected. Electrical arcing, if not prevented, could introduce an ignition source in the fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–28A2261, dated February 19, 2009. The service bulletin describes procedures for replacing the relays for the main tank fuel boost pumps and jettison pumps, and the center tank scavenge pump, as applicable, with new relays having a GFI feature. The replacement also includes reworking certain wiring and doing an operational test of the fuel boost pumps and new relays.

We have also reviewed the following documents, which include a repetitive inspection (test) to verify continued functionality of the GFI relays:

- For Model 747–400, 747–400D, and 747–400F series airplanes: Subsection D, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS,'' of Boeing 747–400 Maintenance Planning Data (MPD) Document, Document D621U400–9, Section 9, Revision April 2008. Subsection D of Revision April 2008 of the MPD includes new airworthiness limitations (AWLs) 28–AWL–28 and 28–AWL–29. (These AWLs were first introduced in Revision October 2007 of the MPD document.) Incorporating these AWLs are an optional action in AD 2008–10–06, Amendment 39–15512 (73 FR 25990, May 8, 2008).

• For Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SP, and 747SR series airplanes: Subsection D, ''AIRWORTHINESS LIMITATIONS—SYSTEMS,'' of Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–13747–CMR, Revision March 2008. Subsection D of Revision March 2008 of the AWLs includes new airworthiness limitation AWL 28–AWL–23. (This AWL was first introduced in Revision September 2007 of the AWLs/CMRs document.) Incorporating this AWL is an optional action in AD 2008–10–07, Amendment 39–15513 (73 FR 25977, May 8, 2008).

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 258 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Replacement	10 to 14 [1]	$80	$16,800 to $36,200 [1].	$17,600 to $37,320 [1].	258	$4,540,800 to $9,628,560 [1].
Revision of Airworthiness Limitations section.	1	$80	None	$80	258	$20,640.

[1] Depending on airplane configuration.

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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2009–0906; Directorate Identifier 2009–NM–075–AD.

Comments Due Date

(a) We must receive comments by November 27, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–28A2261, dated February 19, 2009.

Note 1: This AD requires a revision to a certain operator maintenance document to include new inspections. Compliance with these inspections is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these limitations, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 43.16 and 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent damage to the fuel pumps caused by electrical arcing that could introduce an ignition source in the fuel tank which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replacement

(g) Within 60 months after the effective date of this AD: Replace the power control relays for the main tank fuel boost pumps and jettison pumps, and the center tank scavenge pump, as applicable, with new relays having a ground fault interrupt feature, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–28A2261, dated February 19, 2009.

Maintenance Program Revision

(h) Concurrently with the actions required by paragraph (g) of this AD: Revise the maintenance program by incorporating the applicable information in paragraphs (h)(1) and (h)(2) of this AD. The inspection interval for AWLs 28–AWL–23, 28–AWL–28, and 28–AWL–29 starts on the date the replacement required by paragraph (g) of this AD is done.

(1) For Model 747–400, 747–400D, and 747–400F series airplanes: Incorporate new airworthiness limitations 28–AWL–28 and 28–AWL–29 of Subsection D, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS,'' of Boeing 747–400 Maintenance Planning Data (MPD) Document, Document D621U400–9, Section 9, Revision April 2008. (These AWLs were first introduced in Revision October 2007 of the MPD document.)

(2) For Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SP, and 747SR series airplanes: Incorporate new airworthiness limitation 28–AWL–23 of Subsection D, ''AIRWORTHINESS LIMITATIONS—SYSTEMS,'' of Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–13747–CMR, Revision March 2008. (This AWL was first introduced in Revision September 2007 of the AWLs/CMRs document.)

No Alternative Inspection or Inspection Intervals

(i) After accomplishing the action required by paragraph (h) of this AD, no alternative inspections or inspection intervals may be used, unless the inspections or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), 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:* Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on September 25, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–24490 Filed 10–9–09; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB87

Electronic Filing of Financial Reports and Notices

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend certain of its regulations in connection with electronic filing of financial reports and other notices (''Proposal''). The Proposal would broaden the language in the Commission's regulations applicable to electronic filings of financial reports to clarify that, to the extent a futures commission merchant (''FCM'') submits a Form 1–FR to the Commission electronically, it may do so using any user authentication procedures established or approved by the Commission. The Proposal also would permit registrants to electronically submit filings in addition to financial reports, including an election to use a non-calendar fiscal year, requests for extensions of time to file uncertified financial reports and ''early warning'' notices required under Commission regulations. In connection with the filing of financial reports, the Commission also is proposing to specify, consistent with other requirements and existing practice, that a statement of income and loss is included as a required part of the non-certified 1–FR filings for FCMs and introducing brokers (''IBs''). The Commission also is proposing to require more immediate, but less prescriptive, documentation regarding a firm's capital condition when a firm falls below its required minimum adjusted net capital. Finally, the Commission is proposing several other minor amendments to correct certain outdated references and to make other clarifications to existing regulations.

DATES: Comments must be received on or before November 12, 2009.

ADDRESSES: You may submit comments, identified by RIN 3038–AB87, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/search/index.jsp.* Follow the instructions for submitting comments.
- *E-mail: secretary@cftc.gov.* Include ''Electronic Filing Amendments'' in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as Mail above.

All comments received will be posted without change to http://www.cftc.gov, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Thelma Diaz, Associate Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202–418–5137; facsimile number: 202–418–5547; and electronic mail: *tdiaz@cftc.gov,* or Lawrence T. Eckert, Special Counsel, Division of Clearing and Intermediary Oversight, 140 Broadway, New York, New York 10005. Telephone number (646) 746–9704; and electronic mail: *leckert@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 4f(b) of the Commodity Exchange Act, as amended (the ''Act'') authorizes the Commission to impose by regulation minimum financial and related reporting requirements on futures commission merchants (''FCMs'') and introducing brokers (''IBs'').[1] Commission Regulation 1.10 sets forth the financial reporting requirements for FCMs and IBs.[2] This regulation includes a requirement for FCMs and IBs to file annual financial statements that have been certified by an independent public accountant in accordance with Regulation 1.16. Regulation 1.10 also requires generally that FCMs file with the Commission non-certified Form 1–FR–FCM financial reports each month and that IBs file non-certified Form 1–FR–IB financial

[1] The Act is codified at 7 U.S.C. 1 *et seq.* (2009), and section 4f(b) of the Act is codified at 7 U.S.C. 6f(b). The Commission's regulations cited in this proposed rulemaking may be found at 17 CFR Ch. 1 (2009).

[2] For simplicity, references in this **Federal Register** release to IBs in connection with financial reporting and notice requirements are intended to refer to IBs that are not operating pursuant to a guarantee agreement.

reports semiannually.[3] Commission Regulation 1.12 requires FCMs, IBs and applicants for registration thereof to provide notice of a variety of predefined events as or before they occur.[4]

The Commission amended Regulation 1.10 in 1997 to provide for the first time the regulatory means for FCMs and IBs to file financial reports electronically with the Commission.[5] Regulation 1.10(c)(2) permits FCMs to file non-certified financial reports with the Commission via electronic transmission using a Commission-assigned personal identification number (''PIN''). Regulation 1.10(b)(2)(iii) requires FCMs to continue to file certified financial reports in paper form, but requires IBs to file such certified reports electronically in accordance with procedures adopted by the National Futures Association (''NFA'').[6]

FCMs that file their non-certified financial reports electronically with the Commission currently do so through WinJammer,™ a software application initially developed jointly by the Chicago Mercantile Exchange (''CME'') and the Chicago Board of Trade (''CBT''). The WinJammer™ Group[7] has licensed or otherwise provided application access to a number of SROs and regulatory agencies, including the Commission. IBs file financial reports with NFA through NFA's ''EasyFile'' system, which was developed by NFA as an internet-based alternative to WinJammer.™

The WinJammer™ Group currently is working on a new release of its application that would, among other things, move toward an internet-based approach to electronic filing of documents. It is envisioned that security access to the updated WinJammer™ application will no longer require a PIN, but rather will use a username/password combination for authentication. The new application is expected to provide a number of advancements over the current software, including the ability for FCMs to file notices on a central server to be maintained by the WinJammer™ Group. The use of a central server-approach will facilitate greater filing efficiency by enabling an FCM to make a single electronic filing to the server. The filing would be available to and would be downloaded by the software of the Commission, NFA and/or the relevant SRO, as applicable. The registrant would be responsible to check its WinJammer™ account for confirmation that the filing had in fact been received by the intended recipients. Currently, FCMs must make separate electronic filings with each relevant party.

II. Proposed Rule Amendments

A. Electronic Filing Issues

Commission Regulation 1.10(c) generally sets forth the provisions governing where and how the financial reports required to be filed by FCMs and IBs under Regulation 1.10 must be filed. Regulation 1.10(c)(1) indicates with whom reports should be filed. Regulation 1.10(c)(2) addresses the method, rather than the location of filing and provides that certain non-certified financial reports may be submitted to the Commission via electronic transmission using a Commission-assigned personal identification number. Electronic submission of certified financial reports is addressed in Regulation 1.10(b)(2)(iii). This section provides that FCMs must file certified financial reports in paper form and IBs must file such reports electronically in accordance with electronic filing procedures established by NFA.

For clarification and ease of reading, the Proposal would move Regulation 1.10(b)(2)(iii) into a new subparagraph of Regulation 1.10(c)(2). Regulation 1.10(c)(2) would be amended as discussed below and divided into 2 new subparagraphs: Subparagraph (c)(2)(i) would address electronic filing by FCMs with the Commission and subparagraph (c)(2)(ii) would address electronic filings with NFA by IBs and by applicants for registration as IBs and FCMs.

Regulation 1.10(c)(2) currently provides that non-certified financial reports may be submitted to the Commission ''in electronic form using a Commission assigned Personal Identification Number, and otherwise in accordance with instructions issued by the Commission * * *.'' As discussed above, the anticipated changes to the user authentication process for WinJammer™ users would no longer utilize a PIN. Accordingly, the Commission is proposing to broaden the language in the regulation relating to user authentication. In addition, the Commission is proposing to permit any filing or other notice submitted under the regulation to be transmitted electronically, rather than limiting such submission to financial reports as under the current regulation. This would enable FCMs to electronically file, for example, an election to use a fiscal year other than a calendar year under Regulation 1.10(e) or a request for an extension of time to file uncertified financial reports under Regulation 1.10(f). As amended, Regulation 1.10(c)(2)(i) would provide that ''[except with respect to the filing of certified financial reports which must be filed in paper form], all filings or other notices or applications prepared by a futures commission merchant pursuant to [Regulation 1.10] may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instruction issued by or approved by the Commission, if the futures commission merchant or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report.'' The Commission also would revise the instructions to Form 1–FR–FCM to reflect this change. Regulation 1.10(c)(2)(ii) would provide that ''[except with respect to the filing of certified FOCUS reports by a registered broker or dealer with the SEC], all filings or other notices or applications prepared by an introducing broker or applicant for registration as an introducing broker or futures commission merchant * * * must be

[3] Commission Regulation 1.10(h) permits a registrant that also is registered as a securities broker-dealer with the Securities and Exchange Commission (''SEC'') to file a copy of its Financial and Operational Combined Uniform Single Report (''FOCUS'') with the Commission in lieu of Form 1–FR.

[4] For example, Regulation 1.12(a) requires immediate telephonic notice, to be confirmed in writing by facsimile, when a registrant's (or applicant's) adjusted net capital falls below that required by Regulation 1.17. Other provisions of Regulation 1.12 require notification to the Commission for certain ''early warning'' events. Regulation 1.12(b), for example, requires notification by a registrant or applicant if such entity's adjusted net capital drops below a specified threshold.

[5] See 62 FR 10441 (March 7, 1997) (a technical amendment to the final rules is found at 62 FR 33007 (June 18, 1997)). Many firms were already filing financial reports electronically with their self regulatory organizations (''SROs'') at this time pursuant to SRO rules approved by the Commission.

[6] The Commission approved on an expedited basis, effective June 30, 2004, NFA rule amendments which require that IBs submit non-certified Forms 1–FR–IB or FOCUS reports electronically using NFA's EasyFile electronic filing system. On November 22, 2006, in response to a petition by NFA, the Commission adopted amendments to its regulations that effectively provided NFA with the ability to further expand its electronic financial report filing requirements applicable to IBs to include mandatory electronic filing of certified financial reports. 71 FR 54789 (Sep. 19, 2006). Although submissions by IBs of certified Form 1–FR–IB must be made electronically, NFA has not yet mandated electronic filing of certified FOCUS reports by IBs registered as securities brokers or dealers.

[7] The ''WinJammer™ Group'' consists of the CME, CBT, and NFA, which joined the group in 2000.

filed electronically in accordance with electronic filing procedures established by the National Futures Association * * *.''

Regulation 1.10(d)(4)(iii) provides that with respect to the electronic submission of a Form 1–FR, the transmission must be accompanied by the PIN or other user authentication assigned to the authorized signer under procedures established or approved by the Commission, and the use of such PIN or other user authentication will substitute for the manual signature of the authorized signer for the purposes of making the oath or affirmation required to accompany the filing of Form 1–FR. In light of the amendments to Regulation 1.10 discussed above related to user authentication procedures, the Proposal would delete from Regulation 1.10(d)(4)(iii) references to the use of a PIN.

Commission Regulation 1.12 requires FCMs, IBs and applicants for registration thereof to provide notice of a variety of predefined events as or before they occur.[8] The regulation generally requires such notices to be provided in writing by facsimile and, in certain cases, written notice must be preceded by immediate telephonic notice. Regulation 1.12(i) provides the procedures for filing notices under Regulation 1.12. In light of the anticipated changes to the WinJammer™ application, the successful implementation in the past of the electronic filing of Form 1–FR with the Commission and the potential benefits in terms of efficiency and paper reduction, the Commission is proposing to amend Regulation 1.12(i) to allow FCMs and IBs to submit electronically filings otherwise required to be submitted in writing via facsimile under Regulation 1.12.[9] The Proposal would add new subparagraph 1.12(i)(3) which would provide that ''[e]very notice or report required to be provided in writing under [Regulation 1.12] may, in lieu of facsimile, be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission.'' An electronic submission would be required to clearly indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing would constitute and become a substitute for the manual signature of the authorized signer.

B. Income Statement Filing Requirement

Commission Regulation 1.10(d) sets forth the content requirements for financial reports filed with the Commission: Regulation 1.10(d)(2) applies to certified financial reports and Regulation 1.10(d)(1) applies to non-certified financial reports.

Certified financial reports are required to include, among other things, ''statements of income (loss)'' pursuant to Regulation 1.10(d)(2)(ii). This requirement is not currently included as part of Regulation 1.10(d)(1) in connection with the filing of non-certified financial reports. In practice, however, FCMs and IBs typically include such statements with all financial report filings made with the Commission, whether or not such reports are required to be certified. FCMs that are also registered with the SEC as broker-dealers and that carry or clear customer accounts already are required to file with their designated examining authority an income statement as part of their monthly FOCUS filing.[10] Other FCMs and IBs, while not necessarily required to file these statements, must nonetheless compute the firm's income and loss on a monthly basis (or semiannual basis in the case of IBs) in order to appropriately complete other relevant portions of Form 1–FR or FOCUS. Both Form 1–FR and FOCUS already are formatted to accept the reporting of income and loss data electronically.

The income statement is an integral part of the financial report that the Commission believes should be available for review along with other relevant financial data filed on an interim basis. Additionally, requiring the filing of such statements should not add any additional burden to registrants. In fact, as mentioned, substantially all FCMs and IBs already include such statements as part of their non-certified financial reports filed with the Commission. Accordingly, the Commission is proposing to amend Regulation 1.10(d)(1)(ii) to require ''statements of income (loss)'' to be included as part of FCM and IB non-certified financial report filings. By requiring that firms file an income statement with their non-certified financial reports as well as with their annual certified report, the amended rule would ensure that Commission staff receive more current information and have the ability to review this information relating to a firm's financial health more than once a year. This amendment would not affect the ability of a broker-dealer to file with the Commission in accordance with Regulation 1.10(h) the FOCUS report under the Securities and Exchange Act of 1934, including the income statement currently provided in that report.[11] Further, as is true of such statements filed as part of a certified financial report, income statements included as part of a non-certified 1–FR or FOCUS filing would be afforded nonpublic treatment pursuant to Commission Regulation 1.10(g).

C. Net Capital Undercapitalization Documentation

The Commission is proposing to amend Regulations 1.12(a)(2) and (a)(3) to require more immediate, but less prescriptive, reporting to the Commission when a registrant or applicant falls below its minimum net capital requirement. Regulation 1.12(a) requires a registrant or applicant for registration as an FCM or IB that knows or should have known that its adjusted net capital is less than the minimum required by the Commission or by its designated self-regulatory organization (''DSRO'') to provide notice of such event immediately by telephone and confirm such telephonic notice in writing by facsimile. Regulation 1.12(a)(2) further requires that, within 24 hours thereafter, the registrant (or applicant) must file certain financial records with the Commission. Specifically, an FCM (or applicant) is required to file: (1) A statement of financial condition; (2) a statement of the computation of its minimum capital requirements; (3) the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts; and (4) the statement of secured amounts

[8] See footnote 4, above.

[9] IBs file notices under Regulation 1.12 with NFA pursuant to NFA rules. NFA has indicated that it intends to make changes to the EasyFile system and/or NFA rules, as may be necessary to facilitate the electronic filing by IBs of notices or other information permitted to be submitted electronically by the Proposal but currently filed with NFA in paper form.

[10] Non-clearing broker-dealers file FOCUS, including the statement of income (loss), on a quarterly basis.

[11] Under SEC Regulation 17a–5 and rules of applicable self-regulatory organizations, certain securities brokers or dealers may include as part of their quarterly FOCUS report filings a consolidated Statement of Income (Loss) for the relevant quarter rather than a Statement of Income (Loss) for the month for which the report is being filed (i.e., March, June, September or December). Such broker-dealers that also are registered as FCMs would file these same reports with the Commission. The Commission wishes to make clear that an otherwise complete FOCUS report filing made with the Commission that includes such a consolidated Statement of Income (Loss) would be deemed an acceptable filing in accordance with Commission Regulation 1.10(h).

and funds held in separate accounts for foreign futures and foreign options customers. Regulation 1.12(a)(3) requires an IB (or applicant) to file a statement of financial condition and a statement of the computation of its minimum capital requirements. All statements under Regulations 1.12(a)(2) and (a)(3) must be prepared as of the date the registrant's or applicant's adjusted net capital was below its minimum requirement.

When a firm falls below its minimum adjusted net capital requirement, the Commission's interest is to understand fully the circumstances that gave rise to the reduction in capital and to ensure that there are no imminent concerns regarding the firm's ability to meet its obligations to the market or customers, or to otherwise continue normal business operations. The statements required by the current regulation help provide a picture of a firm's financial position as of the time such statements are prepared. The regulations, however, currently allow up to 24 hours from the receipt of original notice of a net capital deficiency for such documentation to be provided. In practice, firms that notify the Commission of a fall below minimum net capital under Regulation 1.12(a) often simultaneously provide written information to the Commission sufficient to evidence the firm's then-current capital condition. Such information has not always taken the specific form prescribed in the regulation, however. Upon receipt of information from a registrant, Commission staff members have requested further information as determined appropriate and necessary in the circumstances. Firms generally have been prompt in providing such data.

The Commission has found that receiving more immediate information regarding a firm's capital condition better satisfies the Commission's interests and typically is of greater benefit than obtaining documentation in the specific form currently prescribed at the expense of a time delay. Accordingly, the Commission is proposing to amend Regulation 1.12(a) consistent with this practice. Under the Proposal, a firm must continue to provide immediate telephonic notice, confirmed in writing, in the event that its adjusted net capital falls below its required minimum. Paragraph 1.12(a)(2) would be amended to require that together with such initial telephonic notice and written confirmation, a firm must provide ''documentation in such form as necessary to adequately reflect the firm's capital condition as of any date such person's adjusted net capital is less than the minimum required.'' [12] Thus, a firm would be required to provide documentation regarding its capital condition at the same time as it provides its notice and confirmation of a capital deficiency to the Commission. The amended regulation would, however, provide greater flexibility with respect to the form such documentation must take, allowing any documentation that adequately reflects the firm's capital condition. The Commission envisions that such adequate documentation would at a minimum specify the firm's adjusted net capital requirement and actual adjusted net capital for any date during which the firm fell below its regulatory requirement. By requiring documentation as of ''any'' date that adjusted net capital is less than the required minimum, the amended regulation makes clear that where a firm is undercapitalized on more than one day, documentation related to all such time must be provided. The amended regulation also would require a firm to provide similar documentation to that initially provided for any other days the Commission may request.[13] Regulation 1.12(a)(3), which provides supplementary documentation requirements for IBs, would be deleted because amended Regulation 1.12(a)(2) would subsume this section.

As a corollary to the amendment to Regulation 1.12(a)(2), the Commission is proposing to amend Regulation 1.12(i)(1). This section addresses the process for filing notices under Regulation 1.12 and currently requires, among other things, that the documentation required under Regulations 1.12(a)(2) and (a)(3) be filed in accordance with the provisions of section 1.10(d), which specifies the required content of financial reports. This requirement is no longer necessary as the specific financial statements currently referenced in Regulation 1.12(i)(1) would no longer be required under the Proposal. Accordingly, the Proposal would delete this requirement. Documentation required to be provided under amended Regulation 1.12(a)(2) would be submitted either by facsimile or electronically pursuant to amended Regulation 1.12(i)(3).

[12] This amendment is consistent with SEC Regulation 17a–11 which requires a broker or dealer whose net capital falls below its required minimum to give notice of the deficiency that same day, specifying the broker or dealer's net capital requirement and its current amount of net capital.

[13] Regulation 1.10(b)(4) already provides that representatives of the Commission may upon written notice require Form 1–FR or other financial information at such times as specified by the representative.

D. Miscellaneous Amendments to Regulations

The Commission is proposing several minor amendments to Regulations 1.10 and 1.12 to correct certain outdated references and to otherwise clarify existing regulations. Regulation 1.10(c)(1) states generally that reports filed by IBs pursuant to paragraph (b)(2)(i) or (b)(2)(ii) (*i.e.,* the filing provisions for non-certified and certified reports by registered IBs) are filed only with NFA. Other reports are generally required to be filed with the relevant regional office of the Commission and the registrant's SRO, except that an applicant for registration is required to file reports with the relevant regional office of the Commission and NFA. The Commission has issued orders delegating to NFA the processing of application requests by FCMs and IBs, and in practice almost all financial reports from applicants for registration as FCMs or IBs are filed with the NFA only.[14] Accordingly, the Commission is proposing to amend the language of Regulation 1.10(c)(1) to delete reference to an applicant's need to file financial reports with a regional office of the Commission.

Similarly, Regulation 1.12(i)(1) currently indicates that an applicant for registration as an FCM must file any notices required under Regulation 1.12 with, among others, the regional office of the Commission that has jurisdiction over the state in which the applicant's principal place of business is located and with the Commission's principal office in Washington, DC. The proposed, amended language in Regulation 1.12(i)(1) would make clear that an applicant for registration as an FCM would file such notices only with NFA and that such notices need not be filed with the Commission. The amended regulation would also make clear that any notice or report filed with the National Futures Association will be deemed to be filed with, and to be the official record of, the Commission.

The Commission also is proposing the following minor wording changes to Regulation 1.10(c)(1) for the purposes of consistency with other provisions of the regulations and/or general clarification as follows: (1) The reference to ''[a] report filed by an [IB] pursuant to paragraph (b)(2)(i) or (b)(2)(ii)'' would be amended to clarify that ''a report'' in this context is meant to refer to Form 1–

[14] The Commission order delegating to NFA the registration function for IB applicants is published at 48 FR 35158 (August 3, 1983), and the order delegating the registration function for FCM applicants is published at 49 FR 39593 (October 9, 1984).

FR; (2) the reference to subparagraphs (b)(2)(i) and (b)(2)(ii) would be amended for simplicity to refer only to paragraph (b)(2) in general; and (3) the language of paragraph 1.10(c)(1) would be amended to make clear that it is intended to cover not only ''reports'' but all reports and other ''information.'' The Commission, NFA and SROs are permitted under Regulation 1.10(b)(4) to make a written request of an FCM or IB for information as they may determine is necessary. The proposed amendment would clarify that the guidance provided in Regulation 1.10(c)(1) regarding with whom filings should be made would govern the filing of such requested information.

Regulation 1.10(b)(2)(i) provides generally that an IB must file a Form 1–FR–IB semiannually as of the middle and close of each fiscal year ''unless the [IB] elects * * * to file a Form 1–FR–IB semiannually as of the middle and close of each calendar year.'' Regulation 1.10(b)(2)(ii) generally states further that an IB must file a certified 1–FR–IB as of the close of its fiscal year ''(even if it files semiannual reports on a calendar year basis).'' Prior to 1993, Commission regulations required IBs to file Form 1–FR on a quarterly rather than a semiannual basis, unless the IB's SRO permitted semiannual filing. The regulations also allowed IBs to elect to file reports on a calendar year basis rather than on a fiscal year basis.[15] This election was separate from the election to use a fiscal year other than a calendar year, which is still permitted to be made under Regulation 1.10(e)(1). The Commission's regulations no longer provide a separate option to elect to file on a calendar year rather than a fiscal year basis and, accordingly, the Commission is proposing to delete the language quoted above referencing such an election.

Regulation 1.10(b)(3) provides generally that an FCM or IB can satisfy the 1–FR filing requirements applicable to them set forth in Regulations 1.10(b)(1) and (2), respectively, if the FCM or IB is a member of a DSRO and satisfies the minimum financial standards and reporting requirements established by rules of the DSRO which have been approved ''after the effective date of these regulations by the Commission * * *.'' The language ''after the effective date of these regulations'' is no longer relevant and, accordingly, the Commission is proposing to delete the language.

Finally, for purposes of clarification and consistency with the Commission's regulations the Commission is proposing to amend language within regulation 1.10(h) that references ''NFA'' by spelling out ''National Futures Association.''

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The amendments proposed herein would affect FCMs and IBs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.

With respect to IBs, the Commission stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[16] The Proposal will not place any additional burdens on IBs that are small businesses because all such parties, if any, already are subject to the financial reporting and notice requirements under Regulations 1.10 and 1.12 and already file financial reports through NFA's electronic filing system. Additionally, although the Commission is proposing to add a requirement to include statements of income and loss as part of non-certified financial report filings, substantially all IBs already are filing this data in practice and, in any event, must compute the relevant income and loss data (although not currently required to be provided in a separate income statement) in order to complete Commission Form 1–FR or the SEC FOCUS report, as applicable, under the Commission's regulations.[17] Accordingly, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these proposed rule amendments will not have a significant economic impact on a substantial number of small entities. However, the Commission invites the public to comment on this finding.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [18] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Proposal does not require a new collection of information on the part of any entities subject to the proposed amendments. The amendments would, if adopted in final form, provide FCMs and IBs with an alternative method for submitting certain data. The amendments proposed under Regulation 1.12(a)(2) would provide FCMs and IBs with a more flexible approach to providing documentation if a registrant's adjusted net capital fell below its minimum requirement, but would not require a new collection or affect the collection burden, as discussed below. Additionally, although the Commission is proposing to add a requirement to include statements of income and loss as part of non-certified financial report filings, substantially all registrants that file financial reports with the Commission already are filing this data.

Collection of Information

(Regulations and Forms Pertaining to the Financial Integrity of the Marketplace, OMB Control Number 3038–0024). Although the amendments if promulgated in final form would alter the method of collection of some of the information required in the above referenced collection, would provide a simpler approach of documenting compliance with certain regulatory obligations, and would add a requirement to include an additional statement as part of non-certified financial report filings, the estimated burden associated with this collection is not expected to increase or decrease as a result. The Commission is proposing to add a requirement for certain registrants to include statements of income and loss as part of their monthly non-certified financial report filings with the Commission. Substantially all registrants that file financial reports with the Commission already are filing this data in practice, however. Additionally, to the extent a firm did not already file this report with the Commission monthly, it would, nonetheless, need to have this information computed and available in order to file other currently required reports. Filing the information with the Commission would require nothing more than inputting a few extra data items into a form already required to be filed. Accordingly, the burden associated with such a filing already is included in the estimated burden for this collection. With respect to proposed

[15] See 48 FR 35248 (Aug. 3, 1983) (adopting registration requirements and procedures for IBs, among others).

[16] See 48 FR 35248, 35275–78 (Aug. 3, 1983).

[17] See Commission Regulations 1.10(b)(2) and 1.10(h) (requiring IBs to file with the Commission Form 1–FR–FCM or, as an alternative in the case of a registered broker or dealer with the SEC, the FOCUS report).

[18] 44 U.S.C. 3507(d).

rule amendments that would permit certain entities to file electronically reports and notices that currently are filed in paper form, all such affected entities currently must complete these same reports and notices. The amendments would simply substitute electronic submission for the mailing of a paper filing. With respect to rule amendments concerning the documentation required of FCMs and IBs that fall below their required net capital requirements, these amendments would provide registrants with more flexibility in choosing the form documentation will take when providing the Commission with required information. The Commission believes, however, that the burden associated with preparing such documentation would be equivalent to that required under current regulations. Additionally, although the amendments allow the Commission to request registrants to provide additional documentation on request, this is simply a clarification of, rather than a change to, current regulations and practice and would not affect the collection burden. Accordingly, for purposes of the PRA, the Commission certifies that the proposed rule amendments, if promulgated in final form, would not impact the total annual reporting or recordkeeping burden associated with the above-referenced collection of information, which has been approved previously by the Office of Management and Budget (''OMB''). Pursuant to the PRA, the Commission has submitted a copy of this section to OMB for its review.

The Commission considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, utility, and clarity of the information to be collected; and

Minimizing 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.

Organizations and individuals desiring to submit comments on the information collection should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Commission. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 90 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. This does not affect the deadline for the public to comment to the Commission on the proposed regulations. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 or (202) 418–5160.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the Commodity Futures Modernization Act, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. The Commission, in its discretion, can choose to give greater weight to any one of the five enumerated areas and determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has considered the costs and benefits of this proposed regulation in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* The proposed amendments should not affect the protection of market participants and the public as they generally provide an alternate method of delivery of information contained in certain reports and notice filings currently required or permitted by Commission regulations but do not substantively alter the character of such information.

2. *Efficiency and competition.* The Commission anticipates that the proposed amendments will benefit efficiency by permitting the Commission and NFA to streamline their processes for receiving financial reports and various notice filings from FCMs and IBs and providing greater flexibility to registrants in providing certain required documentation to the Commission. The proposed amendments are considered by the Commission as benefiting efficiency and not impacting competition.

3. *Financial integrity of futures markets and price discovery.* The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of futures markets or the price discovery function of such markets.

4. *Sound risk management practices.* The proposed amendment should have no effect, from the standpoint of imposing costs or creating benefits, on sound risk management practices.

5. *Other public interest considerations.* The Commission believes that the proposed regulations are beneficial in that they should encourage improvements to future systems of electronic authorization and streamline the timeliness of delivery and electronic accessibility of notices to and by the Commission and NFA as well as allow the Commission and NFA to retain such reports in a more streamlined manner.

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby proposes to amend 17 CFR part 1 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24, as amended by the Commodity Futures Modernization Act of 2000, appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Section 1.10 is amended by removing paragraph (b)(2)(iii) and revising paragraphs (b)(2)(i), (b)(2)(ii)(A), (b)(3), (c)(1) and (c)(2), (d)(1)(ii), (d)(4)(iii), and (h) to read as follows:

§ 1.10 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(2)(i) Except as provided in paragraphs (b)(3) and (h) of this section, and except for an introducing broker operating pursuant to a guarantee agreement which is not also a securities broker or dealer, each person registered as an introducing broker must file a Form 1–FR–IB semiannually as of the middle and the close of each fiscal year. Each Form 1–FR–IB must be filed no later than 17 business days after the date for which the report is made.

(ii)(A) In addition to the financial reports required by paragraph (b)(2)(i) of this section, each person registered as an introducing broker must file a Form 1–FR–IB as of the close of its fiscal year which must be certified by an independent public accountant in accordance with § 1.16 no later than 90 days after the close of each introducing broker's fiscal year: Provided, however, that a registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer must file this report not later than the time permitted for filing an annual audit report under § 240.17a–5(d)(5) of this title.

* * * * *

(3) The provisions of paragraphs (b)(1) and (b)(2) of this section may be met by any person registered as a futures commission merchant or as an introducing broker who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations, or resolutions and approved by the Commission pursuant to Section 4f(b) of the Act and § 1.52: *Provided, however,* That each such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

* * * * *

(c) *Where to file reports.* (1) Form 1–FR filed by an introducing broker pursuant to paragraph (b)(2) of this section need be filed only with, and will be considered filed when received by, the National Futures Association. Other reports or information provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located and by the designated self-regulatory organization, if any; and reports or other information required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association. Any report or information filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

(2)(i) Except as provided in the last sentence of this subparagraph, all filings or other notices prepared by a futures commission merchant pursuant to this section may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the futures commission merchant or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report. A Form 1–FR required to be certified by an independent public accountant in accordance with § 1.16 which is filed by a futures commission merchant must be filed in paper form and may not be filed electronically.

(ii) Except as provided in paragraph (h) of this section, all filings or other notices or applications prepared by an introducing broker or applicant for registration as an introducing broker or futures commission merchant pursuant to this section must be filed electronically in accordance with electronic filing procedures established by the National Futures Association. In the case of a Form 1–FR–IB that is required to be certified by an independent public accountant in accordance with § 1.16, a paper copy of any such filing with the original manually signed certification must be maintained by the introducing broker or applicant for registration as an introducing broker in accordance with § 1.31.

* * * * *

(d) * * *

(1) * * *

(ii) Statements of income (loss) and a statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

* * * * *

(4) * * *

(iii) In the case of a Form 1–FR filed via electronic transmission in accordance with procedures established by or approved by the Commission, such transmission must be accompanied by the user authentication assigned to the authorized signer under such procedures, and the use of such user authentication will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in this paragraph.

* * * * *

(h) *Filing option available to a futures commission merchant or an introducing broker that is also a securities broker or dealer.* Any applicant or registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b), (c), and (j) of this section) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS Report), in lieu of Form 1–FR; *Provided, however,* That all information which is required to be furnished on and submitted with Form 1–FR is provided with such FOCUS Report; and *Provided, further,* That a certified FOCUS Report filed by an introducing broker or applicant for registration as an introducing broker in lieu of a certified Form 1–FR–IB must be filed according to National Futures Association rules, either in paper form or electronically, in accordance with procedures established by the National Futures Association, and if filed electronically, a paper copy of such filing with the original manually signed certification must be maintained by such introducing broker or applicant in accordance with § 1.31.

* * * * *

3. Section 1.12 is amended by:

a. Revising paragraphs (a)(2) and (i)(1);

b. Removing paragraph (a)(3); and

c. Adding paragraph (i)(3).

The revisions and addition read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

(a) * * *

(2) Provide together with such notice documentation in such form as necessary to adequately reflect the applicant's or registrant's capital condition as of any date such person's adjusted net capital is less than the minimum required. The applicant or registrant must provide similar documentation for other days as the Commission may request.

* * * * *

(i)(1) Every notice and written report required to be given or filed by this section (except for notices required by paragraph (f) of this section) by a futures commission merchant or a self-regulatory organization must be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located, with the principal office of the Commission in Washington, DC, with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such registrant is a securities broker or dealer. Every notice and written report required to be given or filed by this section by an applicant for registration as a futures commission merchant must be filed with the National Futures Association (on behalf of the Commission), with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such applicant is a securities broker or dealer. Any notice or report filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

* * * * *

(3) Every notice or report required to be provided in writing to the Commission under this section may, in lieu of facsimile, be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer.

* * * * *

Issued in Washington, DC on October 6, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–24480 Filed 10–9–09; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0620; FRL–8957–1]

Revisions to the California State Implementation Plan, San Diego Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Diego Air Pollution Control District portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from cold solvent cleaning and vapor degreasing operations. We are proposing to approve two local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by November 12, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0620, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SDAPCD Rule 67.6.1 and SDAPCD Rule 67.6.2. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 21, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–24454 Filed 10–9–09; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 74, No. 196

Tuesday, October 13, 2009

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 6, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Vegetable Surveys.

OMB Control Number: 0535–0037.

Summary of Collection: The primary function of the National Agricultural Statistics (NASS) is to prepare and issue current official state and national estimates of crop and livestock production. Vegetable estimates are an integral part of this function. The vegetable program is complex in that some crops are processing only, some are fresh market only, and others are dual crops (both processing and fresh market). Vegetable processors are surveyed the first week of April for their intended acreage of vegetables for processing and the first week of July for acreage contracted. The fresh market vegetable program consists of weekly estimates during the growing season for tomatoes in Florida. NASS will collect information using surveys.

Need and Use of the Information: NASS will collect information to estimate acreage planted and harvested, production, price, and utilization for the various crops. The estimates provide vital statistics for growers, processors, and marketers to use in making production and marketing decisions.

Description of Respondents: Farms; business or other for-profit.

Number of Respondents: 31,120.

Frequency of Responses: Reporting: Annually; other (seasonally).

Total Burden Hours: 4,640.

National Agricultural Statistics Service

Title: 2009 Census of Horticultural Specialties.

OMB Control Number: 0535–0236.

Summary of Collection: The census of horticultural specialties is one of a series of census special studies for the Census of Agriculture which provides more detailed statistics relating to a specific subject. The census of horticultural specialties is an integral part of the 2007 Census of Agriculture and is authorized by the Food, Conservation, and Energy Act of 2008 (Title X—Horticulture and Organic Agriculture). The Census of Horticultural Specialties has been conducted approximately every 10 years to show how the industry has changed over time. It was last conducted in 1998 for the reference period of 1997. Horticultural crops are high value crops which farmers could grow to diversify their farming operations. Using data from the 2007 Census of Agriculture, NASS will collect information from every respondent who reported production and sales of $10,000 or more of horticultural specialty crops, and is still in business in 2009.

Need and Use of the Information: NASS will collect information on the number and value of plants grown and sold, the value of land, buildings, machinery and equipment, selected production expenses, irrigation, marketing channels, hired labor, area used for production, and type of structure. Horticulture is one of the fastest growing segments in the agriculture sector. The primary objective of the horticultural specialties census is to obtain a comprehensive and detailed picture of the horticultural sector of the economy. Without the census of horticultural specialties, government policy makers and planners would lack valuable information needed to accomplish their missions.

Description of Respondents: Farms; business or other for-profit.

Number of Respondents: 37,700.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 46,405.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–24487 Filed 10–9–09; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Clear Prong Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Cascade Ranger District of the Boise National Forest will prepare an Environmental Impact Statement (EIS) for the Clear Prong Project. The entire project area is located in watersheds that drain into Clear Creek, which in turn drains into the North Fork of the Payette River downstream of Cascade Reservoir. The 11,056 acre project area is located 10 miles east of Cascade, Idaho, and about 120 miles

north of Boise, Idaho. The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decision-making process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision. At this time no public meetings to discuss the project are planned.

Proposed Action: Seven objectives have been identified for the project: (1) Move toward restoration of historic vegetative conditions by manipulating the forest structure, density, and species composition in order to accelerate development of larger tree size class stands and old forest habitat; (2) Consistent with Objective #1, reduce the level of heavy dwarf mistletoe infection in Douglas-fir trees where deemed necessary to accelerate development of larger tree size class stands and old forest habitat; (3) Move stands toward their historic conditions by reducing fuel loads and ladder fuels through the use of prescribed fire where such an action could be accomplished without substantial mortality of the overstory trees and where topographic features would make the use of prescribed fire a practical management action; (4) Improve the health, vigor, and sustainability of aspen clones by eliminating competing conifer and brush species; (5) Utilize wood products created by restoration treatments to support local and regional economies as an outcome of pursuing Objectives #1 and #2 above; (6) Reduce management-induced sediment and recurring maintenance needs, and address the intent of the TMDL, by graveling road surfaces and replacing under-sized culverts; and (7) Reduce the potential for sedimentation and future maintenance needs, and address the intent of the TMDL, by decommissioning roads not needed for the long-term management of the Forest.

The Proposed Action would implement silvicultural activities, including thinning of sub-merchantable trees, prescribed fire, and aspen enhancement on 2,204 acres. An estimated 8.4 MMbf would be removed using tractor/off-road jammer, skyline, and helicopter yarding systems. The Proposed Action would employ a variety of silvicultural prescriptions including commercial thin, commercial thin with prescribed fire, sanitation/improvement, sanitation/improvement with prescribed fire, individual tree selection, thinning of sub-merchantable trees, prescribed fire to abate natural fuels, and aspen enhancement activities.

The Proposed Action would restore an estimated 0.8 miles of the #409 road through maintenance activities to reduce sedimentation. Specifically, gravel would be applied to the surface of the #409 road from near the #409/#409D intersection to Clear Creek Summit. In addition, 12 under-sized culverts along the #409 road would be replaced with culverts sufficient in size to accommodate a 100-year flow event, and designed to allow fish passage where habitat exists upstream. Roughly 1.1 miles of temporary road would be constructed to facilitate harvest activities.

An estimated 4.4 miles of existing road (#405B, #405B2, #405C, #405D, and #417HX1) not needed for the long term management of the area would be decommissioned to reduce future maintenance needs and to reduce sedimentation. Decommissioned sections of these five roads would be removed from the transportation system.

Preliminary Issues: Preliminary concerns with the Proposed Action include potential impacts on water quality and terrestrial wildlife species.

Possible Alternatives to the Proposed Action: One alternative to the Proposed Action that has been discussed thus far is a no action alternative. Other alternatives will likely be developed as issues are identified and information received.

Decisions To Be Made: The Boise National Forest Supervisor will decide the following: (1) Should vegetation be managed within the project area at this time, and if so, which stands should be treated and what silvicultural systems applied? (2) Should temporary roads be built at this time, and if so, how many miles should be built and where should they occur within the project area? (3) Should existing classified roads within the project area receive maintenance activities to reduce sedimentation, and if so, where within the project area? (4) Should portions of roads #405B, #405B2, #405C, #405D, and #417HX1 be decommissioned at this time? (5) Based on the completed Clear Prong Project Roads Analysis, which roads should be adopted as the minimum transportation system? (6) What design features, mitigation measures, and/or monitoring should be applied to the project?

DATES: Comments concerning the proposed project and analysis are encouraged and should be postmarked or received within 30 days following publication of this announcement in the **Federal Register**.

ADDRESSES: Comments should be addressed to the Cascade Ranger District, ATTN: Keith Dimmett, P.O. Box 696, Cascade, ID 83611 or sent electronically to *comments-intermtn-bojse-cascade@fs.fed.us.* Electronic comments must be submitted in plain text or another format compatible with Microsoft Word. Comments may also be delivered to the above address during regular business hours of 8 a.m. to 4:30 p.m. Monday–Friday. Comments can also be submitted by phone at 208–382–7400 or FAX to 208–382–7480. Comments received in response to this request will be available for public inspection and will be released in their entirety if requested pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Further information can be obtained from Keith Dimmett at the address mentioned above or by calling 208–382 7400.

Schedule: Draft Environmental Impact Statement (DEIS), January 2010. Final Environmental Impact Statement (FEIS), April 2010.

SUPPLEMENTARY INFORMATION: An estimated 2,194 acres of the Peace Rock Inventoried Roadless Area (IRA) and an additional 252 acres of the Stony Meadows IRA lie within the Clear Prong Project Area. With the exception of a small portion of the prescribed fire, none of the activities associated with the Proposed Action would occur within either IRA.

The entire project area drains into Clear Creek which appears on the State of Idaho's 303(d) and 305(b) Integrated Report. The North Fork Payette River Subbasin Assessment and Total Maximum Daily Load (TMDL) was completed in July 2005 by the Idaho Department of Environmental Quality (IDEQ) and approved by the U.S. Environmental Protection Agency in August 2005. That document states that the beneficial uses of ''Upper Clear Creek'' (i.e. that portion that occurs within the project area) do not appear impacted, but may be threatened by increasing sediment levels.

The entire project area lies within Management Area 17 (North Fork Payette River), discussed on pages 111–290 through 111–301 in the Forest Plan.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental

review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the DEIS 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Cecilia R. Seesholtz, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709.

Dated: October 6, 2009.

Cecilia R. Seesholtz,

Forest Supervisor.

[FR Doc. E9–24523 Filed 10–9–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to NutriGrown, LLC of Baltimore, Maryland, an exclusive license to U.S. Patent Application Serial No. 11/504,401, ''Fertilizer Formulation for Reduction of Nutrient and Pesticide Leaching'', filed on August 14, 2006.

DATES: Comments must be received on or before November 12, 2009.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as NutriGrown, LLC of Baltimore, Maryland, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E9–24484 Filed 10–9–09; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Washington, DC, October 28–29, 2009. The purpose of the meeting is to discuss emerging issues in urban and community forestry, work on Council administrative items and hear public input related to urban and community forestry.

DATES: The meeting will be held on October 28–29, 2009, 9 a.m. to 5 p.m. or until Council business is completed.

ADDRESSES: The meeting will be held at the Franklin Court Building, Washington, DC, 1099 14th Street, NW., Suite 5500 W, Washington, DC, Phone: 202–273–4695. Written comments concerning this meeting should be addressed to Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Comments may also be sent via e-mail to *nstremple@fs.fed.us,* or via facsimile to 202–690–5792.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC. Visitors are encouraged to call ahead to 202–205–1054 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Those interested in attending should contact Nancy Stremple to be placed on the list at the lobby security desk. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff (201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, e-mail: *nstremple@fs.fed.us*) before or after the meeting. Public input sessions will be provided at the meeting.

Public comments will be compiled and provided to the Secretary of Agriculture along with the Council's recommendations.

Dated: September 28, 2009.

James E. Hubbard,

Deputy Chief, State and Private Forestry.

[FR Doc. E9–24607 Filed 10–9–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Solicitation of Applications (NOSA) for Inviting Rural Business Enterprise Grant Program Preapplications for Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the USDA Rural Development mission area, solicits applications of two individual grants: one single grant from the passenger transportation funds appropriated for the Rural Business Enterprise Grant (RBEG) program and another grant for Federally Recognized Native American Tribes' (FRNAT) from funds appropriated for the RBEG program. USDA Rural Development will administer these awards under the RBEG program and 7 U.S.C. 1932(c)(2) for fiscal year (FY) 2010. Historically, Congress has appropriated funding for these specific programs. This Notice is being issued prior to passage of a FY 2010 Appropriations Act, which may or may not provide an appropriation for these programs, to allow applicants sufficient time to leverage financing, submit applications, and give the Agency time to process applications within the 2010 fiscal year. A subsequent notice identifying the amount received in the appropriations will be published, if any. Each grant is to be competitively awarded to a qualified national non-profit organization. One grant is for the provision of technical assistance to rural transportation projects. The other grant is for the provision of technical assistance to rural transportation projects operated by FRNAT's only.

Expenses incurred in developing applications will be at the applicant's risk.

DATES: The deadline for receipt of preapplications in the USDA Rural Development State Office is December 14, 2009. Applications received at a USDA Rural Development State Office after that date will not be considered for FY 2010 funding.

ADDRESSES: Entities wishing to apply for assistance should contact the appropriate Rural Development State Office to receive copies of the application package. A list of the USDA Rural Development State Offices addresses and telephone numbers are as follows:

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905.

Arizona

USDA Rural Development State Office, 230 N. 1st Ave., Suite 206, Phoenix, AZ 85003, (602) 280–8701/TDD (602) 280–8705.

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848.

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2903/TDD (720) 544–2976.

Delaware-Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585.

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644.

Illinois

USDA Rural Development State Office 2118 West Park Court, Suite A Champaign, IL 61821 (217) 403–6200/TDD (217) 403–6240

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100/TDD (317) 290–3343.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858.

Kansas

USDA Rural Development State Office, 1303 S.W. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331.

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169.

Minnesota

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 W. Capitol Street. Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, 900 Technology Boulevard, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE

68508, (402) 437–5551/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222/TDD (775) 885–0633.

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554,

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3300/TDD (503) 414–3387.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320/TDD (801) 524–3309.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000/TDD (802) 223–6365.

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1550/TDD (804) 287–1753.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760.

West Virginia

USDA Rural Development State Office, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700/TDD (307) 233–6733.

FOR FURTHER INFORMATION CONTACT: The Rural Development State Office identified in this notice.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Solicitation Opportunity Title: Rural Business Enterprise Grants.

Announcement Type: Initial Solicitation Announcement.

Catalog of Federal Domestic Assistance Number: 10.769.

Dates: Application Deadline: Completed applications must be received in the USDA Rural Development State Office no later than December 14, 2009, to be eligible for FY 2010 grant funding. Applications received after this date will not be eligible for FY 2010 grant funding.

I. Funding Opportunity Description

The RBEG program is authorized by section 310B(c) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(c)). Regulations are contained in 7 CFR part 1942, subpart G. The primary objective of the program is to improve the economic conditions of rural areas. The program is administered on behalf of RBS at the State level by the USDA Rural Development State Offices. Assistance provided to rural areas under this program may include on-site technical assistance to local and regional governments, public transit agencies, and related non-profit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program will be made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. Information required to be in the application package includes Forms SF 424, ''Application for Federal Assistance;'' RD 1940–20, ''Request for Environmental Information;'' Scope of Work Narrative; Income Statement; Balance Sheet or Audit for previous 3 years; AD–1047, ''Debarment/Suspension Certification;'' AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion;'' AD–1049, ''Certification Regarding Drug-Free Workplace Requirements;'' Restrictions on Lobbying; RD 400–1, ''Equal

Opportunity Agreement;'' RD 400–4, ''Assurance Agreement;'' Letter stating Board authorization to obtain assistance; and Letter certifying citizenship, as referenced in 7 CFR 1942.307(b). For the FRNAT grant, which must benefit Federally Recognized Native American Tribes, at least 75 percent of the benefits of the project must be received by members of Federally Recognized Native American Tribes. The project that scores the greatest number of points based on the RBEG selection criteria and the discretionary points will be selected for each grant. Applications will be tentatively scored by the State Offices and submitted to the National Office for review, final scoring, and selection.

Applicants must be qualified national non-profit organizations with experience in providing technical assistance and training to rural communities for the purpose of improving passenger transportation service or facilities. To be considered ''national'' RBS requires a qualified organization to provide evidence that it operates rural transportation assistance programming in multiple States. There is not a requirement to use the grant funds in a multi-State area. Under this notice, grants will be made to qualified, private, non-profit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities.

Definitions

The definitions are published at 7 CFR 1942.304.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2010.

Total Funding: To be determined by appropriations bill, if any.

Approximate Number of Awards: Two

Average Award: Will be determined by amount received in appropriations, if any. This Notice will be amended to provide this information once an appropriation has been exacted.

Anticipated Award Date: January 26, 2010.

III. Eligibility Information

A. Eligible Applicants

To be considered eligible, an entity must be a private non-profit corporation serving rural areas. Grants will be competitively awarded to one or more qualified national organizations.

B. Cost Sharing or Matching

Matching funds are not required.

C. Other Eligibility Requirements

Applications will only be accepted from qualified national organizations to provide technical assistance for rural transportation.

D. Completeness Eligibility

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

IV. Fiscal Year 2010 Application and Submission Information

A. Address To Request Application Package

For further information, entities wishing to apply for assistance should contact the USDA Rural Development State Office identified in this Notice to obtain copies of the application package.

Applicants are encouraged to submit applications through the Grants.gov web site at: *http://www.grants.gov*. Applications may be submitted in either electronic or paper format. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov web site. Applications may not be submitted by electronic mail.

- When you enter the Grants.gov web site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You may submit all documents electronically through the Web site, including all information typically included on the application and all necessary assurances and certifications.
- After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- USDA Rural Development may request that the applicant provide original signatures on forms at a later date.
- If applicants experience technical difficulties on the closing date and are unable to meet the deadline, you may submit a paper copy of your application to your respective Rural Development State Office. Paper applications submitted to a Rural Development State Office must meet the closing date and local time deadline.

All applicants, whether filing applications through *http://www.Grants.gov* or by paper, must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or at *http://www.dnb.com*.

Please note that applicants can locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number or FedGrants Funding Opportunity Number, which can be found at *http://www.Grants.gov*.

B. Content and Form of Submission

An application must contain all of the required elements. Each application received in a USDA Rural Development State Office will be reviewed to determine if it is consistent with the eligible purposes contained in section 310B(c) of the CONACT. Each selection priority criterion outlined in 7 CFR 1942.305(b)(3), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 1942, subpart G, will be provided by any interested applicant making a request to a USDA Rural Development State Office listed in this notice.

All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the applications are submitted to the USDA Rural Development State Office. Multiple project applications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project.

For multiple-project applications, the average of the individual project scores will be the score for that application.

C. Submission Dates and Times

Application Deadline Date: December 14, 2009.

Explanation of Deadlines: Applications must be in the USDA Rural Development State Office by the deadline date.

V. Application Review Information

The National Office will score applications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G and will select a grantee subject to the grantee's satisfactory submission of the additional items required by 7 CFR part 1942, subpart G and the USDA Rural Development Letter of Conditions.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification for funding from the USDA Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applications will receive notification by mail. Grantees must further comply with applicable provisions of 7 CFR parts 3015, 3016, 3019, and 3052.

VII. Agency Contacts

For general questions about this announcement, please contact your USDA Rural Development State Office identified in this Notice.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0570–0022.

Nondiscrimination Statement:

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.''

Dated: September 23, 2009.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–24611 Filed 10–9–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: American Community Survey Methods Panel Tests.

Form Number(s): ACS–1, ACS–1(SP), ACS–1PR, ACS–1PR(SP), ACS CATI(HU), ACS CAPI(HU).

OMB Control Number: 0607–0936.

Type of Request: Revision of a currently approved collection.

Burden Hours: 92,422.

Number of Respondents: 169,667.

Average Hours per Response: 28 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the American Community Survey (ACS) Methods Panel tests.

Given the rapid demographic changes experienced in recent years and the strong expectation that such changes will continue and accelerate, the once-a-decade data collection approach to a census is no longer acceptable as a source for the housing and socio-economic data collected on the census long-form. To meet the needs and expectations of the country, the Census Bureau developed the ACS. This survey collects detailed socioeconomic data every month and provides tabulations of these data on a yearly basis. The ACS allows the Census Bureau to provide more timely and relevant housing and socio-economic data while also reducing operational risks in the census by eliminating the long-form historically given to one in every six addresses.

Full implementation of the ACS includes an annual sample of approximately three million residential addresses a year in the 50 states and the District of Columbia, and another 36,000 addresses in Puerto Rico. A sample this large allows for annual production and release of single-year estimates for areas with a population of 65,000 or more. Lower levels of geography require aggregates of three and five years' worth of data in order to produce estimates of comparable reliability to the census long-form. However, an ongoing data collection effort with an annual sample of this magnitude requires that the ACS continue research, testing and evaluations aimed at improving ACS questionnaires content and related data collection materials. In addition, the ACS Methods Panel during the 2010–2012 period may include testing methods for increasing survey and operational efficiencies; alternative methods or procedures may be developed and evaluated that could potentially reduce the overall survey cost, lessen respondent burden, and improve response rates. At this time, specific plans are in place to propose three methods panel tests: A content reinterview study, the 2010 ACS Content Test, and an Internet Mode Test. Since the ACS Methods Panel is designed to address emerging issues, we may conduct additional testing as needed. Testing would focus on methods for reducing data collection costs or testing new questions that have an urgent need to be included on the ACS.

During Census 2000, a content reinterview study (CRS) was conducted in conjunction with the long form, which the ACS now replaces. The decennial CRS was an evaluation of the quality of the data collected in the census, focusing on response bias and simple response variance (reliability). The Census Bureau proposes to design and implement a CRS to look at the current ACS production questions on an ongoing basis. This will allow for the identification of problems with reliability. Results from the CRS will provide data users with concrete data quality measures (such as reliability or bias measures) for each ACS item.

The ACS CRS will allow the Census Bureau to continuously monitor the data quality of the ACS and identify questions that are currently unreliable or that may become unreliable due to changes in the survey climate (*e.g.,* changes in policy that change the definition of what the ACS is trying to measure). The results from the CRS, generated on a yearly basis, would identify which questions require modifications and future testing via a content test, thus providing a more scientific approach to determining the need for content testing of current ACS items. The CRS will be conducted by telephone only with a small sample of cases that responded during production.

Second, in response to Federal agencies' requests for new and revised ACS questions, the Census Bureau plans to conduct the 2010 ACS Content Test. Changes to the current ACS content and the addition of new content were identified through the Interagency Committee for the ACS and through recent legislative action. The primary objective of the 2010 ACS Content Test is to test whether changes to question wording, response categories, and redefinition of underlying constructs improve the quality of data collected. The Census Bureau proposes to evaluate changes to the questions, or for new questions, to compare the performance of question versions to each other as well as to other well-known sources of such information. The proposed topics for content testing are new questions to

measure computer and Internet access and usage, as well as parental place of birth and revisions to veteran's identification and period of service, cash public assistance income, wages income and property income, and the Food Stamp program name.

A third test, the ACS Internet ModeTest, is planned to determine the best methods for informing sample households about an ACS Internet response option and encouraging them to respond. By offering an Internet response option in the ACS, the Census Bureau is taking further steps to comply with the e-gov initiative and potentially reduce collection costs. The objectives of the Internet ModeTest include: potential improvement in self-response rates; potential cost savings if we can change the distribution of responses by mode (*i.e.,* obtain more responses by Internet); and potential improvement in data quality including a potential reduction in item nonresponse.

Two additional tests are currently planned. The specific details of these tests are not known at this time but would include an additional content test for new questions that have an urgent need to be included on the ACS as well as an additional test of new methods to address an emergent need.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., sections 141, 193 and 221.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: October 6, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–24466 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: License Transfer and Duplicate License Services.

OMB Control Number: 0694–0126.

Form Number(s): N/A.

Type of Request: Regular submission (Extension).

Burden Hours: 38.

Number of Respondents: 110.

Average Hours per Response: 15 to 30 minutes.

Needs and Uses: The information is needed to provide services to exporters who have either lost their original license and require a duplicate, or wish to transfer ownership of their approved license to another party.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

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

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer via the Internet at *Jasmeet_K._Seehra@omb.eop.gov,* or fax to (202) 395–5167.

Dated: October 7, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–24502 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Commercial Encryption Items under Commerce Jurisdiction.

OMB Control Number: 0694–0104.

Form Number(s): N/A.

Type of Request: Regular submission (Extension).

Burden Hours: 8,090.

Number of Respondents: 940.

Average Hours per Response: 10 minutes to 20 hours.

Needs and Uses: The collection is necessary to provide technical and end user information for encryption items that are eligible for export under license exception or under licenses that authorize exports to various destinations. This collection provides technical information for programs related to encrypted communications.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

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

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, via the Internet at *Jasmeet_K._Seehra@omb.eop.gov,* or fax to (202) 395–5167.

Dated: October 7, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–24501 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Generic Clearance for Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) Update Activities

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before December 14, 2009.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to M. Adele Hilton, U.S. Census Bureau, 5H028B, Washington, DC 20233, 301–763–7943 (or via the Internet at *Margaret.a.Hilton@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau presently operates a generic clearance covering activities involving respondent burden associated with updating our Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) system. The MAF is the Census Bureau's address database and the TIGER is the geographic database. We now propose to extend the generic clearance to cover update activities we will undertake during the next three fiscal years.

Under the terms of the generic clearance, we plan to submit a request for OMB approval that will describe, in general terms, all planned activities for the entire period. We will provide information to OMB at least two weeks before the planned start of each activity giving more exact details, examples of forms, and final estimates of respondent burden. We also will file a year-end summary with OMB after the close of each fiscal year giving results of each activity conducted. The generic clearance enables OMB to review our overall strategy for MAF and TIGER updating in advance, instead of reviewing each activity in isolation shortly before the planned start.

The Census Bureau used the MAF for mailing and delivering questionnaires to households during the Census 2000 and will do so for the Census 2010. The MAF is also used as a sampling frame for our demographic current surveys. In the past, the Census Bureau built a new address list for each decennial census. The MAF built for Census 2000 and 2010 is designed to be kept up-to-date, thereby eliminating the need to develop a completely new address list for future censuses and surveys. The Census Bureau plans to use the MAF for post-Census 2010 evaluations and as a sampling frame for the American Community Survey and our other demographic current surveys. The TIGER is a geographic system that maps the entire country in Census Blocks with applicable address ranges or living quarter location information. Linking MAF and TIGER allows us to assign each address to the appropriate Census Block, produce maps as needed and publish results at the appropriate level of geographic detail. The following are descriptions of activities we plan to conduct under the clearance for the next three fiscal years. The Census Bureau has conducted these activities (or similar ones) previously and the respondent burden remains relatively unchanged from one time to another.

Demographic Area Address Listing (DAAL)

The Demographic Area Address Listing (DAAL) program encompasses the geographic area updates for the Community Address Updating System (CAUS), the area and group quarters frame listings for many ongoing demographic surveys (the Current Population Survey, the Consumer Expenditures Survey, etc.), and any other operations which choose to use the Automated Listing and Mapping System (ALMI) for evaluations, assessments, or to collect updates for the MAF and TIGER. The CAUS program was designed to address quality concerns relating to areas with high concentrations of noncity-style addresses, and to provide a rural counterpart to the update of city-style addresses the MAF will receive from the U.S. Postal Services's Delivery Sequence File. The ongoing demographic surveys, as part of the 2000 Sample Redesign Program, use the MAF as one of several sources of addresses from which they select their samples. In fiscal year 2010, the DAAL program will also be used to assess a job aid used in the 2010 Address Canvassing operation to identify units in small multi-unit structures. The DAAL program is a cooperative effort among many divisions at the Census Bureau; it includes automated listing software, systems, and procedures that will allow us to conduct listing operations in a dependent manner based on information contained in the MAF.

The DAAL operations will be conducted on an ongoing basis in potentially any county across the country. Field Representatives (FRs) will canvass selected Census 2000 tabulation blocks in an effort to improve the address list in areas where substantial address changes may have occurred that have not been added to the MAF through regular update operations, and/or in blocks in the area or group quarters frame sample for the demographic surveys. FRs will update existing address information and, when necessary, contact individuals to collect accurate location and mailing address information. In general, contact will occur only when the FR is adding a unit to the address list, and/or the individual's address is not posted or visible to the FR. There is no pre-determined or scripted list of questions asked as part of this listing operation. If an address is not posted or visible to the FR, the FR will ask about the address of the structure, the mailing address, and, in some instances, the year the structure was built. If the occupants of these households are not at home, the FR may attempt to contact a neighbor to determine the best time to find the occupants at home and/or to obtain the correct address information.

DAAL is an ongoing operation. Listing assignments are distributed quarterly with the work conducted throughout the time period. We expect that DAAL listing operation will be conducted throughout the entire time period of the extension.

The list above is not exhaustive of all activities, which may be performed under this generic clearance. We will follow the approved procedure when submitting any additional activities not specifically listed here.

II. Method of Collection

The primary method of data collection for most operations/evaluations will be personal interview by Census Listers, Verifiers, Enumerators or Field Representatives using the operation/evaluation's listing form or questionnaire. In some cases, the interview could be by telephone callback if no one was home during the initial visit.

III. Data

OMB Control Number: 0607–0809.

Form Number: Some form numbers for activities have not yet been assigned.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents:

FY10: 65,300 HH
1,294 GQs
FY11: 70,543 HH
2,138 GQs
FY12: 71,236 HH
1,781 GQs

Estimated Time per Response: 3 min/HH; 10 min/GQ.

Estimated Total Annual Burden Hours:
FY10: 3,481
FY11: 3,883
FY12: 3,859

Estimated Total Annual Cost: The only cost to respondents is that of their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Sections 141 and 193.

IV. Request for Comments

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

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

Dated: October 6, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–24481 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Certified Trade Mission Program Application

AGENCY: International Trade Administration.

ACTION: Notice.

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

DATES: Written comments must be submitted on or before December 14, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Susan Crawford, phone 202–482–2050, *Susan.Crawford@mail.doc.gov,* fax 202–482–2599.

SUPPLEMENTARY INFORMATION:

I. Abstract

Certified Trade Missions are international trade events that have been accepted into the U.S. Department of Commerce's (DOC) trade promotion events program. Certified Trade Missions can be planned, organized and led by both Federal and non-Federal government export promotion agencies such as industry trade associations, State and local government agencies, Congressional representatives, chambers of commerce, regional groups and other export-oriented groups.

The Certified Trade Mission Program Application form is the vehicle by which individual mission organizers apply, and if accepted agree, to participate in the DOC's trade promotion events program, recruit U.S. companies, identify the products or services they intend to sell or promote, and report on results. The collection of information is required for DOC to properly assess the credentials of the missions and applicants.

II. Method of Collection

The Certified Trade Mission Program Application is e-mailed by request to U.S. export-oriented organizations seeking DOC certification of their trade mission. Applicant firms complete the form and return it via e-mail to DOC.

III. Data

OMB Control Number: 0625–0215.

Form Number(s): ITA–4127P.

Type of Review: Regular submission.

Affected Public: Mission organizers (business or for-profit organizations, not-for-profit institutions) applying to participate in trade missions facilitated but not led by DOC officials.

Estimated Number of Respondents: 60.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 60.

Estimated Total Annual Cost to Public: $2,100.

IV. Request for Comments

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

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

Dated: October 7, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–24513 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Notice of Extension of Time Limit for Final Results of Semi-Annual New Shipper Review

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

DATES: *Effective Date:* October 13, 2009.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6412.

Background

On July 27, 2009, the Department of Commerce (''the Department'') published the preliminary results of a

semi-annual new shipper review of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China, covering the period June 1, 2008, through November 30, 2008, and the exporter, Juancheng Kangtai Chemical co., Ltd. (''Kangtai''). *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of June 2008 through November 2008 Semi-Annual New Shipper Review,* 74 FR 37007 (July 27, 2009). The final results are currently due on October 18, 2009.

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(i)(1) require the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the 90-day period for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

As a result of issues raised in this new shipper review, specifically the issue of collapsing Kangtai into a single entity with its affiliated supplier, certain surrogate values, and surrogate financial ratios, the Department determines that this new shipper review is extraordinarily complicated and it cannot complete this new shipper review within the current time limit. Accordingly, the Department is extending the time limit for the completion of the final results by 60 days until December 17, 2009, in accordance with sections 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: October 6, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–24600 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

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

EFFECTIVE DATE: October 13, 2009.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5047 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2009, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China (''PRC''). *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Administrative Review*, 74 FR 27104 (June 8, 2009). This review covers the period June 1, 2007, through May 31, 2008. The final results of review are currently due no later than October 6, 2009.

Extension of Time Limit for Final Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days. Completion of the final results of this review within the 120-day period is not practicable because the Department needs additional time to analyze and address complicated by–product and surrogate value issues for the final results. Because it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the final results of the administrative review by 30 days in accordance with section 751(a)(3)(A) of the Act. Therefore, the final results will be due Thursday, November 5, 2009, which is 150 days from publication of the preliminary results.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: October 2, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–24604 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Notice of Revocation in Part

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

DATES: *Effective Date:* October 13, 2009.

SUMMARY: On August 5, 2009, the Department of Commerce (the Department) published a notice of preliminary results of changed circumstances review of the antidumping duty order on frozen warmwater shrimp (shrimp) from Thailand. In that notice, we preliminarily determined that it was appropriate to treat the Rubicon Group inclusive of Phatthana Frozen Food Co., Ltd. (PFF) and Sea Wealth Frozen Food Co., Ltd. (Sea Wealth) as the successor-in-interest to the Rubicon Group as it operated during the period of investigation (POI) of the less-than-fair-value (LTFV) investigation. Further, we preliminarily determined that it was appropriate to revoke PFF and Sea Wealth from the antidumping duty order on shrimp from Thailand, effective as of January 16, 2009. *See Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results of Antidumping Duty Changed Circumstances Review and Notice of Intent to Revoke in Part*, 74 FR 39042 (Aug. 5, 2009) (*Preliminary Results*). For these final results the Department continues to find that the current form of the Rubicon Group, inclusive of PFF and Sea Wealth, is the successor-in-interest to the Rubicon Group as it operated during the LTFV investigation. Accordingly, we are revoking PFF and Sea Wealth from the antidumping duty

order on shrimp from Thailand, effective as of January 16, 2009.

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

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Thailand. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From Thailand*, 70 FR 5145 (Feb. 1, 2005) (*Thai Shrimp Order*).

Subsequent to the issuance of this order, the Thai Government challenged before the World Trade Organization (WTO) the Department's practice of not offsetting dumped sales with non-dumped sales in the LTFV investigation of shrimp from Thailand. In February 2008, the WTO dispute settlement panel found that the Department acted inconsistently with its international obligations when it performed average-to-average comparisons without providing offsets for comparisons where the export price was greater than normal value in the LTFV investigation. *See United States—Measures Relating to Shrimp from Thailand*, WT/DS343/R (February 29, 2008).

In November 2008, the Department initiated a section 129 proceeding to implement the findings of the WTO panel, and in January 2009 it issued a final determination in that proceeding which resulted in the revocation of the order related to shrimp produced and exported by two entities—Thai I-Mei and the Rubicon Group. *See Implementation of the Findings of the WTO Panel in United States—Antidumping Measure on Shrimp From Thailand: Notice of Determination Under section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp From Thailand*, 74 FR 5638, 5638 (Jan. 30, 2009) (*Section 129 Implementation*). For purposes of the *section 129 Implementation*, the Department defined the Rubicon Group as consisting of the following nine companies, which were the group members existing at the time of the LTFV investigation: Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Intersia Foods Co., Ltd., Phatthana Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafoods Co., Ltd., and Wales & Co. Universe Limited. *See section 129 Implementation* at 5639.

On February 5, 2009, the Rubicon Group requested that the Department conduct an expedited changed circumstances review under 19 CFR 351.221(c)(3)(iii) to consider also revoking PFF and Sea Wealth from the *Thai Shrimp Order*. According to the Rubicon Group, although these two companies were not included in the Department's margin calculations in the LTFV investigation, the Department has treated them as part of the Rubicon Group in subsequent segments of this proceeding. In this request, the Rubicon Group also asked that any revocation for PFF and Sea Wealth be made effective January 16, 2009, the effective date of the *section 129 Implementation*.

On March 24, 2009, the Department published a notice of initiation of a changed circumstances review to consider the Rubicon Group's request. *See Certain Frozen Warmwater Shrimp from Thailand: Initiation of Antidumping Duty Changed Circumstances Review*, 74 FR 12308 (Mar. 24, 2009) (*Initiation Notice*).

On August 5, 2009, the Department published the preliminary results of the changed circumstances review, where we preliminarily determined that it was appropriate to treat the Rubicon Group inclusive of PFF and Sea Wealth as the successor-in-interest to the Rubicon Group as it operated during LTFV investigation. Further, we preliminarily determined that it was appropriate to revoke PFF and Sea Wealth from the antidumping duty order on shrimp from Thailand. *See Preliminary Results* at 39044. Subsequent to the *Preliminary Results* we received no comments from interested parties.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size. The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted

[1] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Final Results of Changed Circumstances Review

For the reasons stated in the preliminary results, the Department continues to find that the Rubicon Group in its current form, including PFF and Sea Wealth, is the successor-in-interest to the Rubicon Group as it existed during the POI of the LTFV investigation. Therefore, consistent with our preliminary results, we have revoked PFF and Sea Wealth from the *Thai Shrimp Order,* effective January 16, 2009 (the effective date of the *section 129 Implementation*). This revocation applies to merchandise produced by any Rubicon Group member and exported by PFF or Sea Wealth, as well as to merchandise produced by PFF or Sea Wealth and exported by any other Rubicon Group member.

Notification

We will instruct U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation for all shipments of frozen warmwater shrimp produced and exported by PFF or Sea Wealth, either singly or in combination with any other Rubicon Group member. Further, the Department will instruct CBP to liquidate without regard to antidumping duties (release all bonds and refund all cash deposits) entries of frozen warmwater shrimp produced and exported by these entities, entered, or withdrawn from warehouse, for consumption on or after January 16, 2009.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.216.

Dated: October 6, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–24536 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 39–2009]

Foreign-Trade Zone 138—Columbus, Ohio Application for Subzone Status, Abercrombie & Fitch, (Footwear and Apparel Distribution), New Albany, OH

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Columbus Regional Airport Authority, grantee of FTZ 138, requesting special–purpose subzone status for the footwear and apparel warehousing and distribution facility of Abercrombie & Fitch (A&F), located in New Albany, Ohio. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 25, 2009.

The A&F facility (453 acres, 2,631,585 sq. ft., 3,407 employees) is located at 6201/6301 Fitch Path & 7795 Smiths Mill Road, New Albany, Ohio. The facility is used for warehousing and distribution of foreign–origin apparel and footwear for the U.S. market and export. FTZ procedures would be utilized to support A&F's U.S.-based distribution activity. Foreign products to be admitted to the proposed subzone for distribution would include men's, boys', women's and girls' footwear, coats, suits, blazers, blouses, trousers, breeches, shorts, shirts, skirts, tops, ski jackets, underwear, petticoats, pajamas, swimwear, scarves, hats, shawls, mufflers, gloves and mittens. Certain textile fabrics (wool, cotton, silk; woven and knit) would also be distributed from the proposed subzone. Additional products that would be admitted to the proposed subzone for distribution are: articles of plastic; various vanity, attachĕ brief and suitcases; handtools; machinery; jewelry; leather goods; paintings, lamps; and, spotlights. The applicant is not seeking manufacturing or processing authority with this request.

FTZ procedures could exempt A&F from customs duty payments on foreign products that are exported (about 2% of shipments). On its domestic sales, the company would be able to defer duty payments until the foreign merchandise is shipped from the facility and entered for consumption. FTZ designation would further allow A&F to realize logistical benefits through the use of weekly customs entry procedures. The request indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Claudia Hausler of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 14, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 28, 2009.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via www.trade.gov/ftz. For further information, contact Claudia Hausler at *Claudia_Hausler@ita.doc.gov*, or (202) 482–1379.

Dated: September 25, 2009.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. E9–24605 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 41–2009]

Foreign-Trade Zone 158—Vicksburg/Jackson, MS, Application for Subzone; Max Home, LLC (Upholstered Furniture); Fulton and Iuka, MS

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Mississippi

Foreign-Trade Zone, Inc., FTZ 158, requesting special-purpose subzone status for the upholstered furniture manufacturing facilities of Max Home, LLC (Max Home), located in Fulton and Iuka, Mississippi. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 6, 2009.

The Max Home facilities (348 employees) consist of two sites on 35 acres: *Site 1* (26 acres) is located at 101 Max Place, Fulton, Mississippi; and *Site 2* (9 acres) is located at 1509 Paul Edmondson Drive, Iuka, Mississippi. The facilities are used to produce upholstered furniture (up to 170,000 sofas, sleep sofas, chairs, and sectionals combined annually) and cut-and-sewn upholstery covers for the U.S. market and export. The application proposes that Max Home utilize foreign-origin ''micro-denier suede'' fabric to be cut and sewn into furniture upholstery covers under FTZ procedures. The finished upholstery covers (HTSUS 9401.90; duty free) would then be assembled into finished chairs, seats, sofas, sleep sofas, and sectionals manufactured by Max Home at the facilities.

The proposed scope of authority under FTZ procedures would only involve duty savings on foreign-origin, micro-denier suede fabrics (classified under HTSUS Headings 5407, 5512, 5515, 5516, 5903, 5906, 6001, 6005, 6006; duty rate range: 2.7–17.2%) finished with a caustic soda wash process, which the applicant indicates are not produced by U.S. mills. The application indicates that Max Home does not seek FTZ benefits on any of the other foreign fabrics used in production at the facilities (*i.e.,* full duties would be paid on all such fabrics). All other material inputs used in production would be domestic-status.

FTZ procedures would exempt Max Home from customs duty payments on the foreign micro-denier suede fabric used in export production. On micro-denier suede fabric used in production for the U.S. market, Max Home could elect the finished upholstery cover (i.e., furniture part) duty rate (free) after the fabric has been cut, sewn, and formed into upholstery covers, at which time they are entered for consumption from the zone. Max Home would also have the option to elect the finished furniture duty rate (free) for the subject fabric when the finished furniture is entered for domestic consumption. The application indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. The closing period for receipt of comments is December 14, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 28, 2009.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Pierre Duy at *Pierre_Duy@ita.doc.gov* or (202) 482–1378.

Dated: October 6, 2009.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. E9–24601 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 42–2009]

Foreign-Trade Zone 41—Milwaukee, WI; Application for Subzone; CNH America, LLC (Agricultural Tractors and Component Parts Manufacturing) Racine, WI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Wisconsin, Ltd., grantee of FTZ 41, requesting special-purpose subzone status for the agricultural tractor and tractor components manufacturing facilities of CNH America, LLC (CNH), located in Racine, Wisconsin. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 6, 2009.

The CNH facilities (620 employees) consist of four sites in Racine, Wisconsin: *Site 1* (76.18 acres) main manufacturing plant, located at 7000 Durand Avenue; *Site 2* (300,750 enclosed square feet) warehouse space, located at 7100 Durand Avenue; *Site 3* (38,400 enclosed square feet) warehouse space, located at 7505 Durand Avenue; and; *Site 4* (150,000 sq. ft. enclosed square feet) warehouse space, located at 3535 S. Oakes Road. The facilities are used for the manufacturing, warehousing and distribution of agricultural tractors and tractor components, with the capacity to produce up to some 10,600 tractors, 600 cabs, 560 transmissions, 5,280 axles, and 11,250 valves annually. Components and materials sourced from abroad (representing 10% of the value of the finished products) include: Glues; adhesives; anti-knock preparations; articles of plastic—tubes, tape, boxes, bags, stoppers, bottles, buckets, and handles; articles of rubber, incl. those reinforced with textile materials—tubes, conveyor belts, transmission belts, belting tires, floor coverings and mats, hoses, and hose assemblies; gaskets; washers; seals; safety glass; mirrors; pipe fittings; chain; fasteners; hand tools; vises; locks; hinges; pneumatic cylinders; steel tubing; engines; cast iron parts; fuel pumps; pump parts; air compressors; fans; air conditioners; filters; agricultural machinery parts; starter motors; generators; ignition components; horns; windshield wipers; heater parts; loudspeakers; microphones; radios; video displays; switches; circuit breakers; fuses; lighting; lamps; electrical machinery; valves; ball bearings; transmission components; gear boxes; gears; flywheels; pulleys; clutches; gaskets; electric motors; ballasts; power supplies; couplings; spark plugs; distributors; copper wire; ignition wiring; conductors; cabs for tractors; bumpers; seat belts; drive axles; wheels; radiators; mufflers; steering wheels; optical lenses; thermometers; speedometers; voltage testers; and lighters. Duty rates range between free and 8.6%.

FTZ procedures could exempt CNH from customs duty payments on the foreign components used in export production. CNH anticipates that some 30 percent of the plant's shipments will be exported. On its domestic sales, CNH would be able to choose the duty rates during customs entry procedures that apply to the finished products—tractors, cabs, transmissions, axles, and valves (duty rate ranges from free to 4%)—for the foreign inputs noted above. FTZ

designation would further allow CNH to realize savings on materials that become scrap/waste during manufacturing. The request indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 14, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 28, 2009.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane_Finver@ita.doc.gov* or at (202) 482–1367.

Dated: October 6, 2009.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. E9–24602 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of the Census

2010 Census Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a meeting of the 2010 Census Advisory Committee. The Committee will address policy, research, and technical issues related to 2010 Decennial Census Programs. Last-minute changes to the agenda are possible, which could prevent giving advance notification of schedule changes.

DATES: November 5–6, 2009. On November 5, the meeting will begin at approximately 8:30 a.m. and end at approximately 5:15 p.m. On November 6, 2009, the meeting will begin at approximately 8:30 a.m. and end at approximately 12:30 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Auditorium and Conference Center, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Suitland, Maryland 20746, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The 2010 Census Advisory Committee is composed of a Chair, Vice-Chair, and 20 member organizations—all appointed by the Secretary of Commerce. The Committee considers the goals of the decennial census, including the American Community Survey and related programs, and users' needs for information provided by the decennial census from the perspective of outside data users and other organizations having a substantial interest and expertise in the conduct and outcome of the decennial census. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section10(a)(b)).

The meeting is open to the public, and a brief period is set aside for public comments and questions. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known—preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–3231 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: October 5, 2009.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. E9–24488 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 0906221081–91339–02]

RIN 0648–XA10

National Environmental Policy Act—Categorical Exclusions covering the Broadband Technology Opportunities Program (BTOP)

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce (DOC) publishes these Categorical Exclusions (CEs) of actions that the agency has determined do not individually or cumulatively have a significant effect on the human environment and thus, should be categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. These CEs are intended to cover only the Broadband Technology Opportunities Program (BTOP).

DATES: This notice is implemented October 13, 2009.

ADDRESSES: This notice and the Administrative Record for the NTIA Broadband Technology Opportunities Program categorical exclusions are available at: *http://www.nepa.noaa.gov/procedures.html* under ''NTIA Broadband Technology Opportunities Program Categorical Exclusions and Administrative Record''. Written requests for a hard copy of the ''NTIA Broadband Technology Opportunities Program Categorical Exclusions and Administrative Record'' should be submitted to: Steve Kokkinakis, National Oceanic and Atmospheric Administration, Office of Program Planning & Integration, SSMC3, Room 15723, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steve Kokkinakis, National Oceanic and Atmospheric Administration, Office of Program Planning & Integration, SSMC3, Room 15723, 1315 East-West Highway, Silver Spring, MD 20910, phone: 301–713–1622 x189.

SUPPLEMENTARY INFORMATION:

I. National Environmental Policy Act (NEPA)

NEPA requires that Federal agencies prepare environmental impact

statements for major Federal actions that may ''significantly affect the quality of the human environment.'' NEPA requirements apply to any federal project, decision, or action, including grants that might have an impact on the quality of the human environment. NEPA also established the Council on Environmental Quality (CEQ) to provide guidance to federal agencies and to issue regulations implementing the procedural provisions of NEPA. Among other considerations, the CEQ regulations require Federal agencies to adopt their own implementing procedures to supplement the CEQ regulations, and to establish and use ''categorical exclusions'' to define categories of actions that do not individually or cumulatively have a significant effect on the human environment. These particular actions, therefore, do not require preparation of an environmental assessment or environmental impact statement as required by NEPA.

On May 26, 2009, the Department of Commerce published a notice in the **Federal Register** requesting comments on proposed Department-wide CEs (74 FR 24782). On July 10, 2009, the Department of Commerce published a notice in the **Federal Register** of final Department-wide CEs (74 FR 33204).

Although some of the CE's outlined in the DOC-wide CE notice are applicable to BTOP, it was determined in consultation with CEQ that the existing NEPA requirements and the CEs of the U.S. Department of Agriculture, Rural Utilities Services' (RUS) Telecommunication Program would serve as a better template for BTOP and the RUS Broadband Initiatives Program (BIP). Therefore, it was determined that similarities between the two programs suggested that an alignment of the requirements documents and applicable CEs would streamline the application process and reduce confusion for applicants and future BTOP decisions.

Accordingly, NTIA published a notice in the **Federal Register** on July 9, 2009 of BTOP-specific CEs (74 FR 32876) and requested comments from the public on the appropriateness and scope of the CEs. The public comment period ended on August 10, 2009. NTIA received three comments representing one private citizen and two organizations. NTIA fully considered all of the comments and provides the responses in the Comments and Agency Response section below.

II. Comments and Agency Responses

Comment #1

The National Audubon Society (NAS) expressed concern that the proposed categorical exclusion for facilities would allow the construction of communication towers without appropriate environmental review, thus ''unnecessarily sacrificing the safety of avian wildlife, their habitats, and the environment.'' The NAS commented that ''the proposed categorical exclusions for BTOP projects include exclusions for guyed towers and towers up to 400 feet in height with no findings regarding their individual or cumulative impacts.'' The NAS commented that the administrative record does not support the CE for towers.

Agency Response

The list of BTOP CEs published on July 9, 2009 (74 FR 32876) did not include a specific CE for communication towers. The language that the NAS quotes in its comment is from the ''Background'' section of the document and was a general statement about the types of projects BTOP/BIP might fund. NTIA never intended the statement to be used to justify the use of a CE for these types of communication towers.

BTOP, however, does have an option for utilizing a CE for certain specific communications towers. The Department of Commerce published on July 10, 2009 (74 FR 33204) a final list of CEs available for use by all DOC Operating Units. That list included a CE for communication towers with specific limitations on tower height and guy wires: ''A–4 Siting/construction/operation of microwave/radio communication towers less than 200 feet in height without guy wires on previously disturbed ground.'' This CE did not receive a single public comment from the **Federal Register** notice on draft CEs published for comment on May 26, 2009. Accordingly, NTIA would only issue a CE for a tower less than 200 feet in height without guy wires on previously disturbed ground. Any NTIA BTOP project that proposes to construct a tower greater than 200 feet in height would require additional environmental documentation, which includes the preparation of an Environmental Assessment or an Environmental Impact Statement. References to the administrative record for CEs for towers less than 200 feet without guy wires were included in the July 10, 2009 notice and are not repeated here.

Comment #2

The Kodiak Kenai Cable Company commented that NTIA should consider expanding Categorical Exclusion B.1, which covers ''construction of buried and aerial telecommunications lines, cables, and related facilities'' to include submarine cables. The commenter noted that many underserved areas in Alaska are on remote islands where the only practical means of providing broadband access is with submarine cables. According to the commenter, the Army Corps of Engineers (COE) conducted an environmental assessment and issued a finding of no significant impact for a Nationwide Permit (NWP 12) involving ''the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the U.S.'', which are similar in nature to projects involving submarine cables.

Agency Response

At this time, NTIA does not have the necessary administrative record to add a CE for submarine cables, however, NTIA will consider the background information provided by the commenter regarding the COE NWP 12 in developing any future amendments to the BTOP CEs.

Comment #3

NTIA should consider a CE for Adirondack Park. Current siting procedures make it difficult to obtain broadband access and wireless communication services in rural areas of upstate New York, thus hindering the ability to communicate with residents and emergency management systems.

Agency Response

Categorical exclusions are intended to exempt certain activities, rather than specific locations, from further environmental review. Categorical exclusions apply to a range of activities that have been shown, individually or cumulatively, not to create significant environmental impacts on the human or natural environment. In addition, in order to qualify for a CE, a project must comply with all state and local laws and regulations. It is incumbent upon the applicant to demonstrate that the project qualifies for a CE. Thus, if Adirondack Park has certain restrictions on siting of broadband or wireless services, then the applicant would need to address those concerns before the project would qualify for a CE and receive funding.

III. BTOP Categorical Exclusions

A. *General administrative/ministerial actions*. Certain types of actions undertaken by BTOP will not normally require the completion of the BTOP/BIP

NEPA Environmental Questionnaire (EQ). These categorically excluded proposals are:

A.1: The issuance of bulletins and information publications that do not concern environmental matters or substantial facility design, construction, or maintenance practices.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions and Environmental Assessments from the U.S. Department of Agriculture, U.S. Department of Homeland Security, Federal Emergency Management Agency, U.S. Coast Guard, and the U.S. Air Force.

A.2: Procurement activities related to the operation of BTOP. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified categorical exclusions from the U.S. Department of Agriculture, U.S. Department of Homeland Security, Federal Emergency Management Agency, U.S. Coast Guard, U.S. Air Force, U.S. Navy, General Services Administration, and the U.S. Department of the Interior.

A.3: Personnel and Administrative Actions. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture, U.S. Department of Homeland Security, U.S. Coast Guard, U.S. Department of the Interior, U.S. Army and the U.S. Air Force.

A.4: Purchase of existing facilities or a portion thereof where use or operation will remain unchanged. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture, U.S. Department of Homeland Security, and the General Services Administration.

A.5: Internal modifications or equipment additions (e.g., computer facilities, relocating interior walls) to structures or buildings. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture, U.S. Department of Homeland Security, and the Federal Emergency Management Agency.

B. *Broadband Activities*. Applications for financial assistance for the types of proposed actions covered in this section require the submission of an EQ. Applicants shall sufficiently identify all proposed actions so their proper classification can be determined. Detailed descriptions shall be provided for each proposal noted in this section. NTIA may require additional information in addition to a description of what is being proposed, to ensure that proposals are properly classified. Proposed actions within this classification are:

B.1: Construction of buried and aerial telecommunications lines, cables, and related facilities. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture, U.S. Department of the Interior, and the U.S. Department of Energy.

B.2: Construction of microwave facilities involving no more than five acres (2 hectares) of physical disturbance at any single site. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions and Findings of No Significant Impact on Environmental Assessments from the U.S. Department of Agriculture, the National Telecommunications and Information Administration, and the U.S. Department of Energy.

B.3: Construction of cooperative or company headquarters, maintenance facilities, or other buildings involving no more than 10 acres (4 hectares) of physical disturbance or fenced property. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions and Findings of No Significant Impact on Environmental Assessments from the U.S. Department of Agriculture, the U.S. Coast Guard, the U.S. Navy, the Economic Development Administration, and the National Oceanic and Atmospheric Administration.

B.4: Changes to existing transmission lines that involve less than 20 percent pole replacement, or the complete rebuilding of existing distribution lines within the same right of way. Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.5: Changes or additions to existing substations, switching stations, telecommunications switching or multiplexing centers, or external changes to buildings or small structures requiring one acre (0.4 hectare) or more but no more than five acres (2 hectares) of new physically disturbed land or fenced property. This categorical exclusion is supported by a long-standing categorical exclusion and administrative record. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture, Rural Utilities Services. Based upon the extensive history of RUS application of these Categorical Exclusions and the lack of extraordinary circumstances associated with their application, this legacy Categorical Exclusion is determined to be applicable to BTOP projects.

B.6: Construction of substations, switching stations, or telecommunications switching or multiplexing centers requiring no more than five acres (2 hectares) of new physically disturbed land or fenced property. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.7: Changes or additions to microwave sites, substations, switching stations, telecommunications switching or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare).

This categorical exclusion is supported by a long-standing categorical exclusion and administrative record from the U.S. Department of Agriculture, Rural Utilities Service. Based upon the extensive history of RUS application of these Categorical Exclusions and the lack of extraordinary circumstances associated with their application, these legacy Categorical Exclusions are determined to be applicable to BTOP projects and appropriate justification for this Categorical Exclusion.

B.8: Ordinary maintenance or replacement of equipment or small structures (e.g. line support structures, line transformers, microwave facilities, telecommunications remote switching and multiplexing sites). This categorical exclusion is supported by long-standing categorical exclusions and

administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.9: The construction of telecommunications facilities within the fenced area of an existing substation, switching station, or within the boundaries of an existing electric generating facility site. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.10: Testing or monitoring work (e.g., soil or rock core sampling, monitoring wells, air monitoring). This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.11: Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.12: Rebuilding of power lines or telecommunications cables where road or highway reconstruction requires the applicant to relocate the lines either within or adjacent to the new road or highway easement or right-of-way. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.13: Phase or voltage conversions, reconductoring or upgrading of existing electric distribution lines, or telecommunication facilities. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.14: Construction of standby diesel electric generators (one megawatt or less total capacity) and associated facilities, for the primary purpose of providing emergency power, at an existing applicant headquarters or district office, telecommunications switching or multiplexing site, or at an industrial, commercial or agricultural facility served by the applicant. This categorical exclusion is supported by long-standing categorical exclusion and administrative record from the U.S. Department of Agriculture Rural Utilities Services. Based upon the extensive history of RUS application of these Categorical Exclusions and the lack of extraordinary circumstances associated with their application, this legacy Categorical Exclusion is determined to be applicable to BTOP projects.

Paperwork Reduction Act

This notice does not contain collection-of-information requirements subject to the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Notwithstanding any other provision of law, no person is required to, nor shall a 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 of information displays a currently valid OMB control number.

Environmental Impact

These procedures supplement CEQ regulations and Department of Commerce NEPA procedures, and provides guidance to NTIA employees regarding procedural requirements for the application of NEPA provisions to BTOP decisions including grants and funding applicant actions. CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3.

Dated: October 5, 2009.

Paul N. Doremus,

NOAA NEPA Coordinator, Office of Program Planning and Integration.

[FR Doc. E9–24606 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Revised Proposal for Changes to the Format of Annual Reports Submitted to the Foreign-Trade Zones Board; Extension of Comment Period

On September 14, 2009, the Foreign-Trade Zones (FTZ) Board published a notice seeking comments on proposed revisions to the format of annual reports that are submitted by grantees to the FTZ Board. The comment period on the revised proposal is being extended to November 16, 2009 to allow interested parties additional time in which to comment.

Submissions shall be addressed to the Board's Executive Secretary at: Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave., NW., Washington, DC 20230. Submissions can be e-mailed to the address provided below.

Any questions about this proposal should be directed to Elizabeth Whiteman at *Elizabeth_Whiteman@ita.doc.gov* or (202) 482–0473.

Dated: October 2, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–24603 Filed 10–9–09; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, October 15, 2009, 3:30 p.m.–5:30 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the public.

Matter To Be Considered:

Compliance Weekly and Monthly Status Reports—Commission Briefing.

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 6, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–24532 Filed 10–9–09; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, October 14, 2009, 9 a.m.–5 p.m. (Items 1–4, 9 a.m.–12 noon; Item 5, 2 p.m.–5 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Briefing/Meeting-Open to the Public.

Matters To Be Considered

1. Lab Accreditation Requirements for Lead.
2. Brass Lead Exclusions Petition.
3. Lead Determination Guidance.
4. Recreational Off Highway Vehicles (ROHVS) ANPR.
5. Toy Safety Certification Program, Toy Industry Association (TIA), Consumers Union (CU) and Consumer Federation of America (CFA).

(This meeting was requested by the participants. For the convenience of all of the Commissioners, the meetings are being consolidated into one public meeting.)

A live webcast of the Briefing can be viewed at *http://www.cpsc.gov/webcast/index.html.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 6, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–24533 Filed 10–9–09; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–HA–0144]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received December 14, 2009.

ADDRESSES: You may submit comments, identified by document number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Document Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the TRICARE Management Activity, Performance Evaluation and Transition Management Branch, ATTN: [John J.M. Leininger], Aurora, CO 80011–9066 or call TRICARE Management Activity, Performance Evaluation and Transition Management Branch at (303) 676–3613.

Title, Associated Form, and OMB Number: TRICARE DoD/CHAMPUS Medical Claim Patient's Request for Medical Payment, DD Form 2642, OMB Number 0720–0006.

Needs and Uses: This form is used solely by beneficiaries claiming reimbursement for medical expenses under the TRICARE Program. The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance eligibility, certification of the beneficiary eligibility and other health insurance liability, certification that the beneficiary received the care, and reimbursement for the medical services received.

Affected Public: Individual or households.

Annual Burden Hours: 750,000.

Number of Respondents: 3,000,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection instrument is for use by beneficiaries under the TRICARE Program. TRICARE/CHAMPUS is a health benefits entitlement program for the dependents of active duty Uniformed Services members and deceased sponsors, retirees and their dependents, dependents of Department of Homeland Security (Coast Guard) sponsors, and certain North Atlantic Treaty Organizations, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. DD Form 2642 is used solely by TRICARE/CHAMPUS beneficiaries to file for reimbursement of costs paid to providers and suppliers for authorized health care services or supplies.

Dated: October 2, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–24503 Filed 10–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of the Fiscal Year 2008 Defense Contract Management Agency (DCMA) Services Contract Inventory

AGENCY: Defense Contract Management Agency, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with section 2330a of title 10 United States Code as amended by the National Defense Authorization Act for Fiscal Year 2008 (NDAA 08) section 807, the DCMA Executive Director for Contracts, in coordination with the Office of the Director, Defense Procurement and Acquisition Policy, Office of Strategic Sourcing (DPAP/SS) will make available to the public the first inventory of activities performed pursuant to contracts for services. The inventory will be published to the DCMA Web site at the following location: *http://www.dcma.mil/siteindex.cfm#I.*

DATES: Inventory to be made publicly available within 30 days of publication of this notice.

ADDRESSES: Send written comments or suggestions concerning the inventory to William Javoroski, Contracts Directorate (AQP), Defense Contract Management

Agency, 6350 Walker Lane, Room 505, Alexandria, VA 22310–3241.

FOR FURTHER INFORMATION CONTACT: William Javoroski, (703) 428–0787 or e-mail at *william.javoroski@dcma.mil.*

SUPPLEMENTARY INFORMATION: NDAA 08, section 807 amends section 2330a of title 10 United States Code to require annual inventories and reviews of activities performed on services contracts. The Deputy Under Secretary of Defense (Acquisition and Technology) (DUSD(AT)) transmitted the DCMA inventory to Congress on September 29, 2009.

The DCMA Executive Director for Contracts submitted the DCMA Fiscal Year 2008 Services Contract Inventory to the Office of the DPAP/SS on August 28, 2009. Included with this inventory was a narrative that describes the methodology for data collection, the inventory data, and the plan for review of this inventory. The narrative and cover letters may be downloaded in electronic form (.pdf file) from the following location: *http://www.dcma.mil/siteindex.cfm#I.* The inventory does not include contract numbers, contractor identification or other proprietary or sensitive information as these data can be used to disclose a contractor's proprietary proposal information.

Dated: October 2, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–24505 Filed 10–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of the Fiscal Year 2008 Missile Defense Agency Services Contracts Inventory

AGENCY: Missile Defense Agency (MDA), DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with section 2330a of title 10 United States Code as amended by the National Defense Authorization Act for Fiscal Year 2008 (NDAA 08) section 807, the Director of the Missile Defense Agency and the Office of the Director, Defense Procurement and Acquisition Policy, Office of Strategic Sourcing (DPAP/SS) will make available to the public the first inventory of activities performed pursuant to contracts for services. The inventory will be published to the Missile Defense Agency (MDA) Web site at the following location: *http://www.mda.mil/barbb/barbb.htm.*

DATES: Inventory to be made publically available within 30 days after publication of this notice.

ADDRESSES: Send written comments and suggestions concerning this inventory to Pamela Bible, Procurement Analyst, MDA/DACP 7100 Defense Pentagon, Washington, DC 20307–7100.

FOR FURTHER INFORMATION CONTACT: Pamela Bible at (703) 882–6062 or e-mail *Pamela.Bible@mda.mil.*

Dated: October 1, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–24508 Filed 10–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Uniformed Services University of the Health Sciences, DoD.

ACTION: Quarterly meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), this notice announces the November 5, 2009, quarterly meeting of the Board of Regents of the Uniformed Services University (USU) of the Health Sciences.

DATES: The meeting will be held on Thursday, November 5, 2009.

The meeting will be open to the public from 8:30 a.m. to 10:30 a.m.

The meeting will be closed to the public from 10:30 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Chesapeake Bay, 100 Heron Boulevard, Cambridge, Maryland 21613.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Official, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone 301–295–3066.

Contact Ms. Taylor for base access procedures.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda

The actions that will take place include the approval of minutes from the Board of Regents Meeting held August 11, 2009; approval of faculty appointments and promotions in both the School of Medicine and the Graduate School of Nursing; and the awarding of master's and doctoral degrees in graduate nursing and the biomedical sciences. The University President will also present a report. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, most of this meeting is open to the public. Seating is on a first-come basis. The closed portion of this meeting is authorized by 5 U.S.C. 552b(c)(6) as the subject matter involves personal and private observations.

Written Statements: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address listed above. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Official will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the November 2009 meeting or at a future meeting.

Dated: October 1, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–24512 Filed 10–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the U.S. Strategic Command Strategic Advisory Group

AGENCY: Department of Defense.

ACTION: Notice of advisory committee closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. App 2, section 1), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150, the Department of Defense announces a closed meeting of the U.S. Strategic Command Strategic Advisory Group.

DATES: The meeting will be held October 29, 2009, from 8 a.m. to 5 p.m. and October 30, 2009, from 8 a.m. to 11:30 a.m. The meeting is closed to the public.

ADDRESSES: The meeting will be held at the Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, NE 68113.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Sudduth, Designated Federal Officer, (402) 294–4102, 901 SAC Blvd, Suite 1F7, Offutt AFB, NE 68113–6030.

For supplementary information, contact: Mr. Floyd March, Joint Staff, (703) 697–0610.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda: Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, General Kevin P. Chilton, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(C)(1) of title 5, U.S.C.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public of interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: October 5, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–24511 Filed 10–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense Performance Review Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, to include the Joint Staff, the U.S. Mission to the North Atlantic Treaty Organization, Defense Field Activities, the U.S Court of Appeals and the Armed Forces and the following Defense Agencies: Defense Advance Research Projects Agency, Defense Contract Management Agency, Defense Commissary Agency, Defense Security Service, Defense Security Cooperation Agency, Defense Business Transformation Agency, Defense Legal Services Agency, and Pentagon Force Protection Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive and Senior Professional performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

DATES: Effective October 26, 2009.

FOR FURTHER INFORMATION CONTACT: Deborah S. Munn, Assistant Director, Human Resources, Washington Headquarters Services, Office of the Secretary of Defense, (703) 699–1869.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of Defense PRB with specific PRB panel assignments being made from this group. Executives listed will serve a one-year renewable term, effective October 26, 2009.

Office of the Secretary of Defense

Chairperson: Eric Coulter.

PRB PANEL MEMBERS

Sheryl McNair	Tim Morgan
Elizabeth McGrath	Paul Hulley
Joseph Angello	Caryn Hollis
William Lowry	Gretchen Anderson
Bonnie Hammersley	Angela Rogers
Joseph Bonnet	Radha Sekar
Christine Condon	Joel Sitrin
Allen Middleton	Kathleen Ott
Jonathan Cofer	Ronald Pontius
Timothy Harp	Janice Haith
Paul S. Koffsky	Susan Shekmar
Diana J Ohman	Debra Filippi
Lydia Moschkin	Richard McCormick
Karen McKenney	Michael Knollmann
Michael Williams	Lisa Disbrow
Craig Glassner	David Fisher
Jeanne Farmer	Melvin Russell
Paul Kozemchak	Susan Yarwood
James Russell	Matthew Schaffer

Dated: October 6, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–24510 Filed 10–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0145]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Intelligence Agency is proposing to alter a system of records in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on November 12, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 1, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 1, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0140

SYSTEM NAME:

Passports and Visas (July 19, 2006, 71 FR 41004).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, address, phone number, Social Security Number (SSN), and forms and applications as required by the U.S. Department of State for obtaining passports, passports themselves, and Visa applications.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper files''.

RETRIEVABILITY:

Delete entry and replace with ''By individual's last name.''

SAFEGUARDS:

Delete entry and replace with ''Records are stored in office buildings protected by guards, controlled screenings, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and User IDs are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Passports are returned to Department of State upon departure of the individual from DIA. Copies of forms and applications are destroyed by shredding or burning. Original forms are property of the U.S. Department of State.''

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Instruction 5400.001 ''Defense Intelligence Agency Privacy Program'' or may be obtained from the system manager.''

* * * * *

LDIA 0140

SYSTEM NAME:

Passports and Visas.

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, DC 20340–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DIA personnel requiring passports and visas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, phone number, Social Security Number (SSN), and forms and applications as required by the U.S. Department of State for obtaining passports, passports themselves, and Visa applications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD 1000.21–R, Passport Agent Services Regulation; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Information is collected to obtain and for safekeeping of official passports until needed for travel and to obtain necessary visas from appropriate Embassies; to notify individuals to reapply when passports expire and to return passports to the Department of State upon departure of the individual from DIA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the DIA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By individual's last name.

SAFEGUARDS:

Records are stored in office buildings protected by guards, controlled screenings, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and User IDs are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Passports are returned to Department of State upon departure of the individual from DIA. Copies of forms and applications are destroyed by shredding or burning. Original forms are property of the U.S. Department of State.

SYSTEM MANAGER(S) AND ADDRESS:

Operations Management Branch, ATTN: DAL–2B, Defense Intelligence Agency, Washington, DC 20340–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Instruction 5400.001 ''Defense Intelligence Agency Privacy Program'' or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual applicant; Department of State, Passport Office; and Embassies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–24507 Filed 10–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0146]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense is proposing to delete the DUSDA 02 systems of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 12, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Office of the Secretary of Defense proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 6, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

DUSDA 02

SYSTEM NAME:

Personnel Administration Files (February 22, 1993, 58 FR 10227).

REASON:

Based on a recent review of DUSDA 02, it was determined that this system of records is covered under the Government-wide SORNs, OPM Govt—1 (General Personnel Records) and OPM Govt—5. DUSDA 02 is duplicative and can therefore be deleted.

[FR Doc. E9–24506 Filed 10–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0140]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Intelligence Agency proposes to amend a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 12, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the agency (*see* **ADDRESSES**).

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 25, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0011

SYSTEM NAME:

Student Information Files (June 5, 2006, 71 FR 32322).

* * * * *

SYSTEM LOCATION:

Delete and replace with ''Defense Intelligence Agency, Washington, DC 20340–0001.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete and replace with ''Current and former students of the National Defense Intelligence College.''

Categories of records in the system: Delete entry and replace with ''Name, Date of Birth and Social Security Number (SSN), address, telephone number; information pertaining to personnel, past, present and projected assignments, educational background, academic/fitness reports, letters of course completion, rosters, grades and academic transcripts.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''DoD Instruction 3305.01, Section 2161 of Title 10, United States Code, American Association of Collegiate Registrars and Admissions Officer publication ''Retention of Records—Guide for Retention and Disposal of Student Records, Middle States Commission on Higher Education Association ''Characteristics of Excellence in Higher Education: Requirements of Affiliation and Standards of Accreditation, and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''This information is collected to provide data for managing the student population at the National Defense Intelligence College and for historical documentation.''

* * * * *

STORAGE:

Delete entry and replace with ''Electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By last name''.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry replace with ''President, National Defense Intelligence College, *Attn:* MC, Washington, DC 20340–5100''.

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number (SSN).''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number (SSN).''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Instruction 5400.001.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individual, military service component, educational institutions, previous employees and other Federal agencies.''

* * * * *

LDIA 0011

SYSTEM NAME:

Student Information Files

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, DC 20340–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former students of the National Defense Intelligence College.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Date of Birth and Social Security Number (SSN), address, telephone number; information pertaining to personnel, past, present and projected assignments, educational background, academic/fitness reports, letters of course completion, rosters, grades and academic transcripts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DoD Instruction 3305.01, Section 2161 of Title 10, United States Code, American Association of Collegiate Registrar's and Admissions Officer publication ''Retention of Records—Guide for Retention and Disposal of Student Records, Middle States Commission on Higher Education Association ''Characteristics of Excellence in Higher Education: Requirements of Affiliation and Standards of Accreditation, and E.O. 9397 (SSN), as amended.

PURPOSE(S):

This information is collected to provide data for managing the student population at the National Defense Intelligence College and for historical documentation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the DIA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By last name.

SAFEGUARDS:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Electronic records are maintained on a classified and password protected system.

RETENTION AND DISPOSAL:

Registration cards are held 2 years and then retired to the Washington National Records Center. They are destroyed when 25 years old.

SYSTEM MANAGER(S) AND ADDRESS:

President, National Defense Intelligence College, *Attn:* MC, Washington, DC 20340–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Instruction 5400.001.

RECORD SOURCE CATEGORIES:

Individual, military service component, educational institutions, previous employees and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–24514 Filed 10–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive License

AGENCY: Department of the Air Force.

SUMMARY: Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Alexium Ltd, a business entity of Cyprus, having a place of business at 2 Sophouli Street, Chanteclair House, 1096–Nicosia, Cyprus, Europe, an exclusive license in any right, title and interest the Air Force has in: U.S. Patent Application No. 12/543,576 filed August 19, 2009, entitled

''Coatings for Disease Control'' by Jeffrey R. Owens, as well as other related know how. A license for this patent and related know how will be granted unless a written objection is filed within fifteen (15) days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Moore, Attorney, Air Force Materiel Command Law Office, AFMCLO/JAZ, Building 11, Room E4, 2240 B Street, Wright-Patterson AFB, OH 45433–7109. Telephone: (937) 904–5088; Facsimile (937) 255–3733.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E9–24587 Filed 10–9–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2009–0029]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is proposing to alter a system of records in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on November 12, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address under **ADDRESSES**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 1, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 1, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0870–5 DAMH

SYSTEM NAME:

Army History Files (March 6, 2003, 68 FR 10706).

CHANGES:

SYSTEM ID:

Delete entry and replace with ''A0870–5 AAMH''

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''U.S. Army Center of Military History, Headquarters, Department of the Army, Washington, DC 20310–0200.

Decentralized segments exist at historical offices at Headquarters, Department of the Army and field operating agencies, major commands, and the U.S. Army Military Historical Research Collection, Carlisle Barracks, PA 17013–5021; U.S. Army Center of Military History, 103 3rd Street, Fort McNair, Washington, DC 20318–5058; U.S. Army Heritage and Education Center, Soldiers Drive, Carlisle, PA 17013–5021; National Museum of the United States Army, 6030 Goethals Road, Fort Belvoir, VA 22060–6205. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.''

Categories of individuals covered by the system: Delete entry and replace with ''Military and civilian personnel associated with the Army; individuals who offer historically significant items or gifts of money to the Army Museum System; and individuals who respond to the Army's World War II, Korean War, Vietnam War Era, Cold War Era, and Post Cold War Era Service Survey Questionnaire.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individuals name, military status, biographical resumes and personal working files of U.S. Army personnel; personal papers donated by individuals for historical research; photographs of Army personages; requests for historical documents regarding U.S. Army activities and responses thereto; copy of donor's proffer of gift agreement and correspondence with donor regarding status and/or location of donation(s). Questionnaires and associated historical items received by the U.S. Army Military History Institute under its Veteran Survey Program. Associated historical items may include, but not limited to, audiotapes, books, camp/unit newspapers, diaries, documents, films, memoirs, and artifacts.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 16 U.S.C. 470, National Historic Preservation Act; and Army Regulation 870–5, Military History: Responsibilities, Policies and Procedures.''

Purpose(s):

Delete entry and replace with ''To provide a record of donations and contributions of historical property to U.S. Army Museums and historical holdings; to enable Army museums and historical holdings to provide upon request by the donor or donor's heirs, information concerning the status/location of his/her donation; to enable the Army to establish title to the property. World War II, Korean War, Vietnam War Era, Cold War Era, and Post Cold War Era Survey Questionnaires will be used to document recollections and opinions of veterans for historical studies of the U.S. Army.''

* * * * *

Notification procedure:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Center of Military History, 103 3rd Street, Fort McNair, Washington, DC 20318–5058.

Individual should provide full name and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

Record access procedures:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the U.S. Army Center of Military History, 103 3rd Street, Fort McNair Washington, DC 20318–5058.

Individual should provide full name and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

* * * * *

A0870–5 AAMH

System name:

Army History Files.

System location:

U.S. Army Center of Military History, Headquarters, Department of the Army, Washington, DC 20310–0200. Decentralized segments exist at historical offices at Headquarters, Department of the Army and field operating agencies, major commands, and the U.S. Army Military Historical Research Collection, Carlisle Barracks, PA 17013–5021; U.S. Army Center of Military History, 103 3rd Street, Fort McNair, Washington, DC 20318–5058; U.S. Army Heritage and Education Center, Soldiers Drive, Carlisle, PA 17013–5021; National Museum of the United States Army, 6030 Goethals Road, Fort Belvoir, VA 22060–6205. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Categories of individuals covered by the system:

Military and civilian personnel associated with the Army; individuals who offer historically significant items or gifts of money to the Army Museum System; and individuals who respond to the Army's World War II, Korean War, Vietnam War Era, Cold War Era, and Post Cold War Era Service Survey Questionnaire.

Categories of records in the system:

Individual's name, military status, biographical resumes and personal working files of U.S. Army personnel; personal papers donated by individuals for historical research; photographs of Army personages; requests for historical documents regarding U.S. Army activities and responses thereto; copy of donor's proffer of gift agreement and correspondence with donor regarding status and/or location of donation(s). Questionnaires and associated historical items received by the U.S. Army Military History Institute under its Veteran Survey Program. Associated historical items may include, but not limited to, audiotapes, books, camp/unit newspapers, diaries, documents, films, memoirs, and artifacts.

Authority for maintenance of the system:

10 U.S.C. 3013, Secretary of the Army; 16 U.S.C. 470, National Historic Preservation Act; and Army Regulation 870–5, Military History: Responsibilities, Policies and Procedures.

Purpose(s):

To provide a record of donations and contributions of historical property to U.S. Army Museums and historical holdings; to enable Army museums and historical holdings to provide upon request by the donor or donor's heirs, information concerning the status/location of his/her donation; to enable the Army to establish title to the property. World War II, Korean War, Vietnam War Era, Cold War Era, and Post Cold War Era Survey Questionnaires will be used to document recollections and opinions of veterans for historical studies of the U.S. Army.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system may be disclosed to a municipal corporation, a soldier's monument association, a State museum, an incorporated museum or exhibition operated and maintained for educational purposes only, a post of the Veterans of Foreign Wars or the American Legion, or other Federal museums upon donation or transfer of the historical property to one of those organizations.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, photographs, and on electronic media. Artifacts will be stored in a secure area.

Retrievability:

By individual's name.

Safeguards:

Records are maintained in secured areas accessible only to persons having need therefore in the performance of official duties.

Retention and disposal:

Permanent. Some historical material and photographs are retired to the Washington National Records Center when no longer needed; other such material is transferred to the Military History Research Collection at Carlisle Barracks, PA for preservation. Inquiries about historical events or persons, and responses thereto, are destroyed when no longer needed.

System manager(s) and address:

Chief, U.S. Army Center of Military History, 103 3rd Street, Fort McNair, Washington, DC 20318–5058.

Director, U.S. Army Heritage and Education Center, 22 Ashburn Drive, Carlisle, PA 17013–5008.

Notification procedure:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Center of Military History, 103 3rd Street, Fort McNair, Washington, DC 20318–5058.

Individual should provide full name and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury

that the foregoing is true and correct. Executed on (date). (Signature)'.

Record access procedures:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the U.S. Army Center of Military History, 103 3rd Street, Fort McNair Washington, DC 20318–5058.

Individual should provide full name and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

Contesting record procedures:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Record source categories:

From the individual, his/her Army record, official Army documents, public records.

Exemptions claimed for the system:

None.

[FR Doc. E9–24504 Filed 10–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket No. USN–2009–0019]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 12, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Head of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Miriam Brown-Lam (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 24, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

N05520–4

SYSTEM NAME:

NCIS Investigative Files System (April 10, 2008, 73 FR 19486).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Official investigative reports prepared by NCIS, DON, Department of Defense (DoD), or other Federal, State, local, Tribal, or foreign law enforcement or investigative bodies.

Biographic data, intelligence/counterintelligence debriefing reports, information concerning U.S. personnel who are missing, captured, or detained by a hostile entity. The information may be of criminal, counterintelligence, or general investigative interest.

Preliminary Investigation Reports (PIR) document receipt of information that at the initial stage indicates an incident occurred involving one or more criminal offenses, however it was subsequently determined that no criminal offense occurred or that the incident and offenses did not fall within NCIS' jurisdiction and or responsibility to investigate.

Polygraph Data. A listing of persons who submitted to polygraph examination by NCIS examiners. The data includes the examinee's name, location and results of the examination and the identity of the examiner. Also, copies of examination records created in support of criminal investigations. This data includes statistical and technical data sheets, questions sheets, charts, numerical evaluation forms, subject statements, consent forms, medical waivers, interview logs, personal data sheets, and related documents.

Case Control and Management documents which serve as the basis for recording, conducting, controlling, and guiding the investigative activity. Records identifying confidential sources and contacts with them. Index to persons reported by 'Name Only'.

Forensic Laboratory Report Records. Records reporting and documenting laboratory analysis of submitted evidence.

Fingerprint Card Files. Fingerprint card and related correspondence obtained by DON designated law enforcement officials and submitted to NCIS Headquarters for quality review and forwarding to the Federal Bureau of Investigations in support of criminal investigations.

Personnel Security and Suitability Investigations. Requests for and results of investigations or inquiries conducted by U.S. Navy or other DoD, Federal, State, or local investigative agency. Record includes: Personal history statements; fingerprint cards; personnel security questionnaire; medical and/or educational records and waivers for release; requests for and National Agency checks; local agency checks; military records; birth records; employment records; credit records and waivers for release; interviews of education, employment, and credit references; interviews of listed and developed character references; interviews of neighbors; and other similar records.''

* * * * *

STORAGE:

Delete entry and replace with ''Maintained on paper records and electronic storage media.''

* * * * *

N05520–4

SYSTEM NAME:

NCIS Investigative Files System.

SYSTEM LOCATION:

Primary System: Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 716 Sicard Street, SE., Washington, DC 20388–5380.

Decentralized Segments—Located at the Naval Criminal Investigative Service

(NCIS) Field Offices (FO), Resident Agencies (RA), and Polygraph sites worldwide. Law Enforcement Information Exchange (LInX) secure remote computer server sites. Naval Criminal Investigative Service Regional Offices retain copies of certain portions of some investigative files and related documentation. The number and location of these Naval Criminal Investigative Service Field Offices, Naval Criminal Investigative Service Resident Agencies, and Polygraph sites are subject to change in order to meet the requirements of the Department of the Navy.

Consolidated Evidence Facilities maintain evidence inventory records. Current locations of NCIS decentralized segments may be obtained from the Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 716 Sicard Street, SE., Washington, DC 20388–5380.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons in the following categories who require access to classified defense information and others who are of criminal, counterintelligence, security or general investigative interest to NCIS:

Active, reserve, and inactive members of the naval service; civilians, to include applicants for employment with NCIS; both citizen and alien employees located in both the U.S. and in overseas areas and including temporary, part-time, and advisory personnel employed by the Department of the Navy; industrial and contractor personnel; civilian personnel being considered for sensitive positions, boards, conferences, etc. Civilian personnel who worked or resided overseas, *e.g.*, Red Cross personnel. Civilian and military personnel accused, suspected, a witness to, or victims of felonious type offenses, or lesser offenses impacting on the good order, discipline, morale or security of the Department of the Navy; civilian personnel seeking access to or seeking to conduct or operate any business or other function aboard a Department of the Navy installation, facility or ship; civilians and civilian or military personnel who are subjects, co-subjects, witnesses, and victims in law enforcement and investigative cases in which law enforcement and investigative authorities (Federal, State, local, Tribal, and foreign) have requested laboratory analysis of submitted evidence for law enforcement purposes; civilian or military personnel involved in the loss, compromise, or unauthorized disclosure of classified material/information; civilian and military personnel who were/are of counterintelligence interest to the Department of the Navy. Persons under investigation and parties to the communications whose communications have been intercepted during wire, electronic or oral surveillance operations conducted by or on behalf of NCIS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official investigative reports prepared by NCIS, DON, Department of Defense (DoD), or other Federal, State, local, Tribal, or foreign law enforcement or investigative bodies.

Biographic data, intelligence/counterintelligence debriefing reports, information concerning U.S. personnel who are missing, captured, or detained by a hostile entity. The information may be of criminal, counterintelligence, or general investigative interest.

Preliminary Investigation Reports (PIR) document receipt of information that at the initial stage indicates an incident occurred involving one or more criminal offenses, however it was subsequently determined that no criminal offense occurred or that the incident and offenses did not fall within NCIS' jurisdiction and or responsibility to investigate.

Polygraph Data. A listing of persons who submitted to polygraph examination by NCIS examiners. The data includes the examinee's name, location and results of the examination and the identity of the examiner. Also, copies of examination records created in support of criminal investigations. This data includes statistical and technical data sheets, questions sheets, charts, numerical evaluation forms, subject statements, consent forms, medical waivers, interview logs, personal data sheets, and related documents.

Case Control and Management documents which serve as the basis for recording, conducting, controlling, and guiding the investigative activity. Records identifying confidential sources and contacts with them. Index to persons reported by 'Name Only'.

Forensic Laboratory Report Records. Records reporting and documenting laboratory analysis of submitted evidence.

Fingerprint Card Files. Fingerprint card and related correspondence obtained by DON designated law enforcement officials and submitted to NCIS Headquarters for quality review and forwarding to the Federal Bureau of Investigations in support of criminal investigations. Personnel Security and Suitability Investigations. Requests for and results of investigations or inquiries conducted by U.S. Navy or other DoD, Federal, State, or local investigative agency. Record includes: personal history statements; fingerprint cards; personnel security questionnaire; medical and/or educational records and waivers for release; requests for and National Agency checks; local agency checks; military records; birth records; employment records; credit records and waivers for release; interviews of education, employment, and credit references; interviews of listed and developed character references; interviews of neighbors; and other similar records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 18 U.S.C. 2510–2520 and 3504; 47 U.S.C. 605; DoD Directive 5210.48, Polygraph and Credibility Assessment Program; DoD Regulation 5240.1–R, Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons; DoD Directive 5505.9, Interception of Wire, Electronic, and Oral Communications for Law Enforcement; Secretary of the Navy Instruction 5430.107, Mission and Functions of the Naval Criminal Investigative Service; Secretary of the Navy M–5510.30, Department of the Navy Personnel Security Program; Secretary of the Navy M–5510.36, Department of the Navy Information Security Program; OPNAVINST 5530.14, Navy Physical Security and Law Enforcement; MCO 558.2, Law Enforcement Manual; E.O. 10450, Security Requirements for Government Employees, in particular sections 2, 3, 4, 5, 6, 7, 8, 9, and 14; E.O. 12333, United States Intelligence Activities and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The information in this system is (was) collected to meet the investigative, counterintelligence, and security responsibilities of the Department of the Navy. This includes personal, personnel security, internal security, criminal, and other law enforcement matters all of which are essential to the effective operation of the Department of the Navy.

The records in this system are used for the following purposes: Suitability for access or continued access to classified information; suitability for promotion, employment, or assignment; suitability for access to military installations or industrial firms engaged in government projects/contracts; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type including applicants; use in judicial or adjudicative proceedings including litigation or in accordance with a court

order; to assist Federal, State and local agencies that perform law enforcement or quasi-law enforcement functions; to assist Federal, State and local agencies that perform victim/witness assistance services, child protection services or family support or sailor services; insurance claims including workmen's compensation; provide protective operations under the DoD Distinguished Visitor Protection Program and to assist the U.S. Secret Service in meeting its responsibilities; assist local law enforcement agencies in meeting their responsibilities for complying with Congressionally mandated records checks such as Brady Handgun Violence Prevention Act checks; used for public affairs or publicity purposes such as wanted persons announcements, etc; referral of matters under their cognizance to Federal, State or local law enforcement authorities including criminal prosecution, civil court action or regulatory order; advising higher authorities and naval commands of the important developments impacting on security, good order or discipline; reporting of statistical data to naval commands and higher authority; input into the Defense Security Service managed Defense Clearance Index of Investigations (DCII) database under system notice V5–02. Wire, Electronic, and Oral Interceptions Index is maintained to enable NCIS to quickly locate records of intercept activities in response to motions for discovery and inquiries.

Users of the records in this system include NCIS employees who require access for operational, administrative, or supervisory purposes; DoD criminal investigative and intelligence units; DoD components making suitability determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, local, Tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities.

(2) To a governmental entity lawfully engaged in collecting criminal law enforcement, criminal law enforcement intelligence, or national security intelligence information for law enforcement or intelligence purposes.

(3) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(4) In an appropriate proceeding before a court, or administrative or adjudicative body, when NCIS determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(5) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

(6) To a former employee of NCIS for purposes of: responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable NCIS regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where NCIS requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(7) To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

(8) To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

(9) To commercial insurance companies in those instances in which they have a legitimate interest in the results of the investigation, but only to that extent and provided an unwarranted invasion of privacy is not involved.

(10) To the White House for the purpose of personnel actions requiring approval of the President of the United States as provided for in DoD Instruction 1320.4.

(11) To any person or entity if deemed by NCIS to be necessary in order to elicit information or cooperation from the recipient for use by NCIS in the performance of an authorized law enforcement activity.

(12) To any individual, organization, or governmental entity in order to notify them of a serious terrorist threat for the purpose of guarding against or responding to such a threat. The DoD Blanket Routine Uses that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper records and electronic storage media.

RETRIEVABILITY:

NCIS closed case paper files are filed by numeric sequential number, alphabetic by company and topical title, and geographic location; microfilm files are filed by dossier number and location; and electronic/optically imaged files by case or control number, name, and Social Security Number (SSN).

In order to locate the file it is necessary to query the Defense Clearance Index of Investigations. Open case files may also be retrieved from NCIS automated systems by a case number assigned at the time the investigation was initiated.

Copies of the files in the Naval Criminal Investigative Service Field Offices, Naval Criminal Investigative Service Resident Agencies, and Polygraph sites are retrieved by name.

Polygraph sites can also retrieve copies of the file by polygraph approval number. Wire, Electronic, and Oral Intercept Index records are retrieved by a combination of name, address, Social Security Number, telephone number/ radio call sign, or case designation.

SAFEGUARDS:

Buildings employ alarms, security guards, and/or rooms with security controlled areas accessible only to authorized persons. Classified and highly sensitive paper records are maintained in General Service Administrative approved security containers. Paper and microform records in NCIS records office are stored on open shelves and in filing cabinets in security controlled areas accessible only to authorized persons. Electronically, digital, and optically stored records are maintained in 'fail-safe' system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared and trained. Noncurrent hardcopy and master copy of microfilmed files are retired to the Washington National Records Center where retrieval is restricted to authorized NCIS personnel.

NCIS employees authorized to work offsite will safeguard government/agency records from unauthorized disclosure or damage by transporting only unclassified records in approved locked briefcases, satchels, or boxes. When not in use by the offsite employee, all records or case-related material is stored in a locked file cabinet or desk in the areas designated that is accessible only to authorized persons. Some documents will be prepared on government computers by NCIS employees at designated offsite locations. When offsite, computers may be connected securely to the Navy networks using approved virtual private network (VPN) software, and data and documents on government computers are protected using encryption. No data is authorized to be transferred to or stored on any employee's personal computer. Documents prepared at designated offsite locations and or temporarily held for the purposes of offsite work will not be printed at any unauthorized offsite location.

RETENTION AND DISPOSAL:

COUNTERINTELLIGENCE (CI) RECORDS:

CI records are retained in the active file until the case is closed; then destroyed 25 years after the date of last action. Major CI investigations are retired to the NCIS records office upon case closure; then transferred to the National Archives and Records Administration (NARA) when 25 years old.

Source records are retained in the active file until the operation is complete; then destroyed 75 years after the date of the last action.

Reciprocal CI investigative files regarding individuals or organizations under investigative jurisdiction of the requesting agency are disposed of as prescribed above for CI investigative records; except when the request is for CI personnel security matters; then the file is destroyed after one year.

CI defensive briefings are retained until case closure, retired to the NCIS records office; then destroyed after 15 years. Foreign national marriage and visa applicant investigations are retired to the NCIS records office upon case closure; then destroyed after one year except when the investigation surfaces significant derogatory material. These files are destroyed after five years.

Records pertaining to CI polygraph examinations conducted in support of CI activities are filed with the case file and disposed of in accordance with the guidance for the associated file. CI Security Polygraph Program (CSP) records are maintained in the active file until no longer needed; then disposed of after the final quality control review as follows: (1) CSP cases favorably resolved are destroyed after the final quality assurance review, except at NCIS Polygraph Units which retain the CSP investigative reports only; destroying it when no longer needed or after one year; (2) CSP cases other than favorably resolved are destroyed 25 years after completion of the final quality assurance review, except when an existing criminal investigation exists. In such cases the CSP Package is incorporated into the investigative file and disposed of in accordance with the disposition guidance for the dossier; and (3) audio tape recordings of routine CSP examinations with no significant responses are erased when no longer needed or after 90 days. Recordings referred for further investigation are incorporated into the investigative case file and disposed of in accordance with the disposition guidance for the dossier.

PERSONNEL INVESTIGATIONS:

Completed NCIS investigative files on Personnel Security Investigations (PSIs) are destroyed after 15 years unless significant incidents or adverse information is developed, in which case they are destroyed after 25 years. PSI files on persons considered for affiliation with DoD will be destroyed within one year if the affiliation is not consummated.

Special Agent applicant records are retained for one year if the applicant declines offer of employment and five years if the applicant is rejected for employment. Non-DoD-affiliated applicant records are destroyed when no longer needed or after 90 days. Records for applicants who are accepted are retired to NCIS records office upon case closure; then destroyed 10 years after release, separation, transfer, retirement, or resignation.

Internal personnel inquiries records are retired to NCIS records office after case closure; then destroyed 25 years after the date of last action or 10 years after termination of employment, whichever is later.

Limited inquiries records are retired to NCIS records office at inquiry closure; then destroyed after 5 years.

Support applicant records are retired to NCIS records office at case closure; then destroyed after 15 years.

LAW ENFORCEMENT RECORDS:

Criminal investigative files are destroyed after 25 years, except (1) controlled death investigations which are destroyed 75 years after date of case closure (2) files of cases determined to be of historical value are transferred to NARA 25 years after the date of the last action, except Grand Jury material which is destroyed at the time of transfer.

Incident Complaint Reports (ICR) received from Navy Shore Patrol and Marine Corps military police offices pertaining to categories of investigations/reports under the jurisdiction of NCIS are destroyed when 25 years old. Cases referred but determined not under NCIS jurisdiction are destroyed when no longer needed.

Criminal intelligence operations files are retired to NCIS records office upon closure; then destroyed 15 years after closure for Group 1 records and five years for Group 2.

Protective operations files involving protective details of distinguished persons are destroyed when five years old, except records where a threat or attempted threat materialized are destroyed when 25 years old.

Law enforcement source (also called ''cooperating witness'') records are retired to NCIS records office after case closure and destroyed 15 years after the date of last action.

Information reports consisting of incidental information impacting on the security or discipline of commands or of interest to other law enforcement elements are destroyed when 25 years old.

Reciprocal investigative files regarding requests for investigative assistance from other Federal, State and local law enforcement agencies are disposed of as prescribed for the criminal investigative reports and ICRs, as appropriate.

Polygraph examinations conducted for criminal investigations are quality assured and filed in the associated criminal investigation. Disposition is in accordance with the guidance for the investigative case file.

Wire, Electronic, Oral Interception Index computer entries are deleted upon destruction or transfer to NARA of the case file containing intercept information. Disposition of the case files is governed by the NARA approved retention period applied to the case dossier. Hardcopy records used to create the index are destroyed upon verification that the indexing information has been fully and accurately entered into the automated index.

National Crime Information Center (NCIC) records that support Department of the Navy entries into the FBI's National Crime Information Center are destroyed after the related entry is deleted from the National Crime Information Center computer. Microfiche copies are destroyed when

all cases on the fiche are cleared from the National Crime Information Center.

LABORATORY FINGERPRINT CARD FILES ARE DISPOSED OF AS FOLLOWS:

(1) One fingerprint card set is forwarded to the Federal Bureau of Investigation; the other set is destroyed when 75 years old.

(2) Fingerprint card indices and related correspondence are destroyed when all administrative needs have expired.

Counterintelligence records on persons not affiliated with DoD must be destroyed within 90 days or one year under criteria set forth in DoD Directive 5200.27, unless retention is required by law or specifically approved by the Secretary of the Navy.

Files retained in the Naval Criminal Investigative Service Field Offices and Naval Criminal Investigative Service Resident Agencies and Polygraph sites are temporary and are destroyed after 90 days or one year, as appropriate.

Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records; and magnetic erasing for computerized records. Optical digital data and CD ROM records are destroyed as specified by NAVSO P–5239–26, ''Remanence Security Guidebook'' of September 1993.

Counterintelligence (CI)/ Counterterrorism (CT) Records: CI records are retained in the active file until the case is closed, then retired to the NCIS records office; then destroyed 25 years after the date of last action. Major CI/CT investigations are retired to the NCIS records office upon case closure; then transferred to the National Archives when 50 years old. Copies may be retained at NCIS Field Offices for one year after case closure unless extended retention is authorized.

Source records are retained in the active file until the operation is complete; then destroyed 75 years after the date of the last action.

Reciprocal CI/CT investigative files regarding individuals or organizations under investigative jurisdiction of the requesting agency are disposed of as prescribed above for CI/CT investigative records; except when the request is for CI/CT personnel security matters; then the file is destroyed after one year.

CI defensive briefings are retained until case closure, retired to the NCIS records office; then destroyed after 15 years. Foreign national marriage and visa applicant investigations are retired to the NCIS records office upon case closure; then destroyed after one year except when the investigation surfaces significant derogatory material. These files are destroyed after five years.

Records pertaining to CI polygraph examinations conducted in support of CI activities are filed with the case file and disposed of in accordance with the guidance for the associated file.

CI Security Polygraph Program (CSP) records are maintained in the active file until no longer needed; then disposed of after the final quality control review as follows: (1) CSP cases favorably resolved are destroyed after the final quality assurance review, except at NCIS Polygraph Units which retain the CSP investigative reports only; destroying it when no longer needed or after one year (2) CSP cases other than favorably resolved are destroyed 25 years after completion of the final quality assurance review, except when an existing criminal investigation exists.

In such cases the CSP Package is incorporated into the investigative file and disposed of in accordance with the disposition guidance for the dossier (3) audio tape recordings of routine CSP examinations with no significant responses are erased when no longer needed or after 90 days. Recordings referred for further investigation are incorporated into the investigative case file and disposed of in accordance with the disposition guidance for the dossier.

Personnel Investigations: Completed NCIS investigative files on Personnel Security Investigations (PSIs) are destroyed after 15 years unless significant incidents or adverse information is developed, in which case they are destroyed after 25 years. PSI files on persons considered for affiliation with DoD will be destroyed within one year if the affiliation is not consummated.

Special Agent applicant records are retained for one year if the applicant declines offer of employment and five years if the applicant is rejected for employment. Non-DoD-affiliated applicant records are destroyed when no longer needed or after 90 days. Records for applicants who are accepted are retired to NCIS records office upon case closure; then destroyed 10 years after release, separation, transfer, retirement, or resignation.

Internal personnel inquiries records are retired to NCIS records office after case closure; then destroyed 15 years after case closure.

Limited inquiries records are retired to NCIS records office at inquiry closure; then destroyed after 5 years.

Support applicant records are retired to NCIS records office at case closure; then destroyed after 15 years.

Law Enforcement Records: Criminal investigative files are destroyed after 25 years, except (1) controlled death and criminal sex investigations and investigations created on or after January 1, 1988 and where DoDI 5505.11 requires submission of offender criminal history data to the FBI are destroyed 50 years after date of case closure (2) files of cases determined to be of historical value are transferred to NARA 50 years after the date of the last action, except Grand Jury material which is destroyed at the time of transfer. Copies may be retained at NCIS Field Offices for one year after case closure unless extended retention is authorized.

Incident Reports (IR) received from Navy Law Enforcement and Marine Corps Military Police offices pertaining to categories of investigations/reports under the jurisdiction of NCIS and created prior to 1 January 1988 are destroyed when 25 years old. Cases created on or after 1 January 1988 are destroyed when 50 years old. Cases referred but determined not under NCIS jurisdiction are destroyed when no longer needed. Copies may be retained at the submitting office for two years after case closure unless extended retention is authorized. Criminal Initiative Operations files are retired to NCIS records office upon closure; then destroyed 15 years after closure for Group 1 records and five years for Group 2.

Protective Operations files involving protective details of distinguished persons are destroyed when five years old, except records where a threat or attempted threat materialized are destroyed when 25 years old.

Law enforcement source records are retired to NCIS records office after case closure and destroyed 15 years after the date of last action.

Preliminary Investigation Reports (PIR) records are used to document the receipt of information that at the initial stage indicated an incident occurred involving one or more criminal offenses, however, it was subsequently determined that no criminal offense occurred or that the incident and offenses did not fall within NCIS' jurisdiction and/or responsibility to investigate. These records are destroyed/deleted 5 years after case closure.

Reciprocal investigative files regarding requests for investigative assistance from other Federal, State and local law enforcement agencies are disposed of as prescribed for the criminal investigative reports and IRs, as appropriate.

Polygraph examinations conducted for criminal investigations are quality assured and filed in the associated

criminal investigation. Disposition is in accordance with the guidance for the investigative case file.

Wire, Electronic, Oral Interception Index computer entries are deleted upon destruction or transfer to NARA of the case file containing intercept information. Disposition of the case files is governed by the NARA approved retention period applied to the case dossier.

Hardcopy records used to create the index are destroyed upon verification that the indexing information has been fully and accurately entered into the automated index.

National Crime Information Center (NCIC) records that support Department of the Navy entries into the FBI's National Crime Information Center are destroyed after the related entry is deleted from the National Crime Information Center computer.

Microfiche copies are destroyed when all cases on the fiche are cleared from the National Crime Information Center.

FINGERPRINT CARD FILES ARE DISPOSED OF AS FOLLOWS:

(1) Digital capture of one fingerprint card set is forwarded to the Federal Bureau of Investigation; and the card is destroyed when it is verified that the digital copy was accurately captured and transferred.

(2) Second fingerprint card, indices, and related correspondence are destroyed when 5 years old.

Counterintelligence records retained solely for the purpose of determining whether the information may be permanently retained on persons not affiliated with DoD must be destroyed within 90 days, unless retention is required by law or specifically approved by the Secretary of the Navy.

Counterintelligence Security Polygraph packages forwarded to Naval Criminal Investigative Service headquarters are destroyed when 35 years old. Files retained in the Naval Criminal Investigative Service Field Offices and Naval Criminal Investigative Service Resident Agencies and Polygraph sites are temporary and are destroyed after 90 days or earlier if no longer needed.

Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records; and magnetic erasing for computerized records. Optical digital data and CD ROM records are destroyed as specified by Department of the Navy, Information Assurance Remanence Publication 5239–26.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 716 Sicard Street, SE., Washington, DC 20388–5380.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, Code 00JF, 716 Sicard Street, SE., Washington, DC 20388–5380.

Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth, or Social Security Number (SSN). Persons submitting written requests must properly establish their identity to the satisfaction of the Naval Criminal Investigative Service. In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, Code 00JF, 716 Sicard Street, SE., Washington, DC 20388–5380.

Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth and Social Security Number(SSN). Persons submitting written requests must properly establish their identity to the satisfaction of the Naval Criminal Investigative Service. In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individual, DoD and Military Department records; Federal Agency records; foreign law enforcement agencies, security, intelligence, investigatory, or administrative authorities; State, county, and municipal records; employment records of public schools, colleges, universities, technical and trade schools; hospital records; real estate agencies; credit bureaus; financial institutions which maintain credit information on individuals such as loan and mortgage companies, credit unions, banks, *etc.*; transportation companies (airlines, railroad, etc.); other private records sources deemed necessary in order to complete an investigation; miscellaneous records such as: telephone directories, city directories; Who's Who in America; Who's Who in Commerce and Industry; Who Knows What, a listing of experts in various fields; American Medical Directory; Martindale-Hubbell Law Directory; U.S. Postal Guide; Insurance Directory; Dunn and Bradstreet; and the U.S. Navy BIDEX (Biographical Index); any other type of miscellaneous records deemed necessary to complete the investigation or inquiry; the interview of individuals who have knowledge of the subject's background and activities; the interview of witnesses, victims, confidential sources, and or other individuals deemed necessary to complete the investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2), since the information is compiled and maintained by the Naval Criminal Investigative Command, which performs as its principle function the enforcement of criminal laws.

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. E9–24509 Filed 10–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on October 20, 2009, at the headquarters of the IEA in Paris, France, in connection with a meeting of the IEA's Standing Group on Emergency Questions (SEQ) on October 20 and 21, 2009.

DATES: October 20–21, 2009.

ADDRESSES: 9, rue de la Fédération, Paris, France.

FOR FURTHER INFORMATION CONTACT: Diana D. Clark, Assistant General for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–3417.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) of the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on October 20, 2009, beginning at 9:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the same location beginning at 2 p.m. on October 20 and continuing at 9:30 a.m. on October 21. The IAB meeting is in preparation for the SEQ meeting. The agenda for this preparatory meeting is to review the agenda for the SEQ meeting and to discuss the availability and suitability of public emergency oil stocks.

The agenda of the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Installation of New Vice-Chair
2. Adoption of the Agenda
3. Approval of the Summary Record of the 127th Meeting
4. Status of Compliance with IEP Stockholding Commitments
5. Program of Work
   —Report on the Meeting of the Governing Board at the Ministerial Level
   —Mid-term Review of the Program of Work 2009–2010
6. Bilateral Cooperation with Thailand
7. The Current Oil Market Situation
8. Emergency Response Review Program
   —Schedule of Emergency Response Reviews
   —Questionnaire Response of the Czech Republic
   —Emergency Response Review of Ireland
   —Emergency Response Review of Canada
9. Emergency Response Exercise 5 (ERE5)
   —Proposal for the Fifth Emergency Response Training and Oil Supply Disruption Response Simulation Exercise
10. Emergency Policy for Natural Gas
   —Update on the Natural Gas Market
   —Developments in EU Natural Gas Emergency Policy
11. Emergency Response Measures
   —Recommendations on Release of Public Stocks
   —Guidelines for Demand Restraint
   —Review of IEA Procedures for Collective Actions
   —Explanation of the Energy Security Model
12. Policy and Other Developments in Member Countries
   —Belgium
   —Switzerland
   —United States
13. Activities with International Organizations and Non-Member Countries
   —Report on the Fossil Fuels Forum, Berlin
   —Report on the 1st Oil Forum of the Energy Community, Belgrade
14. Report from the Industry Advisory Board
15. Documents for Information
   —Emergency Reserve Situation of IEA Member Countries on July 1, 2009
   —Base Period Final Consumption: 3Q 2008–2Q 2009
   —Monthly Oil Statistics: July 2009
   —Updated Emergency Contacts List
13. Other Business
   —Demonstration of New SEQ Web Site Discussion Forum
   —Tentative Schedule of Meetings:
   —March 23–25, 2010
   —June 29–30 and July 1, 2010
   —November 16–18, 2010 (ERE5)

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, October 6th, 2009.

Diana D. Clark,

Assistant General Counsel for International and National Security Programs.

[FR Doc. E9–24555 Filed 10–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council (NCC). The Federal Advisory Committee

Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, November 6, 2009; 10 a.m. to 2 p.m.

ADDRESSES: Hilton Hotel at the Ballpark, One South Broadway, St. Louis, MO 63102.

FOR FURTHER INFORMATION CONTACT: Michael J. Ducker, U.S. Department of Energy; 4G–036/Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 202–586–7810.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide a review by the Committee of the final draft of the current study underway by the Council on carbon capture and storage technologies for use on coal-based electricity generation plants.

Agenda: Review of the previously described draft report.

Public Participation: The meeting is open to the public. 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 potential items on the agenda, you should contact Michael J. Ducker, 202–586–7810 or *Michael.Ducker@HQ.DOE.GOV* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The NCC will prepare meeting minutes within 45 days of the meeting. The minutes will be posted on the NCC Web site at *http://www.nationalcoalcouncil.org/.*

Issued at Washington, DC on October 6, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–24590 Filed 10–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–32–008]

Gulf South Pipeline Company, LP; Notice of Application

October 2, 2009.

Take notice that on September 28, 2009, Gulf South Pipeline Company, LP (Gulf South), filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(c) of the Natural Gas Act (NGA) seeking authorization to amend its existing certificate to reduce to the maximum certificated capacity on the East Southeast Expansion Project facilities to reflect refined flow characteristics after a year of operational experience, all as more fully described in the application.

This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Any questions regarding this application should be directed to: J. Kyle Stephens, Vice President of Regulatory Affairs, Boardwalk Pipeline Partners, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, at 713–47908033 or fax at 713–479–1846.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: October 16, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24498 Filed 10–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12628–002]

The City of Nashua, IA; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

October 5, 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 minor license.

b. *Project No.:* 12628–002.

c. *Date Filed:* January 13, 2009.

d. *Applicant:* The City of Nashua, Iowa.

e. *Name of Project:* Cedar Lake Dam Hydroelectric Project.

f. *Location:* The project would be located at the existing Cedar Lake Dam, on the Cedar River, in Chickasaw County, Iowa. The project would not occupy any Federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ms. Rebecca Neal, The City of Nashua, 402 Main Street, Nashua, IA 50658; (641) 435–4156.

i. *FERC Contact:* Michael Watts, *michael.watts@ferc.gov,* (202) 502–6123.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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 ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

k. This application has been accepted, and is ready for environmental analysis at this time.

l. *The proposed project would consist of:* (1) An existing 15.5-foot-high concrete dam with a 258-foot-long spillway equipped with four 6-foot-high taintor gates, a 6-foot-high control gate, and three 4-foot-high flashboards; (2) an existing 405-acre reservoir with a normal full pond elevation of 960.1 feet above mean sea level; (3) an existing 50-foot-wide concrete intake structure connected to; (4) an existing powerhouse to contain four new turbine generating units with a total installed capacity of 800 kilowatts; (5) a new 75-foot-long, 13.8-kilovolt overhead transmission line; and (6) appurtenant facilities. The proposed project would generate an estimated average annual generation of 3,285 megawatt hours.

The existing Cedar Lake dam and integral powerhouse are owned by the City of Nashua, Iowa (Nashua) and were constructed in 1917 and used for power generation until 1965. Nashua currently operates the dam to maintain the reservoir's water surface elevation. Nashua is proposing to rehabilitate the hydro project by installing the new turbine generators and transmission equipment. As proposed, the project will operate in run-of-river mode.

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 access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) Bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

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.

Procedural Schedule: The application will be processed according to the following Revised Hydro Licensing Schedule. Other revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing of Agency Recommendations.	December 4, 2009.
Notice of the availability of the EA.	May 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24496 Filed 10–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13524–000]

Contra Costa Water District; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

October 2, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 13524–000.

c. *Date Filed:* June 22, 2009.

d. *Applicant:* Contra Costa Water District.

e. *Name of Project:* Los Vaqueros Pipeline Energy Recovery Project.

f. *Location:* The Los Vaqueros Pipeline Energy Recovery would be located at the Los Vaqueros Pipeline near Bureau of Reclamation's Contra Costa Canal, near city of Antioch, Contra Costa County, California. The land in which all the project structures are located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Chris Hentz, Contra Costa Water District, P.O. Box H2O, Concord, California 94524–2099, (925) 688–8311.

i. *FERC Contact:* Alyssa Dorval, 202–502–6735, *alyssa.dorval@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for Filing Responsive Documents:* The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533, issued May 8, 1991, 56 FR 23,108 (May 20, 1991)) that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission by December 1, 2009. All reply comments must be filed with the Commission by January 15, 2010.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in 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.

l. *Description of Project:* The proposed project will generate electricity from existing water supply operations flowing through the buried 96-inch diameter Los Vaqueros pipeline, located at elevation of 220 feet, to the Contra Costa Canal, located at elevation 120 feet. A small hydroelectric generating facility, consisting of a 1-megawatt turbine-generating unit, will be built near where the Los Vaqueros pipeline ends into the Contra Costa Canal.

The project would have an estimated annual generation of 4,400,000 kWh (kilowatt-hours). The applicant plans to use most of the generated energy.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, here P–12624, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. Protests or Motions To Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24497 Filed 10–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 2, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–1–000.

Applicants: Fibrowatt LLC, Fibrominn LLC, Unagi LLC.

Description: Joint Application for Authority to Transfer Jurisdictional Facilities, Request for Waivers and for Expedited Consideration of Fibrowatt LLC, Fibrominn LLC and Unagi LLC.

Filed Date: 10/01/2009.

Accession Number: 20091001–5093.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–468–011; ER00–3621–012; ER04–318–007; ER05–36–008; ER05–37–008; ER05–34–008; ER05–35–008; ER04–249–008; ER99–1695–016; ER02–23–014; ER97–30–009; ER07–1306–007; ER96–2869–016; ER08–1323–002; ER97–3561–008.

Applicants: Dominion Energy Marketing, Inc., Dominion Nuclear Connecticut, Inc., Dominion Energy Kewaunee, Inc., Dominion Energy Brayton Point, LLC, Dominion Energy Manchester Street, Inc., Dominion Energy New England Inc., Dominion Energy Salem Harbor, LLC, Dominion Retail, Inc., Elwood Energy, LLC, Fairless Energy, LLC, Kincaid Generation, L.L.C., NedPower Mt Storm LLC, State Line Energy L.L.C., Fowler Ridge Wind Farm, LLC, Virginia Electric and Power Company.

Description: Amended Notice of Change in Status of Dominion Resources Services, Inc.

Filed Date: 10/01/2009.

Accession Number: 20091001–5094.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER09–1098–000.
Applicants: DownEast Power Company, LLC.
Description: DownEast Power Co LLC responds to a deficiency letter the Commission issued on July 2, 2009 re a request for additional information in support of the Market-based Rate Authorization filing.
Filed Date: 09/30/2009.
Accession Number: 20091002–0136.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Docket Numbers: ER09–1748–000.
Applicants: Inupiat Energy Marketing, LLC.
Description: Inupiat Energy Marketing, LLC submits Application for Expedited Order Accepting Initial Rate Schedule, Blanket Authorizations, and Certain Waivers.
Filed Date: 09/30/2009.
Accession Number: 20091002–0077.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Docket Numbers: ER09–1760–000.
Applicants: Wilton Wind II, LLC.
Description: Wilton Wind II, LLC submits application for authorization to make market-based sales of energy capacity and certain ancillary services under a market-based rate tariff.
Filed Date: 09/30/2009.
Accession Number: 20091002–0084.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–24527 Filed 10–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 5, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–855–011.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits amendment to its Triennial Market Power Analysis.
Filed Date: 10/01/2009.
Accession Number: 20091002–0130.
Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER98–2270–006.
Applicants: PEI Power Corporation.
Description: PEI Power Corp request for Category 1 Seller classification pursuant to Appendix D–2 of Order No. 697–A.
Filed Date: 09/30/2009.
Accession Number: 20091002–0074.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Docket Numbers: ER01–1822–006.
Applicants: Indigo Generation LLC, Larkspur Energy LLC, Wildflower Energy LP.
Description: Wildflower Entities submits supplement to 9/11/09 notification of non material change in status and request for waiver.
Filed Date: 09/30/2009.
Accession Number: 20091002–0125.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Docket Numbers: ER04–318–008.
Applicants: Dominion Energy Kewaunee, Inc.
Description: Dominion Energy Kewaunee, Inc. supplement to June 30, 2009 filing of market power analyses for the Central Region.
Filed Date: 10/02/2009.
Accession Number: 20091002–5032.
Comment Date: 5 p.m. Eastern Time on Friday, October 23, 2009.

Docket Numbers: ER05–757–004.
Applicants: Victoria International LTD.
Description: Victoria International LTD submits revised market based rate tariff and request for Category 1 Seller status.
Filed Date: 09/30/2009.
Accession Number: 20091002–0073.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Docket Numbers: ER06–613–008.
Applicants: ISO New England Inc. & New England Power Pool.
Description: ISO New England, Inc submits seventh compliance report on the status of stakeholder consideration of the possible implementation in New England of a forward Ten-Minute Spinning Reserve Market.
Filed Date: 10/01/2009.
Accession Number: 20091002–0078.
Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER08–1113–006.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits Substitute First Revised Sheet No. 1182A to 9/28/09 compliance filing.
Filed Date: 10/01/2009.
Accession Number: 20091002–0127.
Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER09–836–002.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits Fourth Revised Sheet No 276.06 *et al.* to its FERC Electric Tariff, Original Volume No 2.
Filed Date: 10/01/2009.
Accession Number: 20091002–0201.
Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER09–1540–001.

Applicants: Pacific Gas and Electric Company.

Description: Compliance Refund Report Twenty-Sixth Quarterly Filing of Facilities Agreements between PG&E and CCSF.

Filed Date: 10/05/2009.

Accession Number: 20091005–5075.

Comment Date: 5 p.m. Eastern Time on Monday, October 26, 2009.

Docket Numbers: ER09–1621–001.

Applicants: Jersey Central Power & Light Co.

Description: Jersey Central Power & Light Company submits First Revised Service Agreement 2269 to FERC Electric Tariff, Sixth Revised Volume 1.

Filed Date: 10/02/2009.

Accession Number: 20091005–0081.

Comment Date: 5 p.m. Eastern Time on Friday, October 23, 2009.

Docket Numbers: ER09–1624–001.

Applicants: Black Creek Hydro, Inc.

Description: Black Creek Hydro, Inc submits second revised supplement No. 1 to rate schedule FERC No 1.

Filed Date: 10/02/2009.

Accession Number: 20091002–0213.

Comment Date: 5 p.m. Eastern Time on Friday, October 23, 2009.

Docket Numbers: ER09–1642–001.

Applicants: Bangor Hydro-Electric Company.

Description: Bangor Hydro-Electric Company submits service agreements with revised headers indicating the corrected designation.

Filed Date: 10/02/2009.

Accession Number: 20091002–0202.

Comment Date: 5 p.m. Eastern Time on Friday, October 23, 2009.

Docket Numbers: ER09–1656–001.

Applicants: Ashtabula Wind II, LLC.

Description: Ashtabula Wind II, LLC submits a Request for Authorization to Sell Energy and Capacity at Market Based Rates and Waiver of the 60-Day Notice Requirement.

Filed Date: 10/01/2009.

Accession Number: 20091002–0151.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER09–1747–001.

Applicants: Fox Islands Electric Cooperative Inc.

Description: Amended Petition of Fox Island Electric Cooperative, Inc for Order Accepting Market Based Rate Tariff for Filing and Granting Waivers and Blanket Approvals, effective 11/1/09.

Filed Date: 10/01/2009.

Accession Number: 20091002–0075.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER09–1773–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits a Notice of Cancellation of a Supplemental Generation with the City of Wamego, Kansas.

Filed Date: 09/30/2009.

Accession Number: 20090930–0102.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Docket Numbers: ER09–1777–000.

Applicants: Delmarva Power & Light Company.

Description: Delmarva Power & Light Co submits an executed Interconnection and Mutual Operating Agreement with City of Seaford, Delaware.

Filed Date: 09/30/2009.

Accession Number: 20090930–0101.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Docket Numbers: ER09–1778–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits executed Service Agreement for Network Integration Transmission Service etc.

Filed Date: 09/30/2009.

Accession Number: 20091002–0068.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Docket Numbers: ER09–1779–000.

Applicants: Midwest ISO & Midwest ISO Transmission Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc *et al.* submits Third Second Revised Sheet 2626 *et al* to FERC Electric Tariff, Fourth Revised Volume 1 to be effective 1/1/10.

Filed Date: 09/30/2009.

Accession Number: 20091002–0069.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Docket Numbers: ER09–1780–000.

Applicants: Entergy Services, Inc.

Description: Entergy Operating Companies *et al.,* submits Service Agreement No 558 to FERC Electric Tariff, Third Revised Volume 3.

Filed Date: 09/30/2009.

Accession Number: 20091002–0070.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Docket Numbers: ER09–1781–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits Third Revised Sheet 235 *et al.,* to FERC Electric Tariff, Fourth Replacement Volume 1.

Filed Date: 09/30/2009.

Accession Number: 20091002–0071.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Docket Numbers: ER09–1782–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc submits unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement.

Filed Date: 09/30/2009.

Accession Number: 20091002–0072.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 21, 2009.

Docket Numbers: ER10–5–000.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Company submits revisions to its Wholesale Distribution Open Access Tariff, *et al.*

Filed Date: 10/01/2009.

Accession Number: 20091002–0085.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER10–6–000.

Applicants: Xcel Energy Services, Inc.

Description: Northern States Power Company *et al.,* submits proposed Notice of Cancellation of the Interconnection and Interchange Agreement with Madison Gas and Electric etc.

Filed Date: 10/01/2009.

Accession Number: 20091002–0076.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER10–7–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. *et al.* submits proposed revisions to the Congestion Management Process of the Joint Operating Agreement etc.

Filed Date: 10/01/2009.

Accession Number: 20091002–0079.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER10–8–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Second Revised Sheet 3706 *et al.* to FERC Electric Tariff, Fourth Revised Volume 1 to be effective 11/1/09.

Filed Date: 10/01/2009.

Accession Number: 20091002–0080.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER10–9–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Large Generator Interconnection Agreement Facilities Maintenance Agreement dated 9/17/019.

Filed Date: 10/01/2009.

Accession Number: 20091002–0081.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER10–10–000.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits instant Informational Filing in order to update the cost components under Southern Companies Open Access Transmission Tariff to recover the Commission's Annual Charge and Southern Companies etc.

Filed Date: 10/01/2009.

Accession Number: 20091002–0082.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER10–11–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits Original Sheet 50.01 *et al.,* to FERC Electric Tariff, Sixth Revised Volume 1 to be effective 12/1/09.

Filed Date: 10/01/2009.

Accession Number: 20091002–0083.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER10–12–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corp submits a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement.

Filed Date: 10/01/2009.

Accession Number: 20091002–0153.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER10–13–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits revisions to its Open Access Transmission Tariff.

Filed Date: 10/01/2009.

Accession Number: 20091002–0149.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER10–14–000.

Applicants: Cheyenne Light Fuel & Power Company.

Description: Cheyenne Light, Fuel and Power Company *et al.,* submit renewable energy sale agreement.

Filed Date: 10/01/2009.

Accession Number: 20091002–0148.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER10–15–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits Second Revised Sheet 523I.04a *et al.,* to FERC Electric Tariff, Sixth Revised Volume 1 to be effective 12/1/09.

Filed Date: 10/01/2009.

Accession Number: 20091002–0150.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER10–16–000.

Applicants: Commonwealth Edison Company.

Description: Commonwealth Edison Company submits Seventh Revised Sheet 314A.01 *et al.,* to FERC Electric Tariff, Sixth Revised Volume 1 to be effective 12/1/09.

Filed Date: 10/01/2009.

Accession Number: 20091002–0152.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Docket Numbers: ER10–17–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Service Agreement 179 *et al.,* First Revised Sheet 18 *et al.,* to FERC Electric Tariff, First Revised Vol. 5.

Filed Date: 10/02/2009.

Accession Number: 20091002–0181.

Comment Date: 5 p.m. Eastern Time on Friday, October 23, 2009.

Docket Numbers: ER10–18–000.

Applicants: Elm Road Services LLC.

Description: Elm Road Services, LLC submits revision to the Power Purchase Agreement Providing for Sales of Test Power.

Filed Date: 10/02/2009.

Accession Number: 20091002–0182.

Comment Date: 5 p.m. Eastern Time on Friday, October 23, 2009.

Docket Numbers: ER10–19–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits Facilities Construction Agreement etc.

Filed Date: 10/02/2009.

Accession Number: 20091002–0183.

Comment Date: 5 p.m. Eastern Time on Friday, October 23, 2009.

Docket Numbers: ER10–20–000.

Applicants: Sierra Pacific Energy, LP.

Description: Sierra Pacific Energy, LP submits a notice of termination of market-based rate authority.

Filed Date: 10/02/2009.

Accession Number: 20091002–0214.

Comment Date: 5 p.m. Eastern Time on Friday, October 23, 2009.

Docket Numbers: ER10–21–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits revised pages to its open access transmission tariff.

Filed Date: 10/02/2009.

Accession Number: 20091002–0212.

Comment Date: 5 p.m. Eastern Time on Friday, October 23, 2009.

Docket Numbers: ER10–25–000.

Applicants: Xcel Energy Services, Inc.

Description: Xcel Energy Services, Inc. submits notice of termination of Umbrella Service Agreements for the Sale, Assignment or Transfer of Transmission Rights.

Filed Date: 10/02/2009.

Accession Number: 20091002–0211.

Comment Date: 5 p.m. Eastern Time on Friday, October 23, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–45–001.

Applicants: Entergy Mississippi, Inc., Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Gulf States Louisiana, L.L.C., System Energy Resources, Inc., Entergy Texas, Inc.

Description: Supplemental Information of Entergy Services, Inc., *et al.*

Filed Date: 10/02/2009.

Accession Number: 20091002–5106.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 13, 2009.

Docket Numbers: ES10–1–000.

Applicants: AEP GENERATING CO, AEP Texas North Company, AEP Texas Central Company, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, Wheeling Power Company.

Description: Application Under section 204 of the Federal Power Act for Authorization to Issue Securities of AEP GENERATING COMPANY, *et al.*

Filed Date: 10/01/2009.

Accession Number: 20091001–5097.

Comment Date: 5 p.m. Eastern Time on Thursday, October 22, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the

FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–24526 Filed 10–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP09–1086–0000]

Texican N. La. Transport, LLC, Complainant, v. Southern Natural Gas Company, Respondent; Notice of Complaint

October 2, 2009.

Take notice that on September 30, 2009, pursuant to section 206 of the Rules of Practice and Procedure, 18 CFR 385.206 section 5 of the Natural Gas Act (NGA), 15 U.S.C. 717d, Texican N. La. Transport, LLC (Complainant) filed a formal complaint against Southern Natural Gas Company (Respondent) alleging that Respondent violated the NGA, Commission precedent, and Respondent's FERC Gas Tariff by awarding capacity in an open season pursuant to a new methodology that was not timely revealed to bidders, therefore precluding bidders from taking a new approach into account when formulating their bid. Complainant requests, inter alia, that the Commission declare Respondent's capacity awards to be void and order Respondent to award the capacity accordingly.

The Complainant states that a copy of the complaint has been served on the contacts for the Respondent as listed on the Commission list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to fileelectronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 20, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24491 Filed 10–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–146–009]

Notice of Compliance Filing; Independent Energy Producers Association v. California Independent System Operator Corporation

October 5, 2009.

Take notice that on October 2, 2009, RRI Energy Services, Inc., on behalf of itself, RRI Energy Coolwater, Inc., RRI Energy Ellwood, Inc., RRI Energy Etiwanda, Inc., RRI Energy Mandalay, Inc., and RRI Energy Ormond Beach, Inc. filed a compliance refund report pursuant to the Commission's order issued on August 18, 2009, 128 FERC ¶ 61,165 (2009) (Order on Remand).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24492 Filed 10–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–146–010]

Independent Energy Producers Association v. California Independent System Operator Corporation; Notice of Compliance Filing

October 5, 2009.

Take notice that on October 2, 2009, Mirant Energy Trading LLC filed a compliance refund report pursuant to the Commission's order issued on August 18, 2009, 128 FERC ¶ 61,165 (2009) (Order on Remand).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24493 Filed 10–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

I–5 Corridor Reinforcement Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: BPA intends to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) on the construction, operation, and maintenance of a proposed 500-kilovolt (kV) transmission line and associated substations. The project would be located in Cowlitz and Clark counties, Washington, and Multnomah County, Oregon. The new BPA transmission line would extend generally southeast from a new substation proposed near Castle Rock in Cowlitz County, Washington (referred to as Castle Rock Substation), to a new substation proposed near BPA's existing Troutdale Substation near the city of Troutdale in Multnomah County, Oregon. Multiple preliminary transmission line route segments have been identified that, when combined, result in various transmission line routing alternatives approximately 70 miles long. The proposed transmission line and substations are needed to help ease transmission system congestion in the southwest Washington and northwest Oregon area, allowing BPA to fulfill existing and new transmission service requests for existing and new generation; improve system reliability; and meet continued electric load growth.

With this NOI, BPA is initiating the public scoping process for the EIS. BPA is requesting comments about potential environmental impacts that it should consider as it prepares the EIS for the proposed project, as well as comments on preliminary transmission line route segments and the proposed substations that have been identified.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment to avoid or minimize potential harm to or within any affected floodplains and wetlands. The assessment will be included in the EIS.

DATES: Oral and written scoping comments are due to BPA no later than November 23, 2009. Comments may also be made at the EIS scoping meetings to be held between October 27 and November 7, 2009 at the addresses below.

ADDRESSES: Send letters with comments on the proposed scope of the EIS to I–5 Corridor Reinforcement Project, P.O. Box 9250, Portland, OR, 97207, or by fax to (888) 315–4503. You may also call BPA's comment and information line at (800) 230–6593 and leave a comment, or submit comments online at *http://www.bpa.gov/go/i5.* BPA will post all comments on BPA's Web site at *http://www.bpa.gov/i5.* Submit requests to be placed on the project mailing list, for information, and questions to the same address and numbers above.

On Tuesday, October 27, 2009, an open-house style scoping meeting will be held from 4 p.m. to 7 p.m. at Amboy Middle School, 22115 NE Chelatchie Road, Amboy, Washington 98601. On Wednesday, October 28, 2009, a scoping meeting will be held from 4 p.m. to 7 p.m. at Clark College, Gaiser Student Hall, 1933 Fort Vancouver Way, Vancouver, Washington 98663. On Thursday, October 29, 2009, a scoping meeting will be held from 4 p.m. to 7 p.m. at Mark Morris High School, 1602 Mark Morris Court, Longview, Washington 98632. On Tuesday, November 3, 2009, a scoping meeting will be held from 4 p.m. to 7 p.m. at Liberty Middle School, 1612 NE Garfield Street, Camas, Washington 98607. On Thursday, November 5, 2009, a scoping meeting will be held from 4 p.m. to 7 p.m. at Gresham Holiday Inn, 2752 NE Hogan Drive, Gresham, Oregon 97030. On Saturday, November 7, 2009, a scoping meeting will be held from 1 p.m. to 4 p.m. at Hazel Dell Grange, 7509 NE Hazel Dell Avenue, Vancouver, Washington 98665. The Hazel Dell Grange is not wheelchair accessible.

At these informal meetings we will provide maps and other information about the project and have members of the project team available to answer questions and accept oral and written comments. You may stop by any time during these open houses.

FOR FURTHER INFORMATION CONTACT: Nancy Wittpenn, Environmental Project Lead, Bonneville Power Administration KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–

3297; or e-mail *nawittpenn@bpa.gov.* You may also contact Mark Korsness, Project Manager, Bonneville Power Administration TNP–3, PO Box 3621, Portland, Oregon, 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 360–619–6326; or e-mail *makorsness@bpa.gov.* Additional information can be found at BPA's Web site: *http://www.bpa.gov/go/i5.*

SUPPLEMENTARY INFORMATION: Southwest Washington and northwest Oregon, including Vancouver, Longview, Portland, and surrounding suburban cities and towns, have a high concentration of industrial, commercial and residential electric load. The power plants that serve this area include hydroelectric dams; gas, coal and nuclear plants; and more recently, wind farms. These power facilities use the electrical transmission system to get the power they produce to the people and industries that use it.

The transmission system in this area has become increasingly congested and is approaching its capacity as power production, particularly from wind, and electrical use have increased. In addition, BPA continues to receive requests for more transmission service. BPA's annual Network Open Season process allows utilities, power generators, and other power marketers to make long-term transmission service requests on BPA's transmission system. Existing and new requests received through BPA's 2008 Network Open Season process further increases the likelihood that the transmission system will exceed its capacity. BPA must respond to these requests for transmission service under its Open Access Transmission Tariff. This tariff, which is generally consistent with the Federal Energy Regulatory Commission's pro forma open access tariff, has procedures that provide access to BPA's transmission system for all eligible customers, consistent with all BPA requirements (including the availability or development of sufficient transmission capacity) and subject to an environmental review under NEPA. If an additional line is not built, continued congestion will jeopardize transmission system reliability and, possibly, lead to power interruptions or blackouts in the area.

The proposed I–5 Corridor Reinforcement Project would help respond to these existing and new requests for transmission service, help accommodate load growth, and address reliability concerns. BPA, therefore, will prepare an EIS under NEPA to assist the agency as it decides whether to build the proposed project, and if a decision is made to build a line, which transmission line alternative should be constructed.

BPA will be the lead agency for preparation of the EIS. In furtherance of existing cooperative agreements between BPA and the States of Washington and Oregon, the Washington Energy Facility Site Evaluation Council (Washington EFSEC) and the Oregon Energy Facility Siting Council (Oregon EFSC) will be cooperating agencies in the NEPA process. Among other things, these state agencies will assist BPA in evaluating transmission line alternatives, identifying State interests that should be addressed in the EIS, and participating in preparation of the EIS. Additional cooperating agencies for the EIS may be identified as the proposed project proceeds through the NEPA process.

Preliminary Route Segments for Developing Alternatives. BPA's proposed 500–kV transmission line would extend from a new substation near Castle Rock, Washington, to a new substation near Troutdale, Oregon. BPA has identified many preliminary transmission line route segments that can be combined in various ways to form different potential routes for the proposed transmission line. All potential transmission line routes generally extend southeast from Castle Rock through Cowlitz County, Washington, and then generally south through Clark County, Washington, to a proposed crossing of the Columbia River near the city of Camas, Washington. Just south of this river crossing, all potential line routes would end at the proposed new substation directly north of the city of Troutdale in Oregon.

The route segments vary in length and are composed of either existing or new rights-of-way, or parallel existing rights-of-way. Route segments cross privately and publicly owned urban and rural lands. Depending on the combination of these route segments, potential routes for the proposed transmission line vary in length but are approximately 70 miles long.

While many preliminary route segments have already been identified, other route segments may be identified and existing route segments may be modified or eliminated as a result of the scoping process. BPA will use comments received during the scoping period, continuing discussions with various interested parties, and further transmission line design work to develop route segments into transmission line alternatives to be studied in the draft EIS. BPA will also consider the No Action Alternative, that is, not building the transmission line and substations, in the draft EIS.

Public Participation and Identification of Environmental Issues. The potential environmental issues identified for most transmission line projects involve land use, recreation, transportation and aviation, socioeconomics, cultural resources, visual resources, public health and safety, noise, electric and magnetic field effects, sensitive plants and animals and their habitats, soil erosion, wetlands, floodplains, and fish and water resources. BPA will conduct a 45-day scoping period during which tribes; affected landowners; concerned citizens; special interest groups; local, State, and Federal governments; and any other interested parties are invited to comment on the scope of the EIS, including the route segments under consideration and the environmental impacts to be evaluated. Scoping will help BPA add, modify, or eliminate route segments and ultimately help BPA develop transmission line alternatives to be studied in the EIS. Scoping will also ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. When completed, the draft EIS will be circulated for review and comment, and BPA will hold public meetings to answer questions and receive comments. BPA will consider and respond to comments received on the draft EIS in the final EIS. The final EIS is expected to be published in spring 2012. BPA's decision will be documented in a Record of Decision that will follow the final EIS.

Issued in Portland, Oregon, on October 2, 2009.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E9–24469 Filed 10–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1760–000]

Wilton Wind II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 2, 2009.

This is a supplemental notice in the above-referenced proceeding of Wilton Wind II, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that

such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is October 20, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–24528 Filed 10–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1748–000]

Inupiat Energy Marketing; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 2, 2009.

This is a supplemental notice in the above-referenced proceeding of Inupiat Energy Marketing's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 20, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–24529 Filed 10–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1747–000]

Fox Island Electric Cooperative Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 2, 2009.

This is a supplemental notice in the above-referenced proceeding of Fox Island Electric Cooperative Inc.'s application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is October 21, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24495 Filed 10–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1725–000]

Cross Border Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 2, 2009.

This is a supplemental notice in the above-referenced proceeding of Cross Border Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is October 21, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24494 Filed 10–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF09–2011–000]

United States Department of Energy—Bonneville Power Administration; Order Approving Rates on an Interim Basis and Providing Opportunity for Additional Comments

September 28, 2009.

Summary: On July 31, 2009, and September 3, 2009, the Bonneville Power Administration (Bonneville) filed a request for interim and final approval of its wholesale power [1] and transmission rates [2] in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) [3] and Subpart B of Part 300 of the Commission's regulations.[4] Bonneville projects that the filed rates will produce average annual power revenues of $2.925 billion, and average annual revenues from transmission and ancillary services rates of $866 million. Bonneville asserts that this level of annual revenues is sufficient to recover its costs for the 2009–2011 rate approval period, while providing cash flow to assure at least a 95 percent probability of making all payments to the United States Treasury in full and on time for each year of the rate period.

Notice of Bonneville's July 31, 2009, application was published in the **Federal Register**, 74 FR 42,068 (2009), with protests, or motions to intervene due on or before August 31, 2009. The Association of Public Agency Customers, Alcoa Inc, Avista Corporation, Clatskanie People's Utility District, Eugene Water and Electric Board, Iberdrola Renewables, Inc., Idaho Power Company, Idaho Public Utilities Commission, Industrial Customers of Northwest Utilities, Northwest Requirements Utilities,[5] Northwest Wind Group,[6] PacifiCorp, Portland General Electric Company, Powerex Corp., Public Power Council, Puget Sound Energy, Inc., and Tillamook People's Utility District filed timely motions to intervene, raising no substantive issues. Notices of interventions and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Any opposed or untimely filed motion to

[1] The proposed wholesale power rates for which Bonneville seeks approval for the period October 1, 2009 through September 30, 2011, include: Priority Firm Power Rate (PF–10); New Resource Firm Power Rate (NR–10); Industrial Firm Power Rate (IP–10); Firm Power Products and Services Rate (FPS–10); General Transfer Agreement Service Rate (GTA–10); and Power General Rates Schedule Provisions (GRSPs).

[2] The proposed transmission rates for which Bonneville seeks approval for the period October 1, 2009, through September 30, 2011, include: Formula Power Transmission Rate (FPT–10.1), Formula Power Transmission Rate (FPT–10.3); Integration of Resources Rate (IR–10); Network Integration Rate (NT–10); Point-to-Point Rate (PTP–10); Southern Intertie Rate (IS–10); Montana Intertie Rate (IM–10); Use-of-Facilities Transmission Rate (UFT–10); Advance Funding Rate (AF–10); Ancillary Services and Control Area Services Rates (ACS–10); Townsend-Garrison Transmission Rate (TGT–10); Eastern Intertie Rate (IE–10); and Transmission General Rate Schedule Provisions (GRSPs).

[3] 16 U.S.C. 839e(i) (2006).

[4] 18 CFR Part 300 (2009).

[5] They comprise various municipalities, public utility districts, cooperatives, etc., and they seek to intervene jointly and also individually.

[6] The Northwest Wind Group is an unincorporated Bonneville customer group comprising Renewable Northwest Project and wind developers BP America, Inc., Columbia Energy Partners LLC, enXco Development Corporation, Horizon Wind Energy and RES America Developments Inc. Renewable Northwest Project is an advocacy organization representing numerous environmental and consumer groups, renewable resource developers, energy efficiency companies, and manufacturers of renewable energy products.

intervene is governed by the provisions of Rule 214.

Notice of Bonneville's September 3, 2009, errata corrections was published in the **Federal Register**, 74 FR 47,243 (2009), with protests, or motions to intervene due on or before September 15, 2009. None were filed.

Standard of Review

Under the Northwest Power Act, the Commission's review of Bonneville's regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2) of the Northwest Power Act:[7]

(A) They must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting Bonneville's other costs;

(B) They must be based upon Bonneville's total system costs; and

(C) Insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.

Commission review of Bonneville's non-regional, non-firm rates also is limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Power Act,[8] which requires that they comply with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act (Transmission System Act). Taken together, those statutes require that Bonneville's non-regional, non-firm rates:

(A) Recover the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period;

(B) Encourage the most widespread use of Bonneville power; and

(C) Provide the lowest possible rates to consumers consistent with sound business principles.

Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under sections 7(a) and 7(k) of the Northwest Power Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville's Administrator. The rates are then submitted to the Commission for approval or disapproval. In this regard, the Commission's role can be viewed as an appellate one: to affirm or remand the rates submitted to it for review.[9]

Moreover, review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before the Commission in this filing, and the limited period in advance of the requested effective date in which to review the application,[10] the Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation. Thus, the proposed rates, if not patently deficient, generally are approved on an interim basis and the parties are afforded an additional opportunity in which to raise issues with regard to Bonneville's filing.[11]

The Commission declines at this time to grant final confirmation and approval of Bonneville's proposed wholesale power and transmission rates. The Commission's preliminary review nevertheless indicates that Bonneville's wholesale power and transmission rates filing appears to meet the statutory standards and the minimum threshold filing requirements of Part 300 of the Commission's regulations.[12] Moreover, the Commission's preliminary review of Bonneville's submittal indicates that it does not contain any patent deficiencies. The proposed rates therefore will be approved on an interim basis pending our full review for final approval. We note, as well, that no one will be harmed by this decision because interim approval allows Bonneville's rates to go into effect subject to refund with interest; the Commission may order refunds with interest if the Commission later determines in its final decision not to approve the rates.[13]

In addition, we will provide an additional period of time for parties to file comments and reply comments on issues related to final confirmation and approval of Bonneville's proposed rates. This will ensure that the record in this proceeding is complete and fully developed.

The Director

Interim approval of Bonneville's proposed wholesale power and transmission rates is hereby granted, to become effective on October 1, 2009, through September 30, 2011, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations, 18 CFR 300.20(c) (2009), pending final action and either their approval or disapproval.

Within thirty (30) days of the date of this order, parties who wish to do so may file additional comments regarding final confirmation and approval of Bonneville's proposed rates. Parties who wish to do so may file reply comments within twenty (20) days thereafter.

The Secretary shall promptly publish this order in the **Federal Register**.

Authorities

This action is taken pursuant to authority delegated to the Director, Division of Tariffs and Market Development—Central, under 18 CFR 375.307 of the Commission's Regulations. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 CFR 385.713.

Penny S. Murrell,

Director, Division of Tariffs and Market Development—Central.

[FR Doc. E9–24545 Filed 10–9–09; 8:45 am]

BILLING CODE P

[7] 16 U.S.C. 839e(a)(2) (2006). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

[8] 16 U.S.C. 839e(k) (2006).

[9] *E.g., United States Department of Energy—Bonneville Power Administration*, 67 FERC ¶ 61,351 at 62,216–17 (1994); *see also, e.g., Aluminum Co. of America* v. *Bonneville Power Administration*, 903 F.2d 585, 592–93 (9th Cir. 1989).

[10] *See* 18 CFR 300.10(a)(3)(ii) (2009).

[11] *See, e.g., United States Department of Energy—Bonneville Power Administration*, 64 FERC ¶ 61,375 at 63,606 (1993); *United States Department of Energy—Bonneville Power Administration*, 40 FERC ¶ 61,351 at 62,059–60 (1987).

[12] *See, e.g., United States Department of Energy—Bonneville Power Administration*, 105 FERC ¶ 61,006 at P13–14 (2003); *United States Department of Energy—Bonneville Power Administration*, 96 FERC ¶ 61,360 at 62,358 (2001).

[13] 18 CFR 300.20(c) (2009).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0494; FRL–8966–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Tips and Complaints Regarding Environmental Violations; EPA ICR No. 2219.03, OMB Control No. 2020–0032

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on 2/28/2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 14, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2009 0494, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: docket.oeca@epa.gov*
- *Mail:* The Enforcement and Compliance Docket and Information Center, Environmental Protection Agency, Mailcode: 28221 T, 1301 Constitution Ave., NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Avenue, NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ECA–2009–0494. EPAs policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Michael Le Desma; Legal Counsel Division; Office of Criminal Enforcement, Forensics and Training; Environmental Protection Agency, Building 25, Box 25227, Denver Federal Center, Denver, CO 80025; telephone number: (303) 462–9453; fax number: (303) 462–9075; e-mail address: *desma.michael@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA 2009–0494, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 564–1927.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information to those who respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burdens or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–HQ–OECA–2009–0494

Affected entities: Entities potentially affected by this action are general members of the public who choose to voluntarily supply a tip or complaint regarding a suspected violation of environmental law.

Title: Tips and Complaints Regarding Environmental Violations ICR numbers: EPA ICR No. 2219.03, OMB Control No. 2020–0032.

ICR status: This ICR is currently scheduled to expire on 2/28/2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control

numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: EPA tips and complaints Webform is intended to provide an easy and convenient means by which members of the public can supply information to EPA regarding suspected violations of environmental law. The decision to provide a tip or complaint is entirely voluntary and use of the Webform when supplying a tip or complaint is also entirely voluntary.

Those persons that provide tips need not supply contact information or other personal identifiers. Those who do supply such information, however, should know that this information may be shared by EPA with appropriate administrative, law enforcement, and judicial entities engaged in investigating or adjudicating the tip or complaint.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average one-half hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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 of 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.

It is expected that a total of 630 people will complete the tips and complaints form each month, for a total of 7,560 people per year. Given that people typically arrive at the form with all of the information needed to complete the form, EPA expects that the form will take no more than 30 minutes to complete. Accordingly, EPA expects that the total annual burden hours will be approximately 3,780. EPA does not anticipate any capital or start-up costs associated with completion of this form.

EPA also does not anticipate that, in the usual case, burden hours associated with the tips and complaint form will translate into actual labor costs; EPA expects relatively few tips or complaints to be submitted as part of an employee's official duties. For this reason, EPA believes that the relevant ''labor costs'' associated with the form are best calculated as the wage opportunity cost to people of the form's estimated burden hours. The wage opportunity cost of the burden hours associated with this form can be estimated by multiplying the total number of burden hours by the average national hourly wage reported by the Bureau of Labor Statistics (BLS). BLS reports the average hourly wage in July 2007 to have been $19.88 per hour; accordingly, the total wage opportunity cost associated with the tips and complaints form would be approximately $75,146 per annum.

Are There Changes in the Estimates From the Last Approval?

There is an increase of 1980 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects the fact that tips and complaints are being filed at a higher rate than originally anticipated, a strong indication of the success of this program. There has been no change in the information being reported or the estimated burden per respondent.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(l)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process. please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 24, 2009.

Cynthia Giles,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. E9–24458 Filed 10–9–09; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8967–8]

2009 Fall Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2009 Fall Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context.

DATES: The meeting will be held on November 5, 2009 starting at 9 a.m. (EST) and ending at 5 p.m.

ADDRESSES: Hotel Monaco Baltimore, 2 North Charles Street, Baltimore, MD 21201; (443) 692–6170.

FOR FURTHER INFORMATION CONTACT: For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@otcair.org*; Web site: *www.otcair.org*.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ''Ozone Transport Region'' (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the Ozone Transport commission is to deal with ground-level ozone formation, transport, and control within the OTR.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by e-mail: *ozone@otcair.org*; or via the OTC Web site at *http://www.otcair.org.*

Dated: September 30, 2009.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. E9–24553 Filed 10–9–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2009—21]

Filing Dates for the New York Special Election in the 23rd Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: New York has scheduled a Special General Election on November 3, 2009, to fill the U.S. House of Representatives seat in the Twenty-Third Congressional District vacated by Representative John M. McHugh.

Political committees participating in the New York Special General Election on November 3, 2009, shall file a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; *Telephone:* (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the New York Special General Election shall file a 12-day Pre-General Report on October 22, 2009; and a 30-day Post-General Report on December 3, 2009. (*See* chart below for the closing date for each report).

Note that these reports are in addition to the campaign committee's Year-End filing in January 2010. (*See* chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2009 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the New York Special General Election by the close of books for the applicable report(s). (*See* chart below for the closing date for each report).

Political committees filing monthly that make contributions or expenditures in connection with the New York Special General Election should continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the New York Special General Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $16,000 during the special election reporting periods (*see* charts below for closing date of each period). 11 CFR 104.22(a)(5)(v). For more information on these requirements, *see* **Federal Register** Notice 2009–03, 74 FR 7285 (February 17, 2009).

CALENDAR OF REPORTING DATES FOR NEW YORK SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. and overnight mailing deadline	Filing deadline
Quarterly Filing Political Committees Involved in the Special General (11/03/09) Must File:			
October Quarterly		—WAIVED—	
Pre-General	10/14/09	10/19/09	10/22/09
Post-General	11/23/09	12/03/09	12/03/09
Year-End	12/31/09	01/31/10	[2] 01/31/10
Semi–Annual Filing Political Committees Involved in the Special General (11/03/09) Must File:			
Pre-General	10/14/09	10/19/09	10/22/09
Post-General	11/23/09	12/03/09	12/03/09
Year-End	12/31/09	01/31/10	[2] 01/31/10

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received before the Commission's close of business on the last business day before the deadline.

Dated: October 6, 2009.

On behalf of the Commission.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–24535 Filed 10–9–09; 8:45 am]

BILLING CODE 6715–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0284; Submission for OMB Review]

Agency Information Collection Activities; Proposed Collection; Comment Request; Data.gov Feedback Mechanisms Information Collection

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for comments regarding a new information collection.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), 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 12, 2009.

ADDRESSES: Submit your comments regarding this collection of information to: *datagov@gsa.gov* or to Marion Royal at the information provided below. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), U.S. General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite Data.gov Information Collection OMB Control No. 3090–0284 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Marion Royal, General Services Administration, Office of Governmentwide Policy, 1800 F Street NW., Room 2018, Washington, DC 20405–0001; telephone number: 202–208–4643; fax number: 202–501–6455; e-mail address: *datagov@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: Data.gov Information Collection.

OMB Control Number: 3090–0284.

Abstract: Data.gov is inspired by the President's program for ''Open Government'' and ''Transparency''. In response to the President's direction to improve the transparency of government, the Federal Chief Information Officer (CIO) Council has created a Web site/portal that improves public access to a wide variety of U.S. Government data. Data.gov is a public-friendly Web site that provides descriptions of the federal datasets, information on how to access the datasets, points of contact information, metadata information, and links to publicly accessible applications that leverage the datasets. 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. Data.gov visitors will be provided opportunities to provide feedback and ratings in the spirit of the President's open government and transparency initiative. Examples of feedback mechanisms are:

(1) A five-star rating and text ''Comment on this Data'' field to give visitors information about which datasets other visitors found most useful and interesting on the Data.gov webpage,

(2) A ''Suggest Other Datasets'' entry page for the public to submit ideas for datasets with an optional contact e-mail address provided for those visitors wishing to identify themselves,

(3) A field for visitors to rank datasets suggested by other visitors at an estimated annual burden of 17 hours,

(4) A ''Contact Us'' entry page with an optional contact e-mail address for those visitors wishing to identify themselves,

(5) A Collaborative Work Environment using wiki web pages and e-mail discussion forum,

(6) Pages for visitors to advise how they leverage the datasets in new and different ways to build applications, conduct analysis, and perform research,

(7) Pages for visitors to rate the benefit of the reported new solutions, etc.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average up to 400 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: Visitors to Data.gov.

Estimated total number of potential respondents: 16,200.

Estimated total number of potential responses: 16,200.

Frequency of response: Occasionally.

Estimated total annual burden hours: 400 hours.

Estimated total annual costs: No cost to the public; no additional government resources.

What Is the Next Step in the Process for This ICR?

GSA did not receive comments to its first **Federal Register** notice 74 FR 29211–29212, June 19, 2009. The final ICR package is being submitted to OMB for review and approval pursuant to 5 CFR 1320.5(a)(1)(iv). The purpose of this **Federal Register** notice is to announce the submission of the ICR to OMB and to provide 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**.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite Data.gov, in all correspondence.

Dated: October 5, 2009.

Casey Colemen,

Chief Information Officer.

[FR Doc. E9–24628 Filed 10–9–09; 8:45 am]

BILLING CODE 6820–WY–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0326]

Agency Information Collection Request. 60–Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information,

including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: The Hospital Preparedness Program—Revision-OMB No. 0990–0326–OS—Assistant Secretary for Preparedness and Response (ASPR).

Abstract: The Office of the Assistant Secretary for Preparedness and Response (ASPR), Division of Healthcare Preparedness Program (HPP) and the State and Local Initiative—Program Evaluation Section (SLI-PES), is proposing a Web-based reporting system to gather critical information and data from the 62 Awardees participating in the National Bioterrorism Hospital Preparedness Program (NBHPP). The reporting system will capture information related on performance measures, critical benchmarks, minimal levels of readiness, program statistics, policies and procedures, surge capacity elements, surge capacity as measured by exercises, and other pertinent information for programmatic fiscal management, improvement and tracking performance. The data submitted to HPP will be gathered for mid-year reports and end of year reports on annual activities and progress.

Awardees will indicate the progress made toward each of the financial and programmatic objectives noted on their cooperative agreement application (CAA) on the mid-year progress report. The end of year report on annual activities will require Awardees to provide additional details on objective achievement and budget/fiscal management. The end of year report will also require Awardees to present improvements made toward achieving the program's critical benchmarks.

In addition, the reporting will increase ASPR's ability to quickly and efficiently analyze data, identify trends, make timely program decisions, and provide the Department of Health and Human Services (HHS), Congress, and other Operating Divisions with data and information.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Form is Web-based interface	Mid-Year Report	62	1	2	124
Form is Web-based interface	Final Report	62	1	16	992
Total					1,116

Seleda Perryman,

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

[FR Doc. E9–24474 Filed 10–9–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Human Research Protections

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

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold its twenty-first meeting. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, October 27, 2009 from 8:30 a.m. until 5 p.m. and Wednesday, October 28, 2009 from 8:30 a.m. until 5 p.m.

ADDRESSES: The Sheraton National Hotel, 900 South Orme Street, Arlington, Virginia 22204. Phone: 703–521–1900.

FOR FUTHER INFORMATION CONTACT: Jerry Menikoff, M.D., J.D., Director, Office for Human Research Protections (OHRP), or Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; 240–453–8141; fax: 240–453–6909; e-mail address: *sachrp@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

On October 27, 2009, the Committee will be briefed on harmonization efforts undertaken by the National Institutes of Health and discuss possible implications for future SACHRP committee work. Following this, Dr. Marjorie Speers will present and discuss the Association for the Accreditation of Human Research Protection Programs' recently revised standards for accreditation. The day will conclude with a report from the Subpart A Subcommittee focusing on issues surrounding consent for future use of specimens or data; this subcommittee is charged with developing recommendations for consideration by SACHRP about the application of subpart A of 45 CFR part 46 in the current research environment. This subcommittee was established by SACHRP at its October 4–5, 2006 meeting.

On October 28, 2009, SACHRP will hear remarks from the Assistant Secretary for Health, Dr. Howard Koh. This will be followed by a panel presentation focusing on types of informed consent tools and mechanisms

that strive to augment the informed consent document and increase a subject's understanding of research participation. The meeting will conclude with a panel of speakers focusing on the regulatory barriers that may be associated with Community Based and Participatory Research. Public comment will be heard on both days.

Public attendance at the meeting is limited to space available. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact persons. Members of the public will have the opportunity to provide comments on both days of the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed materials distributed to SACHRP members for this scheduled meeting should submit materials to the Executive Director, SACHRP, prior to the close of business Thursday, October 22, 2009. Information about SACHRP and the draft meeting agenda will be posted on the SACHRP Web site at: *http://www.hhs.gov/ohrp/sachrp/index.html.*

Dated: October 6, 2009.

Jerry Menikoff,

Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. E9–24482 Filed 10–9–09; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood Safety and Availability

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

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood Safety and Availability (ACBSA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will take place Thursday, November 19 and Friday, November 20, 2009 from 8:30 a.m. to 5 p.m.

ADDRESSES: The Universities at Shady Grove, 9630 Gudelsky Drive, Rockville, MD 20850, Phone: 301–738–6000.

FOR FURTHER INFORMATION CONTACT: Jerry A. Holmberg, PhD, Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852, (240) 453–8803, FAX (240) 453–8456, e-mail *ACBSA@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee on Blood Safety and Availability provides advice to the Secretary and the Assistant Secretary for Health on a range of policy issues that impact (1) Definition of public health parameters around safety and availability of the blood supply and blood products, (2) broad public health, ethical and legal issues related to transfusion and transplantation safety, and (3) the implications for safety and the availability of various economic factors affecting product cost and supply.

In keeping with its established mission, the ACBSA has been asked to review and comment on the current processes and parameters which should be used in the decision-making process for transplantation safety policy. At the November 19 and 20, 2009 meeting, the Committee will be asked to comment and make recommendations on current safety decision making processes within the Department of Health and Human Services while considering those same processes within the Private Sector.

During the meeting, the ACBSA will be provided a briefing on Biovigilance (surveillance of blood, organs, and tissues safety). Specifically, the committee will be asked to comment on the white paper entitled, ''Biovigilance in the United States: Efforts to Bridge a Critical Gap in Patient Safety and Donor Health.''

The public will have opportunity to present their views to the Committee on both meeting days. A public comment session has been scheduled for November 19 and 20, 2009. Comments will be limited to five minutes per speaker and must be pertinent to the discussion. Pre-registration is required for participation in the public comment session. Any member of the public who would like to participate in this session is encouraged to contact the Executive Secretary at his/her earliest convenience. It is requested that those who wish to have printed material distributed to the Committee provide thirty (30) copies of the document to be distributed to the Executive Secretary, ACBSA, prior to close of business November 16, 2009. If it is not possible to provide 30 copies of the material to be distributed, then individuals are requested to provide at a minimum one (1) copy of the document(s) to be distributed prior to the close of business November 16, 2009. It also is requested that any member of the public who wishes to provide comments to the Committee utilizing electronic data projection submit the necessary material to the Executive Secretary prior to close of business November 16, 2009.

Dated: September 25, 2009.

Jerry A. Holmberg,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. E9–24483 Filed 10–9–09; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–0612]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) Reporting System (OMB #0920–0612, exp. 1/31/2010)—Revision—National Center

for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cardiovascular disease (CVD), which includes heart disease, myocardial infarction, and stroke, is the leading cause of death for women in the United States, and is largely preventable. The WISEWOMAN program (Well-Integrated Screening and Evaluation for Women Across the Nation), administered by the Centers for Disease Control and Prevention (CDC), was established to examine ways to improve the delivery of services for women who have limited access to health care and elevated risk factors for CVD. The program focuses on reducing CVD risk factors and provides screening services for select risk factors such as elevated blood cholesterol, hypertension and abnormal blood glucose levels. The program also provides lifestyle interventions and medical referrals. On an annual basis, 15 grantees funded through the WISEWOMAN program have provided services to approximately 30,000 women who are already participating in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), also administered by CDC. CDC plans to increase the reach of the WISEWOMAN program by increasing the number of grantees from 15 to 21.

CDC currently collects information from WISEWOMAN grantees to support continuous program monitoring and improvement activities. CDC seeks to extend OMB approval for three additional years. The total estimated annualized burden will increase due to the increase in the number of funded grantees. However, the burden to each respondent will decrease due to a reduction in the frequency of data collection for items that were previously collected on a quarterly basis. During the next OMB approval period, all information will be collected twice per year.

Information reported to CDC includes baseline and follow-up data (12 months post enrollment) for all women served through the WISEWOMAN program. These data, called the minimum data elements (MDE), include data elements that describe risk factors for the women served in each program and data elements that describe the number and type of intervention sessions attended. Funded grantees compile the data from their existing databases and report the MDE to CDC in April and October of each year. The MDE data provide an assessment of how effective the WISEWOMAN program is at reducing the burden of cardiovascular disease risk factors among women who utilize program services. The information collected from grantees is also used to assess the cost-effectiveness and impact of the program. The overall program evaluation is designed to demonstrate how WISEWOMAN can obtain more complete health data on vulnerable populations, promote public education about disease incidence and risk-factors, improve the availability of screening and diagnostic services for under-served women, ensure the quality of services provided to under-served women, and develop strategies for improved interventions. The information reported to CDC also includes programmatic information related to grantee management, public education and outreach, professional education, service delivery, cost, and progress toward meeting stated programmatic objectives.

All MDE information will be submitted to CDC electronically. Progress reports will be submitted in hardcopy format. Because certain demographic information has already been collected as part of NBCCEDP, the additional burden on grantees will be modest. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
WISEWOMAN Grantees	WISEWOMAN MDEs	21	2	40	1,680
	Progress Report	21	2	16	672
Total					2,352

Dated: October 5, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–24522 Filed 10–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0484]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance on Reagents for Detection of Specific Novel Influenza A Viruses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on guidance on reagents for detection of specific novel influenza A viruses.

DATES: Submit written or electronic comments on the collection of information by December 14, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget

(OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden 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 the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance on Reagents For Detection of Specific Novel Influenza A Viruses–21 CFR 866.3332–(OMB Control Number 0910–0584)–Extension

In accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA evaluated an application for an in vitro diagnostic device for detection of influenza subtype H5 (Asian lineage), commonly known as avian flu. FDA concluded that this device is properly classified into class II in accordance with 21 U.S.C. 360c(a)(1)(B), because it is a device for which the general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, but there is sufficient information to establish special controls to provide such assurance.

The statute permits FDA to establish as special controls many different things, including postmarket surveillance, development and dissemination of guidance recommendations, and ''other appropriate actions as the Secretary deems necessary'' (21 U.S.C. 360c(a)(1)(B)). This information collection is a measure that FDA determined to be necessary to provide reasonable assurance of safety and effectiveness of reagents for detection of specific novel influenza A viruses.

FDA issued an order classifying the H5 (Asian lineage) diagnostic device into class II on February 3, 2006, establishing the special controls necessary to provide reasonable assurance of the safety and effectiveness of that device and similar future devices. The new classification will be codified in 21 CFR 866.3332, a regulation that will describe the new classification for reagents for detection of specific novel influenza A viruses and set forth the special controls that help to provide a reasonable assurance of the safety and effectiveness of devices classified under that regulation. The regulation will refer to the special controls guidance document entitled ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses,'' which provides recommendations for measures to help provide a reasonable assurance of safety and effectiveness for these reagents.

The guidance document recommends that sponsors obtain and analyze postmarket data to ensure the continued reliability of their device in detecting the specific novel influenza A virus that it is intended to detect, particularly given the propensity for influenza viruses to mutate and the potential for changes in disease prevalence over time. As updated sequences for novel influenza A viruses become available from the World Health Organization, National Institutes of Health, and other public health entities, sponsors of reagents for detection of specific novel influenza A viruses will collect this information, compare them with the primer/probe sequences in their devices, and incorporate the result of these analyses into their quality management system, as required by 21 CFR 820.100(a)(1). These analyses will be evaluated against the device design validation and risk analysis required by 21 CFR 820.30(g), to determine if any design changes may be necessary.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the Federal Food, Drug, and Cosmetic Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
513	10	2	20	10	200	$5,000

FDA estimates that 10 respondents will be affected annually. Each respondent will collect this information twice per year, estimated to take 10 hours. This results in a total data collection burden of 200 hours (10 x 20= 200). FDA estimates that cost of developing standard operating procedures for each data collection is $500 (10 hours of work at $50/hour). This results in a total cost to industry of $5,000 ($500 x 10 respondents).

The guidance also refers to previously approved information collections found in FDA regulations. The information collections in 21 CFR part 820 have been approved under OMB control number 0910–0073.

Dated: October 5, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–24544 Filed 10–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–0469]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and

Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Program of Cancer Registries Cancer Surveillance System (OMB no. 0920–0469 exp. Date 1/31/2010)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 1992, Congress passed the Cancer Registries Amendment Act, which established the National Program of Cancer Registries (NPCR). The NPCR provides support for central cancer registries (CCR) that collect, manage and analyze data about cancer cases. The NPCR-funded CCR, which are located in states, the District of Columbia, and U.S. territories, report information to CDC annually through the National Program of Cancer Registries Cancer Surveillance System (NPCR CSS) (OMB No. 0920–0469, exp. 1/31/2010). CDC plans to request OMB approval to continue collecting this information for three years.

The NPCR CSS allows CDC to collect, aggregate, evaluate and disseminate cancer incidence data at the national level, and is the primary source of information for *United States Cancer Statistics (USCS),* which CDC has published annually since 2002. The NPCR CSS also allows CDC to monitor cancer trends over time, describe geographic variation in cancer incidence throughout the country, and provide incidence data on minority populations and rare cancers. These activities and analyses further support CDC's planning and evaluation efforts for State and national cancer control and prevention. In addition, datasets can be made available for secondary analysis.

Each responding CCR is asked to report a cumulative file containing incidence data from the first diagnosis year for which the cancer registry collected data with the assistance of NPCR funds (*e.g.,* 1995) through 12 months past the close of the most recent diagnosis year (*e.g.,* 2007). Because cancer incidence data are already collected and aggregated at the State level the additional burden of reporting the information to CDC is small. Information is transmitted to CDC electronically once per year.

The Revision request will include changes. First, data definitions will be updated to reflect changes in national standards for cancer diagnosis and coding. In addition, the number of respondents will decrease. Respondents will be 45 State-based CCR, the CCR of the District of Columbia, the CCR of Puerto Rico, and the CCR that aggregates information from 10 flag territories and freely associated States in the Pacific Islands. States that receive sole funding from the National Cancer Institute are not included as respondents. The adjusted number of respondents will result in a reduction in the total estimated burden hours for the NPCR CSS. The estimated burden per response will not change.

There are no costs to respondents except their time. The total estimated annualized burden hours are 96.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Central Cancer Registries in States, Territories, and the District of Columbia	48	1	2

Dated: October 5, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–24520 Filed 10–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0406]

Agency Emergency Processing Under Office of Management and Budget Review; Tobacco Product Establishment Registration and Submission of Certain Health Information; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until October 26, 2009, the comment period for the notice published in the **Federal Register** of September 1, 2009 (74 FR 45219). The document announced the proposed collection of information concerning the submission of tobacco product establishment registration and submission of certain health information, including ingredient listing and health related documents, as required by The Family Smoking Prevention and Tobacco Control Act (FSPTCA). The agency is reopening the comment period because FDA has reevaluated the expected launch date of the electronic portal and to allow interested persons additional time to review the proposed collection of information and submit comments.

DATES: Fax written comments on the collection of information by October 26, 2009. FDA is requesting approval of this emergency processing by November 2, 2009.

ADDRESSES: To ensure that comments on the information collection are received, the Office of Management and Budget (OMB) recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–5806, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794, e-mail: *Jonnalynn.Capezzuto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 1, 2009 (74 FR 45219), FDA requested emergency processing of this proposed collection of information under section

3507(j) of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(j) and 5 CFR 1320.13). On June 22, 2009, the President signed FSPTCA into law (Public Law 111–31). Section 101 of FSPTCA amends the Federal Food, Drug, and Cosmetic Act (the act) by adding, among other things, new sections 904 (21 U.S.C. 394) and 905 (21 U.S.C. 395).

FDA originally identified its plan to collect the information submission requirements of sections 905, 904(a)(1), and 904(a)(4) through a single electronic portal. In addition to the electronic portal, FDA also plans to provide a paper based form to collect this information for those individuals who choose not to use the electronic portal. FDA originally planned to launch the electronic portal for the collection of this information on October 1, 2009. FDA now plans to launch the electronic portal for the collection of this information on November 2, 2009. If FDA were to use the normal PRA clearance procedures, the availability of the electronic portal and the submission of information by respondents could not begin with adequate time to meet the respective statutory deadlines (December 22, 2009, for section 904, and December 31, 2009, for section 905).

Dated: October 6, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–24543 Filed 10–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

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

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

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; DMID Clinical Research Operations and Management Support.

Date: November 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Roosevelt Room, Rockville, MD 20852.

Contact Person: Clayton C. Huntley, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2570, *chuntley@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Exploratory Investigation in Food Allergy (R21).

Date: November 19–20, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–0985, *vijhs@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24472 Filed 10–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Interagency Autism Coordinating Committee (IACC) Subcommittee for Planning the Annual Strategic Planning Process.

The purpose of the Subcommittee for Planning the Annual Strategic Planning Process is to plan the process for annually updating the IACC Strategic Plan for Autism Spectrum Disorder Research. The Subcommittee meeting will be conducted as a telephone conference call. This meeting is open to the public through a conference call phone number.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Subcommittee for planning the Annual Strategic Planning Process.

Date: October 15, 2009.

Time: 2 p.m. to 4 p.m. Eastern Time.

Agenda: To discuss the outcome of the IACC Scientific Workshop that took place on September 30 and October 1, 2009.

Conference Call: Dial: 888–455–2920. *Access code:* 1050786.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8200, Bethesda, MD 20892–9669. *Phone:* 301–443–6040.*E-mail: IACCPublicInquiries@mail.nih.gov.*

Please Note: The meeting will be open to the public through a conference call phone number. Individuals who participate using this service and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least 4 days prior to the meeting.

Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. This phone call may end prior to or later than 4 p.m., depending on the needs of the subcommittee.

This meeting is being published less than 15 days prior to the meeting due to the timing limitations for the Subcommittee to review and discuss the outcomes from the IACC Workshop and to be able to present their proposals at the IACC meeting on October 23.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: October 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24473 Filed 10–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

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

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; ADRC Meeting.
Date: November 3–5, 2009.
Time: 8 a.m. to 10 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: William Cruce, PhD, Scientific Review Officer, National Institute on Aging, Scientific Review Branch, Gateway Building 2C–212, 7201 Wisconsin Ave., Bethesda, MD 20814. 301–402–7704. *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Amyloid and Brain Aging.
Date: November 9, 2009.
Time: 1 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7702, *PARSADANIANA@NIA.NIH.GOV.*

Name of Committee: National Institute on Aging Special Emphasis Panel; ADCC Meeting.
Date: November 12, 2009.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: William Cruce, PhD, Scientific Review Officer, National Institute on Aging, Scientific Review Branch, Gateway Building 2C–212, 7201 Wisconsin Ave., Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Amyloid Imaging In Aging and Dementia.
Date: November 12, 2009.
Time: 11 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301–402–7703. *PARSADANIANA@NIA.NIH.GOV.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Neuroimaging and Aging.
Date: November 13, 2009.
Time: 12 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Elaine Lewis, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301–402–7707. *elainelewis@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Medical Professionalism and Healthcare.
Date: November 20, 2009.
Time: 3:30 p.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301–402–7703. *ferrellrj@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24597 Filed 10–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

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

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

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Member Conflict SEP.
Date: November 3, 2009.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.
Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24599 Filed 10–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

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

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

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Member Conflict SEP.
Date: November 3, 2009.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC, DC 20015.
Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24598 Filed 10–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

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

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

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research Resource Review.

Date: November 4–6, 2009.

Time: 6 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: George W. Chacko, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301–435–1245, *chackoge@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; High-end Mass Spectrometry Instrumentation.

Date: November 5–6, 2009.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arnold Revzin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation Grant Applications.

Date: November 16–17, 2009.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR08–259: Bio-Organic Biomedical Mass Spectrometry Resource.

Date: November 18–20, 2009.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Vonda K. Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24596 Filed 10–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; File No. OMB–6, Emergency Federal Law Enforcement Assistance; OMB Control No. 1653–0019.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 14, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Joseph M. Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20024; (202) 732–6337.

Comments are encouraged and will be accepted for sixty days until December 14, 2009. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Emergency Federal Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; (File No. OMB–6) U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. Section 404(b) of the Immigration and Naturalization Act provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

Requests for a copy of the proposed information collection instrument, with

instructions; or inquiries for additional information should be requested via e-mail to: *forms.ice@dhs.gov* with ''IEF-Emergency Assistance'' in the subject line.

Dated: October 7, 2009.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9–24563 Filed 10–9–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Electronic Baggage Screening Program

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of waiver.

SUMMARY: The Department of Homeland Security (DHS) has granted a limited nationwide waiver of the buy American provision contained in sec. 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) Public Law 111–5, 123 Stat. 115, 303 (2009) under the authority of sec. 1605(b)(1) (public interest exception) provided that at least 95 percent of the costs of each Transportation Security Administration (TSA) Electronic Baggage Screening Program (EBSP) project will comply with sec. 1605(a).

DATES: This notice is effective October 13, 2009.

ADDRESSES: Office of Acquisitions/Acquisitions Policy Office, TSA–25, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6025.

FOR FURTHER INFORMATION CONTACT: Ronald B. Gallihugh, Office of Acquisitions/Acquisitions Policy Office, TSA–25, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6025; telephone (571) 227–2402; facsimile (571) 227–1372; e-mail *ronald.gallihugh@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On February 17, 2009, the Recovery Act was enacted to assist those most impacted by the recession by creating and preserving jobs and promoting economic recovery. The funding was specified for multiple areas of national interest. TSA received $1 billion to invest in the procurement and installation of checked baggage explosives detection systems and checkpoint explosives detection equipment to be obligated by September 30, 2010. Approximately $500 million in Recovery Act funding will be allocated to facility modification projects to be administered through TSA's EBSP. This program directly benefits the traveling public, air carriers, airport authorities, and our Nation as a whole.

TSA's EBSP supports the DHS goals of protecting our Nation from dangerous goods and protecting our Nation's critical transportation infrastructure by strengthening screening of checked baggage to reduce the probability of a successful terrorist or other criminal attack to the air transportation system. Since December 31, 2002, EBSP has been responsible for ensuring 100 percent screening of checked baggage in the United States. The EBSP's objective is to deter, detect, mitigate, and prevent transportation of explosives or other prohibited items in checked baggage on commercial aircraft. One significant way EBSP accomplishes its objectives is through the construction of Checked Baggage Inspection Systems (CBIS). These projects form the backbone of TSA's EBSP and represent the highest level of baggage screening capability in terms of processing efficiency and security. TSA has identified twenty-six airports across the country with ''shovel ready'' facility modification projects that include CBIS construction. These projects are dependent on Recovery Act funding. Several of these projects, however, are on hold and in jeopardy because of concerns over compliance with sec. 1605(a).

Section 1605(a) of the Recovery Act, the buy American provision, states that none of the funds appropriated by the Act, including the funds that have been dedicated to project awards under EBSP, ''may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.'' Subsections 1605(b) and (c) of the Recovery Act authorize the head of a Federal department or agency to waive the buy American provision by finding that: (1) Applying the provision would be inconsistent with the public interest; (2) the relevant goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent. If the head of the Federal department or agency waives the buy American provision, then the head of the department or agency is required to publish a detailed justification in the **Federal Register**. Finally, sec. 1605(d) of the Recovery Act states that the buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

Public Interest Finding

The Secretary of Homeland Security has determined that it would be inconsistent with the public interest—and particularly with the Recovery Act's directives to ensure expeditious spending of construction funds consistent with prudent management, as cited above—to apply the buy American requirement to an entire CBIS project where at least 95 percent of the costs of the project will comply with sec. 1605(a).

A CBIS is a highly sophisticated electromechanical system for screening checked baggage. It consists of hundreds of mechanical and electrical items. It includes a mechanical conveyor system or baggage handling system (BHS) that transports checked baggage through the system. The CBIS also features a security screening matrix area where baggage is fed through one or more Explosion Detection Systems (EDS) or Explosive Trace Detection (ETD) systems to be analyzed. All of the mechanical and electrical items and processes that make up the CBIS are controlled by a central programmable logic controller (PLC) or programmable controller. The PLC is essentially a computer 'brain' used for the automation of electro-mechanical processes, such as the control of machinery on factory assembly lines. The PLC controls all aspects of the CBIS including conveyor belt speeds, baggage tracking and managing the BHS merge points or windows.

CBIS projects are comprised of thousands of manufactured goods, such as conveyor, conveyor motor drives, electrical and communications controls, programmable logic controllers, electronic tracking devices, high speed diverters, vertical sorters, specialty fasteners and switches. Not all of these items are domestically available. Furthermore, in many instances, the geographic origin of the equipment is not readily ascertainable. While arguably the Secretary of Homeland Security could have relied on the authority under sec. 1605(b)(2) (non-availability waiver), the burden placed on TSA and contractors in sourcing and evaluating equipment availability would be unduly burdensome, impracticable and not in keeping with the Recovery Act's overall goal of expeditious spending of recovery funds.

In the construction of such a sophisticated system as a CBIS, complete adherence to the requirements of section 1605(a) is impracticable, if not impossible. In addition, it has become a serious obstacle to ensuring that all identified airports will be able to sign construction contracts by September 30, 2010. Some airport authorities have simply been unable or unwilling to certify that the construction contracts it signs are compliant with the buy American provisions. The alternative would be for the airports and communities to lose their Recovery Act assistance, requiring TSA to reallocate funds, which is inconsistent with the public interest and the intent and purpose of the Recovery Act.

DHS has considered the disproportionate cost and delay that would ensue if a limited waiver is not issued. The exercise of ascertaining whether compliant products exist or can be made to meet these requirements is already becoming a demanding and time-consuming task far out of proportion to the total percentage of project costs. On balance, the public interest in having these projects completed outweighs the Buy American requirement; particularly where the value of noncompliant goods is relatively small when compared to total project cost. CBIS projects significantly benefit aviation security, baggage screening efficiency and the flying public in general. Also, these projects help stimulate job growth for local construction workers, technicians, equipment designers, engineers, and others who will operate and maintain the equipment.

Therefore, the Secretary granted a limited, nationwide public interest waiver, having found that it would be inconsistent with the public interest—and particularly with the Recovery Act's directives—to apply the buy American requirement to an entire CBIS project in which at least 95 percent of the costs of the project will comply with section 1605. The Secretary determined the five percent limit based on research and informed professional judgment as to the maximum total amount of costs used in most CBIS projects.

Waiver

Accordingly, the Secretary granted a limited, nationwide waiver of the requirements of section 1605(a) of the Recovery Act, Public Law 111–5, buy American requirements, based on the public interest authority of section 1605(b)(1), provided that at least 95 percent of the costs of each TSA EBSP project will comply with section 1605. This waiver applies to all eligible EBSP projects for which the TSA has awarded or will award a project award using Recovery Act funds, and where at least 95 percent of the costs of the project will comply with sec. 1605.

TSA will attempt to obtain 100 percent compliance with the buy American provision on all airport projects. This limited nationwide waiver is available to airports that cannot comply 100 percent with the buy American provision because applying the provision would be inconsistent with the public interest in accordance with sec. 1605(b)(1). TSA will ensure that on all projects at least 95 percent of the costs will comply with section 1605. Recipients who wish to use this waiver should, in consultation with their contractors determine the items to be covered by this waiver, must retain relevant documentation as to those items in their project files, and must summarize in reports to TSA the types and/or categories of items to which this waiver is applied, the total cost of the goods covered by the waiver, and the calculations by which they determined the total cost of materials used in and incorporated into the project.

Issued in Arlington, Virginia, on October 7, 2009.

Gale D. Rossides,

Acting Administrator.

[FR Doc. E9–24608 Filed 10–9–09; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Appointment to the National Indian Gaming Commission

ACTION: Notice.

SUMMARY: The Indian Gaming Regulatory Act provides for a three-person National Indian Gaming Commission. One member, the chairman, is appointed by the President with the advice and consent of the Senate. Two associate members are appointed by the Secretary of the Interior. Before appointing members, the Secretary is required to provide public notice of a proposed appointment and allow a comment period. Notice is hereby given of the proposed appointment of Steffani A. Cochran as an associate member of the National Indian Gaming Commission for a term of 3 years.

DATES: Comments must be received before November 12, 2009.

ADDRESSES: Comments should be submitted to the Director, Office of Executive Secretariat, United States Department of the Interior, 1849 C Street, NW., Mail Stop 7229, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John A. Strylowski, Executive Secretariat, United States Department of the Interior, 1849 C Street, NW., Mail Stop 7229, Washington, DC 20240; telephone 202–208–3071.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.,* established the National Indian Gaming Commission (Commission), composed of three full-time members. 25 U.S.C. 2704(b). Commission members serve for a term of 3 years. 25 U.S.C. 2705(b)(2)(4)(A). The Chairman is appointed by the President with the advice and consent of the Senate. 25 U.S.C. 2704(b)(1)(B). The two associate members are appointed by the Secretary of the Interior. 25 U.S.C. 2704(b)(1)(B). Before appointing an associate member to the Commission, the Secretary is required to ''publish in the **Federal Register** the name and other information the Secretary deems pertinent regarding a nominee for membership on the commission and * * * allow a period of not less than thirty days for receipt of public comments.'' 25 U.S.C. 2704(b)(2)(B).

The Secretary proposes to appoint Steffani A. Cochran as an associate member of the Commission for a term of 3 years. Ms. Cochran is well qualified to serve as a member of the Commission, by virtue of her broad background in the law and her work for both State and tribal governments on issues affecting Indian tribes. Her extensive legal experience includes service in New Mexico State government as a Special Counsel for Indian Affairs and as an Administrative Law Judge for the State of Oregon. She has also served tribal governments as General Counsel for the Pueblo of Pojoaque and as an Associate Judge for the Isleta Tribal Court and judge pro tem on the Southwest Intertribal Court of Appeals. Working at different times for tribal and State governments, Ms. Cochran has participated in negotiations and addressed issues of critical importance to both constituencies. She is a member of the Chickasaw Nation. Ms. Cochran does not have any financial interests that would make her ineligible to serve on the Commission under 25 U.S.C. 2704(b)(5)(B) or (C).

Any person wishing to submit comments on this proposed appointment of Steffani Cochran may submit written comments to the address

listed above. Comments must be received by November 12, 2009.

David Hayes,

Deputy Secretary.

[FR Doc. E9–24617 Filed 10–9–09; 8:45 am]

BILLING CODE 4310–17–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Geological Survey (USGS).

ACTION: Notice of a new information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) for approval of the paperwork requirements for the National Coal Resources Data System (NCRDS) competitive grant program. This notice provides the public an opportunity to comment on the paperwork burden of this project.

DATES: You must submit comments on or before November 12, 2009.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via e-mail to *OIRA_DOCKET@omb.eop.gov* or fax at 202–395–5806; and identify your submission with Information Collection Number 1028-new, NCRDS.

Please also submit a copy of your written comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference information collection 1028-new, NCRDS in the subject line.

FOR FURTHER INFORMATION CONTACT: Susan Tewalt by mail at U.S. Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 20192 or by telephone at 703–648–6437.

SUPPLEMENTARY INFORMATION:

Abstract

The primary objective of the NCRDS is to advance the understanding of the energy endowment of the United States (U.S.) by gathering and organizing digital geologic information related to coal, coalbed gas, shale gas and other energy resources. The NCRDS of the USGS will issue a call for proposals to support researchers that can provide geologic data to support the National Coal Resources Data System and other solid-fuel energy assessment projects being conducted by the Energy Resources Program. Additional data is needed to data to support regional or national assessments concerning coal and coal bed gas occurrences. Requesting external cooperation is the very best way for NCRDS to collect energy data and perform research on the characterization of coals and organic-rich shale, and obtain other information (including geophysical or seismic data, sample collection for generation of thermal maturity data) that can be used in solid-fuel resource assessments. Data submitted to NCRDS by external cooperators will constitute more than two-thirds of the USGS point-source stratigraphic database (USTRAT) on coal occurrence. In 2010, NCRDS plans to support 26 projects in 23 States. The program will be conducted under various authorities, including 30 U.S.C. 208–1, 42 U.S.C. 15801, and 43 U.S.C. 31 *et seq.* This collection will consist of applications, proposals and reports (annual and final).

I. Data

OMB Control Number: 1028–NEW.

Title: Energy Cooperatives to Support the National Coal Resources Data System (NCRDS).

Respondent Obligation: Required to obtain or retain benefits.

Frequency of Collection: One time every 5 years for applications and final reports; annually for progress reports.

Affected Public: Individuals; State, local and tribal governments; State Geological Surveys, universities, and businesses.

Annual Burden Hours: 300.

Estimated Annual Number of Respondents: 26.

Estimated Annual Number of Responses: 35 (9 applications 26 reports).

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': None.

III. Request for Comments

On May 14, 2009, we published a **Federal Register** notice (74 FR 22760) announcing that we would submit this information collection to OMB for approval. The notice provided a 60-day comment period ending on July 13, 2009. We did not receive any comments in response to that notice.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at anytime. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

USGS Information Collection Clearance Officer: Phadrea Ponds, (970) 226–9445.

Dated: October 6, 2009.

Brenda Pierce,

Program Coordinator, USGS Energy Resources Program.

[FR Doc. E9–24534 Filed 10–9–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Maryhill Museum of Art, Goldendale, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Maryhill Museum of Art, Goldendale, WA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1943, Native American cultural items were loaned to the Maryhill Museum of Art by Harvey T. and Bessie

Day Harding of Wenatchee, WA. In 1979, their children, Ethel L. Harding, Helen Harding Schmidt, and Charles L. Harding, converted the loan to a gift (Accession #1972.02). Mr. H.T. Harding and his associates gathered and excavated the items listed in this notice from numerous Indian burial sites along the Columbia River in what are now the states of Washington and Oregon. Mr. Harding kept a journal of where he dug and what he removed from each site (and below all words in quotes are from Harding's journal). In 1995, Maryhill Museum conducted an inventory, which compared Harding's journal and inventory numbers with the museum's Harding Collection. Since that inventory, the museum has consulted with tribes and during consultation with the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group, the museum was requested to handle the cultural items as little as possible. Because many of the cultural items are in sealed bags and boxes, and the 1995 inventory did not include an inventory count of the objects with the boxes and bags, there has not been a specific count of all items.

At an unknown date, cultural items were removed from graves that were ''10 miles South of the East Bank of Columbia River.'' The two unassociated funerary objects are one lot of dentalium shells and one regalia fragment (Box 62).

On November 3, 1920, cultural items were removed from a grave that was ''1/4 mile NW of Vulcan Station and about 200 feet from the Columbia River.'' The six unassociated funerary objects are a piece of diatomaceous earth, one knife, two stone projectile points, one bone point, and one bone awl (Box 63).

On November 4, 1920, cultural items were removed from a grave ''Along Columbia River in North end of Grant Co., about two miles below Vulcan.'' The five unassociated funerary objects are one broken knife, one pendant, one lot of bead forms, and two bottles of red ochre (Box 64).

In October 1920, cultural items were removed from two graves ''in the slide rock, at edge of bluff, East of Vantage camp site.'' The 55 unassociated funerary objects are 2 pestles, 1 obsidian knife, 12 shaft abraders, 1 antler handle, 18 bone fragments, 11 antler fragments, 1 modified antler tine, 1 utilized horn tool, 1 utilized antler tine, 6 points, and 1 lot of fiber (Boxes 65–67).

On July 2, 1922, cultural items were removed from a grave on the ''Columbia River at Vulcan.'' The one unassociated funerary object is a petrified wood biface (Box 69).

At an unknown date, cultural items were removed from a grave at ''Wahluke Ferry.'' The one box of unassociated funerary objects contains 10 bags (Box 68), which includes, but are not limited to, miscellaneous bead forms in sand; numerous beads; a basalt cobble; a beaded awl sheath; 2 small abraders; a group of dentalium shells; 2 pipes; 2 clam shells; points; metal, cordage, and mat fragments; an elk horn wedge; copper bracelets, pieces, and fragments; and 2 chisels.

On October 20–25, 1922, and numerous unknown dates until 1924, cultural items were removed from a grave at ''1/2 mile upriver from the Richmond Ferry.'' The one box of unassociated funerary objects contains 27 bags of uncounted objects (Bags 1–27, #836–847).

At an unknown date, cultural items were removed from a grave at the ''Mouth of the Yakima River.'' The one box of unassociated funerary objects contains approximately 65 pieces of stone tools (Box 71).

On an unknown date, one cultural item was removed from a grave, which is located about ''1 mile South of Vulcan.'' The one unassociated funerary object is a pestle (#484).

Sometime between September 3 and 10, 1923, cultural items were removed from the surface of ''Memaloose Island.'' Memaloose Island is known to have many Native American burials. The unassociated funerary object is one lot of beads.

The Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group, are descendants of the Native American communities that used the Columbia River area. Based on museum records and consultation evidence, Maryhill Museum of Art officials have determined that the Harding Collection was collected along the shores of the Columbia River. Based on linguistic, oral tradition, geographic and consultation evidence, Maryhill Museum of Art officials have determined that there is a shared group identity that can be reasonably traced between the unassociated funerary objects and the above-mentioned Indian tribes and group.

Officials of the Maryhill Museum of Art have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 74 unassociated funerary objects, including 3 boxes of unassociated funerary objects, described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of the Maryhill Museum of Art also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and Nez Perce Tribe, Idaho. Furthermore, officials of the Maryhill Museum of Art have determined that there is a cultural relationship between the unassociated funerary objects and the Wanapum Band, a non-Federally recognized Indian group. The above-mentioned Indian tribes and group have submitted a joint claim for repatriation of the unassociated funerary objects.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Colleen Schafroth, Executive Director, Maryhill Museum of Art, 35 Maryhill Museum Drive, Goldendale, WA 98620, telephone (509) 773–3733, before November 12, 2009. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group, may proceed after that date if no additional claimants come forward.

The Maryhill Museum of Art is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation

of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group, that this notice has been published.

Dated: September 9, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–24595 Filed 10–9–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indian Affairs Council, Bemidji, MN. The human remains and associated funerary objects were removed from Clearwater County, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and associated funerary objects was made by the Minnesota Indian Affairs Council professional staff in consultation with representatives of the White Earth Band of Minnesota Chippewa Tribe, Minnesota.

In 1952, human remains representing a minimum of one individual were removed from site 21–CE–5, Ponsford Landing Site, Clearwater County, MN, by Mr. Robert H. Littlewolf's father. In 1959, Mr. Littlewolf, a White Earth band member, gave the human remains and associated funerary objects to the University of Minnesota. The University of Minnesota transferred control of the human remains and associated funerary objects to the Minnesota Indian Affairs Council per a transfer agreement dated June 16, 1989. No known individual was identified. The 12 associated funerary objects are 1 ceramic sherd, 1 bone needle, 1 bone shaft straightener, 1 bone punch, 1 bone harpoon, and 7 pieces of worked bone.

Based on material culture, the burial at site 21–CE–5 has been identified as a post-contact burial related to the local Ojibwe population, who were later relocated to the White Earth Reservation after 1867. The geographic location is consistent with the historically documented territory of the White Earth Band of Minnesota Chippewa Tribe, Minnesota.

Officials of the Minnesota Indian Affairs Council have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Minnesota Indian Affairs Council have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 12 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the White Earth Band of Minnesota Chippewa Tribe, Minnesota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact James L. (Jim) Jones Jr., Cultural Resource Director, Minnesota Indian Affairs Council, 1819 Bemidji Ave., Bemidji, MN 56601, telephone (218) 755–3825, before November 12, 2009. Repatriation of the human remains and associated funerary objects to the White Earth Band of Minnesota Chippewa Tribe, Minnesota may proceed after that date if no additional claimants come forward.

The Minnesota Indian Affairs Council is responsible for notifying the White Earth Band of Minnesota Chippewa Tribe, Minnesota that this notice has been published.

Dated: September 8, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–24557 Filed 10–9–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC and New York University College of Dentistry, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the New York University College of Dentistry, New York, NY. The human remains were removed from a village at Waacht, on the Makah Indian Reservation, Clallam County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Bureau of Indian Affairs and New York University College of Dentistry professional staff in consultation with representatives of the Makah Indian Tribe of the Makah Indian Reservation, Washington.

In January 1921, human remains representing one individual were removed from an unoccupied house at Waacht, on the Makah Indian Reservation, Neah Bay, Clallam County, WA, by T.T. Waterman. That same year, Waterman donated the human remains to the Museum of the American Indian, Heye Foundation. In 1956, the Museum of the American Indian transferred the human remains to Dr. Theodore Kazamiroff, New York University College of Dentistry. No known individual was identified. No associated funerary objects are present.

Waterman's notes indicate that the human remains were removed from a deserted house at the west end of Waacht. Based on Waterman's description of the house, it has been determined that the human remains were removed from tribal lands. In this house, Waterman found the cranial remains of two individuals in a wooden case. One of the individuals, an adult,

was associated with whaling objects. The other individual was a juvenile. Forensic examination identified the individual in the possession of the College of Dentistry as the remains of a child. Basketry in the wooden case and elsewhere in the house were identified as the craftwork of Dase'LtEb. Waterman concluded that the human remains of the adult were those of Mr. McCarty, the husband of Dase'LtEb. Although Waterman's records name the adult as Mr. McCarty, they do not name the juvenile. Tribal representatives discussed this matter with members of the McCarty family. Information provided by members of the McCarty family indicates that the human remains of the child may belong to a nephew of Mr. McCarty, but no lineal descendants have been identified.

Officials of the Bureau of Indian Affairs and New York University College of Dentistry have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Bureau of Indian Affairs and New York University College of Dentistry also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Makah Indian Tribe of the Makah Indian Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Louis Terracio, New York University College of Dentistry, 345 East 24th St., New York, NY 10010, telephone (212) 998–9917, before November 12, 2009. Repatriation of the human remains to the Makah Indian Tribe of the Makah Indian Reservation, Washington may proceed after that date if no additional claimants come forward.

New York University College of Dentistry and the Bureau of Indian Affairs are responsible for notifying the Makah Indian Tribe of the Makah Indian Reservation, Washington that this notice has been published.

Dated: September 8, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–24594 Filed 10–9–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Riverside Metropolitan Museum, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary object in the control of the Riverside Metropolitan Museum, Riverside, CA. The human remains were removed from Santa Barbara County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Riverside Metropolitan Museum professional staff in consultation with the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

At an unknown date, human remains representing a minimum of one individual were removed from the site for the Potter Hotel, Santa Barbara, Santa Barbara County, CA, during the excavation for the construction of the hotel. Cornelius E. Rumsey donated the human remains to the Riverside Metropolitan Museum in 1925. No known individual was identified. The one associated funerary object is a stone pestle.

Historic records identify the Chumash Indians as the inhabitants of the Santa Barbara area.

In 1949, human remains representing a minimum of one individual were removed from an unknown burial on San Miguel Island, Channel Islands, Santa Barbara County, CA. Oscar Perrine donated the human remains to the Riverside Metropolitan Museum in 1962. No known individual was identified. No associated funerary objects are present.

San Miguel Island is one of the Channel Islands, which are historically associated with the Island Chumash people. Archeologists have suggested that there is considerable cultural continuity in this area. The establishment of Spanish missions resulted in the dispersal of the Island Chumash. The 109 Chumash Indians, who settled on the small plot of land near the Santa Ynez Mission given to them in 1855, support a historical connection between the present-day Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, and the Island Chumash people.

Based on collections research, geographic location, and historic documentation, the human remains are of Chumash origin. Descendants of the Chumash are members of the Federally-recognized Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Officials of the Riverside Metropolitan Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Riverside Metropolitan Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Riverside Metropolitan Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact Ennette Morton, Museum Director, Riverside Metropolitan Museum, 3580 Mission Inn Avenue, Riverside, CA 92501, telephone (951) 826–5273, before November 12, 2009. Repatriation of the human remains and associated funerary object to the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may proceed after that date if no additional claimants come forward.

The Riverside Metropolitan Museum is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California that this notice has been published.

Dated: September 8, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–24593 Filed 10–9–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Riverside Metropolitan Museum, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Riverside Metropolitan Museum, Riverside, CA. The human remains were removed from Greybull, Bighorn County, WY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Riverside Metropolitan Museum professional staff in consultation with the Crow Tribe of Montana.

In 1930, human remains representing a minimum of two individuals were removed from an exposed earth bank near Greybull, Bighorn County, WY, during highway construction by Lt. Col. R. J. Pilcher. Lt. Col. Pilcher donated the human remains to the Riverside Metropolitan Museum in 1957. No known individuals were identified. No associated funerary objects are present.

It was determined that the human remains are Native American. Through collections research, and based on the geographic location of the discovery, the human remains are reasonably believed to be of Crow origin. Descendants of the Crow are members of the Crow Tribe of Montana.

Officials of the Riverside Metropolitan Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Riverside Metropolitan Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Crow Tribe of Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Ennette Morton, Museum Director, Riverside Metropolitan Museum, 3580 Mission Inn Avenue, Riverside, CA 92501, telephone (951) 826–5273, before November 12, 2009. Repatriation of the human remains to the Crow Tribe of Montana may proceed after that date if no additional claimants come forward.

The Riverside Metropolitan Museum is responsible for notifying the Crow Tribe of Montana that this notice has been published.

Dated: September 8, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–24592 Filed 10–9–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Ohio Historical Society, Columbus, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and an associated funerary object in the possession of the Ohio Historical Society, Columbus, OH. The human remains and associated funerary object were removed from Lucas County, OH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Ohio Historical Society's professional staff in consultation with Dr. G. Michael Pratt of Heidelberg University and the Lucas County Coroner's Office. The Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Ottawa Tribe of Oklahoma, were notified and sent the inventory records.

On May 23, 2007, human remains representing a minimum of three individuals were removed from along the eastern end of Indian Island in the Maumee River, Lucas County, OH, by a staff member of the Lucas County Coroner's Office, and Dr. G. Michael Pratt. Prior to removal, the Ohio Highway Patrol had received a report that human remains had been discovered. Indian Island is owned by the State of Ohio. No known individuals were identified. The one associated funerary object is a knife.

Dr. Pratt identified the human remains as Native American based on the presence of the cranial vault configuration, the presence of Wormian bones in the lambdoid cranial suture, and the attrition present on the teeth. The associated funerary object and other artifacts found in the vicinity indicate that these human remains probably were buried during the period from A.D. 1760 to 1833.

Archeological and historical information indicate that Ottawa bands began to settle in the lower Maumee valley beginning in A.D. 1740 to 1750. Ottawa occupation of this region continued until August 1794 when the principal villages were burned by Anthony Wayne's expedition in the days following the Battle of Fallen Timbers. In the following summer of 1795, the Ottawa Tribe was one of the signatories of the Treaty of Greenville under the terms of which they ceded their claim to much of the land in this region. More land was ceded in treaties signed between 1807 and 1817, but four small reservations were retained for the Ottawa in the lower Maumee valley. Indian Island was part of the Roche de Boeuf reservation established in the Treaty of Detroit in 1807. In 1831 to 1833, the four reservations were ceded to the United States in return for lands in present-day Franklin County, KS. In 1867, the Kansas reservation organization was dissolved and the Ottawa sold their individual allotments and moved to Oklahoma, and are represented by the Ottawa Tribe of Oklahoma.

Officials of the Ohio Historical Society have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least three individuals of Native American ancestry. Officials of the Ohio Historical

Society also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Ohio Historical Society have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the associated funerary object and the Ottawa Tribe of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact James Strider, Acting Executive Director, Ohio Historical Society, 1982 Velma Ave., Columbus, OH 43211, telephone (614) 297–2350, before November 12, 2009. Repatriation of the human remains and associated funerary object to the Ottawa Tribe of Oklahoma may proceed after that date if no additional claimants come forward.

The Ohio Historical Society is responsible for notifying the Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Ottawa Tribe of Oklahoma that this notice has been published.

Dated: September 15, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–24591 Filed 10–9–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI. The human remains were removed from Puget Sound, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Museum of Natural History and Planetarium, Roger Williams Park professional staff in consultation with representatives of the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Port Gamble Indian Tribe of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Sauk-Suiattle Indian Tribe of Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington. A claim for the human remains described in this notice has been received by the Museum of Natural History and Planetarium from the Puyallup Tribe of the Puyallup Reservation, Washington. In July 2008, a letter was sent notifying the above-mentioned tribes of the claim by the Puyallup Tribe of the Puyallup Reservation, Washington, and statements of support or non-support were also solicited.

In 1913 or earlier, human remains representing a minimum of one individual were removed from the Puget Sound region, WA. No known individual was identified. No associated funerary objects are present.

A letter dated December 30, 1913, from the museum's curator acknowledges receipt of the human remains from the ''Puget Sound region'' as a loan from Sydney R. Turner of East Providence, RI (Accn.# RIR035; Cat. # E 4166). The letter also acknowledges receipt of ''beads and other small articles found in the grave with it.'' However, these objects were not located in the museum collections during the inventory. Therefore, no associated funerary objects are currently present with these human remains. There is no information regarding how the human remains (and the articles that once accompanied them) came into Mr. Turner's possession.

In the 1913 letter the curator remarks to Mr. Turner, ''It is understood that you have loaned these specimens to the museum and we shall keep them safely until you may order their removal.'' This statement must stand as the sole justification for why the Puget Sound remains were retained in the collection. It would appear that Mr. Turner failed to recall them. In 2008, museum staff reviewed 1913 city directories for East Providence, RI. It was learned that Mr. Sydney R. Turner owned and operated a grocery store with his brother Frederick until 1915–16. After that time, he initiated a career as a traveling salesman until his death in 1932, which may explain his failure to retrieve the remains. The museum tried to contact any possible heirs of Mr. Turner, but was unsuccessful.

No specific information is available about the collection of the human remains. The human remains were found to be consistent with Native American morphology by a physical anthropologist (1983 Self Study funded by the National Endowment for the Humanities). Due to the generalized ''Puget Sound region'' provenience, the human remains were originally reported by the Museum of Natural History as being culturally unidentifiable under NAGPRA, although the 1983 study suggested a possible Nootka (Nuu-chah-nulth) affiliation for the human remains. During consultation with the Puyallup Tribe, the museum was notified that tribes inhabiting the Puget Sound area are culturally identifiable as Salish and not Nootka, as the Nootka are further north. The human remains show skull flattening in the manner consistent with the cultural history of Puyallup and other Salish tribes. Therefore, officials of the Museum of Natural History hereby determine the human remains to be those of a Salish Indian. Descendants of the Salish of the Puget Sound region are members of the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Port Gamble Indian Tribe of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Sauk-Suiattle Indian Tribe of Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip

Reservation, Washington; and Upper Skagit Indian Tribe of Washington.

In consultation with the Puyallup Tribe of the Puyallup Reservation, Washington, the museum has learned that there were many Puyallup villages along Puget Sound prior to treaty times. Additionally, the territory of the Puyallup Tribe of the Puyallup Reservation, Washington (within Pierce County) extends to the Islands and waterways of Puget Sound, up to present day Steilacoom, out to present day Gig Harbor, embracing the cities of Tacoma, Fife, Milton, Puyallup, Edgewood, Sumner, and up to the top of Mount Rainier (and King County.) The Puyallup also occupied seasonal encampments in the Puget Sound area.

Based on lack of information about the removal from Puget Sound, Mr. Turner's and his heirs' failure to remove the human remains from the museum, and the fact that the Museum of Natural History has had stewardship of them since 1913, the museum considers the human remains abandoned and has decided to proceed as the responsible entity under NAGPRA.

Officials of the Museum of Natural History and Planetarium, Roger Williams Park have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Museum of Natural History and Planetarium, Roger Williams Park also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Port Gamble Indian Tribe of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Sauk-Suiattle Indian Tribe of Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Marilyn Massaro, Curator of Collections, Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI 02907, telephone (401)785–9457, ext. 248, before November 12, 2009. Repatriation of the human remains to the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Port Gamble Indian Tribe of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Sauk-Suiattle Indian Tribe of Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington may proceed after that date if no additional claimants come forward.

The Museum of Natural History and Planetarium, Roger Williams Park is responsible for notifying the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Port Gamble Indian Tribe of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Sauk-Suiattle Indian Tribe of Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington that this notice has been published.

Dated: September 21, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–24558 Filed 10–9–09; 8:45 am]

BILLING CODE 4312–50–S

LIBRARY OF CONGRESS

Copyright Office

Copyright Office Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Other Persons With Disabilities

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry and request for comments.

SUMMARY: The United States Copyright Office (Copyright Office) and the United States Patent and Trademark Office (USPTO) seek comment on possible solutions to enhance the accessibility of copyrighted works for the benefit of the blind or other persons with disabilities,[1] including specifically the objectives and text of a draft treaty prepared under the auspices of the World Blind Union and proposed formally at the May 2009 session of the World Intellectual Property Organization's Standing Committee on Copyright and Related Rights. Interested parties are invited to submit comments on the topics outlined in the supplementary information section of this notice.

DATES: Initial comments on the Notice of Inquiry and Request for Comments are due on or before November 13, 2009. Reply comments are due on or before December 4, 2009.

ADDRESSES: Notice of Inquiry and Request for Comments: The Copyright Office and USPTO strongly prefer that comments be submitted electronically. A comment page containing a comment form will be posted on the Copyright Office web site at www.copyright.gov/docs/sccr/comments and will be activated approximately two weeks prior to the comment deadline. The web site interface will allow commenters to enter required information into specified fields and upload comments as an attachment. In order to be accessible to visually impaired persons, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The uploaded comment must include the name of the commenter. A browse button will facilitate submission of the completed form to the Copyright Office. All comments from this proceeding will be posted publicly on the Copyright Office web site. The name and organization of the commenter from the comment form

[1] Various terms are used formally and informally throughout the world. When inquiring about experiences within the United States, the term used in this Notice of Inquiry is that which appears in U.S. copyright law. *See* 17 U.S.C. 121(d)(2). There, the term ''blind or other persons with disabilities'' is defined to include individuals who are eligible or who may qualify to receive books and other publications in specialized formats in accordance with the Act entitled ''An Act to provide books for the adult blind,'' approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487).

will be posted together with the entire attached comment document. Other information from the comment form will not be posted, but note that if the same information is included in the attached document it will be available on the Copyright Office web site as part of the attachment. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–1027 for special instructions.

FOR FURTHER INFORMATION CONTACT: Maria Pallante, Associate Register, Policy and International Affairs, or Michele Woods, Senior Counsel for Policy and International Affairs, by telephone at 202–707–1027 or by electronic mail at mpall@loc.gov or mwoo@loc.gov.

SUPPLEMENTARY INFORMATION:

Background: The United States is a Member State of the World Intellectual Property Organization (WIPO) and an active member of the Standing Committee on Copyright and Related Rights (SCCR). An on–going focus of the SCCR is the topic of limitations and exceptions to exclusive rights, including limitations and exceptions for visually impaired persons. At its seventeenth session (November 2008), the SCCR stressed the importance of dealing ''without delay and with appropriate deliberation'' with the issue of facilitating and enhancing access to protected works.[2] At the most recent (eighteenth) session of the SCCR (May 2009), the delegations of Brazil, Ecuador, and Paraguay formally introduced a proposal for a new treaty for the benefit of blind, visually impaired, and other reading disabled persons, based on text that was prepared under the auspices of the World Blind Union (WBU).[3]

The treaty proposal would require the implementation of prescribed copyright exceptions and limitations, among other provisions. The stated purpose of the proposal is to ''provide the necessary minimum flexibilities in copyright laws that are needed to ensure.formats that are accessible for persons who are blind, have low vision, or have other disabilities in reading text, in order to support their full and effective participation in society on an equal basis with others, and to ensure the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.''

Most notably, the proposal would permit the cross–border import, export and qualified distribution of copyrighted works in accessible formats without the permission of the rights holders, including to countries that presently lack, in their national laws, a specific copyright exception or other legal framework for serving the visually impaired. The proposal would also permit the circumvention of technological protection measures for the purpose of making works accessible. *See* Proposal by Brazil, Ecuador and Paraguay, Relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU), submitted at the World Intellectual Property Organization Standing Committee on Copyright and Related Rights (SCCR), 18th Session, May 25–29, 2009 (available at http://www.wipo.int/meetings/en/doc__details.jsp?doc__id=122732).

The United States has long been a leader in the area of providing popular books, textbooks, magazines, newspapers and other materials to the blind, through the services of several trusted organizations, including the Library of Congress (National Library Service for the Blind and Physically Disabled), American Printing House for the Blind, Recording for the Blind & Dyslexic, and Bookshare.[4] A statutory exception in the Copyright Act (Title 17), the so–called ''Chafee Amendment,'' permits these and other authorized entities to reproduce and distribute certain literary works in specialized formats exclusively for use by blind or other persons with disabilities. In the context of education, the Chafee Amendment operates jointly with the Individual with Disabilities Education Act (IDEA) of 2004, which allows publishers to create and distribute print instructional materials for elementary and secondary schools in a file format known as ''NIMAS'' (the National Instructional Materials Accessibility Standard). Another U.S. organization, the DAISY Consortium, has worked globally to establish the technical standards that are necessary to ensure interoperability of file formats and actual access by the blind, not only with respect to works made pursuant to copyright exceptions but also for works sold to visually impaired persons on the open market. More information on the DAISY Consortium is available at http://www.daisy.org/.

In a floor statement at the eighteenth session of the SCCR (May 2009), the delegation of the United States affirmed its commitment to working jointly with stakeholders to find ''timely, effective and practical solutions'' to further enhance the accessibility of protected works, taking into account the complex and interrelated issues of copyright law, business models, technology and human and financial resources. *See* Statement on Improving Accessibility to Copyrighted Works for Blind and Visually Impaired Persons, as Delivered by the United States of America before the World Intellectual Property Organization Standing Committee on Copyright and Related Rights (SCCR), 18th Session, May 26, 2009 (available at http://www.copyright.gov/docs/sccr/statement/us–intervention.pdf). The United States stressed the importance of national consultations as a critical first step to addressing specific proposals within the SCCR. The United States reported at length on its formal and informal consultations with copyright owners, representatives of the blind, and the public, including a notice of inquiry (through which the public submitted written comments and reply comments) and a comprehensive public meeting that preceded the SCCR session. See Notice of Inquiry and Request for Comments; Notice of Public Meeting, 74 FR 13268 (Mar. 26, 2009); *see also* http://www.copyright.gov/docs/sccr/.

To date, the U.S. consultations have demonstrated that although there are willing buyers and sellers of accessible works, concerns over rights clearances, downstream infringement, and high costs prevent the marketplace of accessible works from growing to its full potential. Additionally, the United States has learned that improved implementation of existing legal and regulatory provisions may be needed in order to maximize the accessibility of works to the blind and other persons with disabilities. But there are many challenges that do not pose questions of law. For example, better coordination between trusted organizations, educational institutions, and publishers could reduce duplication of efforts and lead to a better variety of titles in accessible formats. Respect for technical standards would improve the

[2] *See* ''Conclusions of the 17th Session of the SCCR,'' November 3–7, 2008, at http://www.wipo.int/edocs/mdocs/copyright/en/sccr__17/sccr__17__www__112533.pdf (last visited on Oct. 1, 2009).

[3] *See* ''Conclusions of the 18th Session of the SCCR,'' May 25–29, 2009, at http://www.wipo.int/edocs/mdocs/copyright/en/sccr__18/sccr__18__conclusions.doc (last visited on Oct. 1, 2009).

[4] The United States signed the United Nations Convention on the Rights of Persons with Disabilities on July 30, 2009. The next step is for the President to transmit a request to the Senate for advice and consent to ratification, accompanied by a treaty transmittal package. Article 30 of the Convention requires that ''States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and...take all appropriate measures to ensure that persons with disabilities...[e]njoy access to cultural materials in accessible formats.''

interoperability of file formats and improve accessibility to hardware, including for refreshable Braille and text–to–speech capabilities. Clearer practices could help assuage delays in providing time–sensitive materials to some visually impaired students, particularly in higher education. Increased funding would help all of the above.

At the international level, the WIPO Secretariat has endeavored to address practical obstacles to accessibility by creating an exploratory partnership between publishers and visually impaired persons, known as the WIPO Stakeholders' Platform. The Stakeholders' Platform is exploring the ''concrete needs, concerns, and suggested approaches'' of facilitating access. For example, one subcommittee has been working on a series of private sector guidelines and pilot projects related to trusted intermediaries and cross–border access for registered, qualified users. More information may be found at http://www.visionip.org/stakeholders/en/trusted__intermediary__guidelines.html.

At the next (nineteenth) session of the SCCR (December 14–18, 2009), the United States is committed to discussing the treaty proposal, as well as other relevant solutions.

Documents from SCCR meetings, including documents regarding copyright limitations and exceptions for the blind and other persons with disabilities, can be found by starting at http://www.wipo.int/meetings/en/topic.jsp?group__id=62 and following the link to information for each specific meeting. A study on copyright limitations and exceptions for the visually impaired can be found at http://www.wipo.int/meetings/en/doc__details.jsp?doc__id=75696. The treaty proposal is available at http://www.wipo.int/meetings/en/doc__details.jsp?doc__id=122732.

Subjects of Inquiry: At this time, in order to allow further opportunity for interested persons to provide their views, the Copyright Office and the USPTO are seeking comments on possible solutions, both legal and practical, for enhancing the accessibility of copyrighted works for the benefit of visually impaired persons. In particular, the Copyright Office and USPTO are interested in learning about 1) how the treaty proposal would interact with existing U.S. law; 2) how the treaty proposal would interact with existing international obligations of the U.S.; 3) the possible benefits of or concerns about the treaty proposal, including with regard to the objectives of the treaty proposal, how those objectives could lead to improved access for the blind and visually impaired, and any concerns about the implementation of the proposed treaty provisions in the U.S. or abroad; and 4) other possible courses of action that would facilitate access by ''blind, visually impaired, and other reading disabled persons.''

1. *How would the treaty proposal interact with United States law under Title 17 or otherwise?* The Copyright Office and the USPTO seek to learn interested parties' views on how the treaty proposal compares to U.S. law under Title 17, or any other statutory or regulatory provisions that might be affected. How consistent is the treaty proposal with current U.S. law? If the treaty proposal is adopted, would any changes to U.S. law be required in order to implement its provisions? Please reference with as much specificity as possible any U.S. statutes, regulations, or other provisions that should be considered in a review of the treaty proposal's implications on U.S. law.

2. *How would the treaty proposal interact with the international obligations of the United States*? Please comment on whether, and how, the treaty proposal would affect the existing multilateral and bilateral agreements of the United States. Please reference with as much specificity as possible the provisions of any treaties, conventions, agreements or other instruments that should be considered, as well as any conclusions or analyses that might be instructive.

3. *What benefits or concerns would the treaty proposal create*? Please comment generally on the objectives of the treaty proposal, and how such objectives could facilitate access for the blind and visually impaired. Is the treaty proposal likely to meet its objectives? Would there be any legal or practical impediments to implementing the treaty proposal in the United States? What issues should the United States consider with respect to application of the treaty proposal in foreign countries?

4. *Other possible courses of action that would facilitate access by ''blind, visually impaired, and other reading disabled persons.''* Please comment on any additional, possible methods of improving accessibility about which the Copyright Office and the USPTO should be aware, including possible roles for WIPO, the U.S. government, and the commercial and noncommercial private sectors.

Dated: October 7, 2009.

Maria Pallante,

Associate Register for Policy and International Affairs, U.S. Copyright Office.

[FR Doc. E9–24539 Filed 10–9–09; 8:45 am]

BILLING CODE 1410–30–S

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 168th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on October 30, 2009 in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting, from 9 a.m. to 11:30 p.m. (ending time is approximate), will be open to the public on a space available basis. After opening remarks and announcements, the meeting will include Government Affairs and budget updates. This will be followed by presentations on the legacy of Merce Cunningham. Presenters will include Suzanne Carbonneau (critic and director of the *NEA Arts Journalism* project at the American Dance Festival), Trevor Carlson (former dancer and executive director of the Cunningham Dance Company), and Elizabeth Streb (dancer and choreographer). After the presentations the Council will review and vote on applications and guidelines, and will adjourn following concluding remarks.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–

5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: October 7, 2009.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. E9–24521 Filed 10–9–09; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2009–0233]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on June 30, 2009.

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* NRC Form 790, Classification Record.
3. *Current OMB approval number:* 3150–0052.
4. *The form number if applicable:* NRC Form 790.
5. *How often the collection is required:* On occasion.
6. *Who will be required or asked to report:* NRC licensees, contractors, and certificate holders who classify and declassify NRC information.
7. *An estimate of the number of annual responses:* 450.
8. *The estimated number of annual respondents:* 208.
9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 30.
10. *Abstract:* Completion of the NRC Form 790 is a mandatory requirement for NRC licensees, contractors, and only certificate holder who classifies and declassifies NRC information in accordance with Executive Order 12958 as amended, ''Classified National Security Information,'' the Atomic Energy Act, and implementing directives.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 12, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

NRC Desk Officer, Office of Information and Regulatory Affairs (3150–0052), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 2nd day of October 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–24589 Filed 10–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0434; Docket No. 40–1162]

Notice of Application From Western Nuclear Inc., for Consent to Indirect Change of Control With Respect to Materials License SUA–56, Opportunity To Provide Comments and To Request a Hearing

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of consideration of a request from Western Nuclear Inc., for consent to indirect transfer of control over materials license SUA–56 and the opportunity to request a hearing.

DATES: A request for a hearing must be filed by November 2, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Chang, Project Manager, Special Projects Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–7188; fax number: (301) 415–5369; e-mail: *richard.chang@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering an application from Western Nuclear Inc., (WNI or licensee), submitted on July 22, 2009, requesting approval of an indirect change of control with respect to its 10 CFR part 40 source materials license SUA–56. WNI's parent company, Phelps Dodge Corporation (PDC) (currently named Freeport-McMoRan Corporation), was previously acquired in a reverse triangular merger by Freeport-McMoRan Copper & Gold, Inc. (Freeport).

On March 19, 2007, Freeport acquired the entire interest in PDC, and Freeport now owns one hundred percent (100%) of PDC. This transaction resulted in the indirect transfer of control of WNI and license SUA–56 from PDC to Freeport. WNI is requesting that the NRC consent to this indirect change of control.

WNI's application states that, as a result of the 2007 transaction, there has been no change to the licensee's operations, and that its key operating personnel and licensed activities have remained the same. WNI has, and will continue to be, the holder of license SUA–56 after the approval of the indirect change of control. WNI will remain technically and financially qualified as the licensee and will continue to fulfill all responsibilities as the licensee.

Pursuant to 10 CFR 40.46, no source material license shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the Atomic Energy Act, and gives its consent in writing. An Environmental Assessment (EA) will not be performed for this proposed action because it falls within a class of actions categorically excluded from the requirement to perform an EA pursuant to 10 CFR 51.22(c)(21).

The NRC staff plans to approve the July 22, 2009, application by issuing the necessary order, along with a supporting safety evaluation report.

II. Opportunity to Request a Hearing

Any person whose interest may be affected if the July 22, 2009, application is approved, and who desires to participate as a party in an NRC adjudicatory hearing, must file a request for a hearing. The hearing request must include a specification of the contentions which the person seeks to have litigated in the hearing, and must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49139, (August 28, 2007). The E-Filing rule requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) A digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Standard Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Standard Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include social security numbers in their filings. Copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, should not be included in the submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by November 2, 2009.

In addition to meeting other applicable requirements of 10 CFR 2.309, a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requestor;
2. The nature of the requestor's right under the Act to be made a party to the proceeding;
3. The nature and extent of the requestor's property, financial or other interest in the proceeding;
4. The possible effect of any decision or order that may be issued in the proceeding on the requestor's interest; and
5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;
2. Provide a brief explanation of the basis for the contention;
3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;
4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to

support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the requestor/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requestors/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requestors/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requestor/petitioner that wishes to adopt a contention proposed by another requestor/petitioner must do so, in accordance with the E-Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requestor/petitioner.

As indicated below, pursuant to 10 CFR 2.310(g), any hearing would be subject to the procedures set forth in 10 CFR part 2, subpart M.

III. Opportunity To Provide Written Comments

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

IV. Further Information

For further details with respect to the proposed action, see the NRC's letter to the licensee dated June 22, 2009 (See ADAMS ML091550317), the licensee's letter dated July 22, 2009 (See ADAMS ML092100253), a letter from NRC to the licensee dated August 13, 2009, accepting the Application for formal review (See ADAMS ML092100480), a transmittal letter dated March 27, 2009, and affidavit requesting that the financial information provided to NRC be withheld from the public pursuant to NRC regulation 10 CFR 2.390 (See ADAMS ML092260137). Additional background information is contained in letters dated March 12, 2007 (See ADAMS ML071080087), and September 5, 2007 (See ADAMS ML072710031). The documents referenced above are available for public inspection, and can be copied for a fee, at the U.S. Nuclear Regulatory Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC maintains an Agency-wide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov*.

Persons who do not have access to ADAMS or who have problems in accessing the documents located in ADAMS may contact the PDR reference staff at 1–800–397–4209, 301–415–4737 or by e-mail at *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 5th day of October 2009.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–24564 Filed 10–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0448]

Notice of Availability of Draft Interim Staff Guidance 25, ''Pressure and Helium Leakage Testing of the Confinement Boundary of Spent Fuel Storage Canisters,'' and Opportunity To Provide Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and opportunity to provide comments.

DATES: Comments must be provided by November 27, 2009.

FOR FURTHER INFORMATION CONTACT: Ron Parkhill, Senior Mechanical Engineer, Thermal and Containment Branch, Division of Spent Fuel Storage and Transportation Division, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 492–3324; fax number: (301) 492–3342; e-mail: *ron.parkhill@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing Draft Interim Staff Guidance 25, ''Pressure and Helium Leakage Testing of the Confinement Boundary of Spent Fuel Storage Canisters.'' This draft interim staff guidance (ISG) clarifies the agency's position on the shop helium leakage test and ASME (American Society of Mechanical Engineers) Code pressure testing requirements in order to provide reasonable assurance of the confinement of radioactive material for spent fuel storage canisters.

The purpose of this notice is to provide the public with an opportunity to review and to solicit comments on this draft ISG. Comments received will be considered in the final version or subsequent revisions.

II. Opportunity To Provide Comments

Comments and questions on draft ISG–25, should be directed to Ron Parkhill, Thermal and Containment Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001 by November 27, 2009. Comments received after this date will be considered if it is practical to do so, but only those comments received on or before the due date can be assured consideration. Comments can also be submitted by

telephone, fax, or e-mail to the following: Telephone: (301) 492–3324; fax number: (301) 492–3331; e-mail: *Ron.Parkhill@NRC.gov.*

III. Further Information

Documents related to this action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this notice is [ML090850380]. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

This document may also be viewed electronically on the public computers located at the NRC's PDR, O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 30th day of September 2009.

For the Nuclear Regulatory Commission.

Michael Waters,

Chief, Thermal and Containment Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. E9–24559 Filed 10–9–09; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

November 5, 2009 Public Hearing

Time and Date: 2 p.m., Thursday, November 5, 2009.

Place: Offices of the Corporation, Twelfth Floor Board Room,1100 New York Avenue, NW., Washington, DC.

Status: Hearing Open to the Public at 2 p.m.

Purpose: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures:

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Thursday, October 29, 2009. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Thursday, October 29, 2009. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the November 19, 2009 Board meeting will be posted on OPIC's Web site on or about October 15, 2009.

Contact Person for Information: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov.*

Dated: October 8, 2009.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. E9–24676 Filed 10–8–09; 4:15 pm]

BILLING CODE 3210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

November 19, 2009 Board of Directors Meeting

Time and Date: Thursday, November 19, 2009, 10 a.m. (Open Portion). 10:15 a.m. (Closed Portion).

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Meeting Open to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.).

Matters To Be Considered:

1. President's Report.
2. Approval of September 17, 2009 Minutes (Open Portion).

Further Matters To Be Considered: (Closed to the Public 10:15 a.m.).

1. Allocation to Retained Earnings.
2. Finance Project—Costa Rica.
3. Finance Project—Global.
4. Finance Project—Republic of Colombia.
5. Finance Project—Global.
6. Finance Project—Latin America.
7. Finance Project—Mexico.
8. Finance Project—Bulgaria.
9. Finance Project—Global.
10. Finance Project—Mexico, Central and South America, and the Caribbean.
11. Approval of September 17, 2009 Minutes (Closed Portion).
12. Pending Major Projects.
13. Reports.

Written summaries of the projects to be presented will be posted on OPIC's Web site on or about October 15, 2009.

Contact Person for Information: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: October 8, 2009.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. E9–24679 Filed 10–8–09; 4:15 pm]

BILLING CODE 3210–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the first quarter meetings of the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meetings for the fourth quarter will be held on the following dates:

Tuesday, October 20, 2009 at 1 p.m. EST.

Tuesday, November 17, 2009 at 1 p.m. EST.

Tuesday, December 15, 2009 at 1 p.m. EST.

ADDRESSES: These meetings will be held via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of these meetings is to discuss following issues pertaining to the SBDC Advisory Board:

Follow-up on ASBDC Fall Conference
White Paper Issues
SBA Update
Member Roundtable

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Alanna Falcone by Friday, October 16th by fax or e-mail. Her contact information is Alanna Falcone, Program Analyst, 409 Third Street, SW., Washington, DC 20416, Phone, 202–619–1612, Fax 202–481–0134, e-mail, *alanna.falcone@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Alanna Falcone at the information above.

Meaghan Burdick,

Acting Committee Management Officer.

[FR Doc. E9–24475 Filed 10–9–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28941; File No. 812–13656]

Morgan Stanley Investment Management Inc., et al.; Notice of Application

October 6, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order pursuant to sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act and pursuant to section 17(d) of the Act and rule 17d–1 under the Act permitting certain transactions.

Summary of the Application: Applicants request an order that would permit (1) registered investment companies for which certain affiliates of Morgan Stanley (''Morgan Stanley'') act as an adviser to engage in certain securities transactions with certain affiliates of Citigroup Inc. (''Citigroup'') and (2) registered investment companies for which certain affiliates of Citigroup act as an adviser to engage in certain securities transactions with certain affiliates of Morgan Stanley.

Applicants: Morgan Stanley Investment Management Inc., Morgan Stanley Investment Advisors Inc., Van Kampen Asset Management (each, an ''MS Adviser''), Morgan Stanley & Co. Incorporated (''MS & Co.''), Morgan Stanley Balanced Fund, Morgan Stanley U.S. Government Money Market Trust, Morgan Stanley Dividend Growth Securities Inc., Morgan Stanley Natural Resource Development Securities Inc., Morgan Stanley Special Growth Fund, Morgan Stanley Global Dividend Growth Securities, Morgan Stanley Limited Term Municipal Trust, Morgan Stanley Technology Fund, Morgan Stanley Small-Mid Special Value Fund, Morgan Stanley Global Advantage Fund, Morgan Stanley Limited Duration U.S. Government Trust, Active Assets California Tax-Free Trust, Active Assets Government Securities Trust, Active Assets Institutional Government Securities Trust, Active Assets Institutional Money Trust, Active Assets Money Trust, Active Assets Tax-Free Trust, Morgan Stanley Equally-Weighted S&P 500 Fund, Morgan Stanley Series Funds, Morgan Stanley Health Sciences Trust, Morgan Stanley Special Value Fund, Morgan Stanley Strategist Fund, Morgan Stanley High Yield Securities Inc., Morgan Stanley International Value Equity Fund, Morgan Stanley Liquid Asset Fund Inc., Morgan Stanley Mid-Cap Value Fund, Morgan Stanley S&P 500 Index Fund, Morgan Stanley Convertible Securities Trust, Morgan Stanley Fundamental Value Fund, Morgan Stanley Mid Cap Growth Fund, Morgan Stanley Prime Income Trust, Morgan Stanley Value Fund, Morgan Stanley European Equity Fund Inc., Morgan Stanley Flexible Income Trust, Morgan Stanley International Fund, Morgan Stanley Mortgage Securities Trust, Morgan Stanley Pacific Growth Fund Inc., Morgan Stanley Capital Opportunities Trust, Morgan Stanley Real Estate Fund, Morgan Stanley California Tax-Free Daily Income Trust, Morgan Stanley California Tax-Free Income Fund, Morgan Stanley Focus Growth Fund, Morgan Stanley FX Series Funds, Morgan Stanley New York Municipal Money Market Trust, Morgan Stanley New York Tax-Free Income Fund, Morgan Stanley Select Dimensions Investment Series, Morgan Stanley Tax-Exempt Securities Trust, Morgan Stanley Tax-Free Daily Income Trust, Morgan Stanley U.S. Government Securities Trust, Morgan Stanley Global Infrastructure Fund, Morgan Stanley Variable Investment Series, Morgan Stanley Municipal Income Opportunities Trust II, Morgan Stanley Municipal Income Opportunities Trust III, Morgan Stanley Municipal Income Opportunities Trust, Morgan Stanley Municipal Premium Income Trust, Morgan Stanley Income Securities Inc., Morgan Stanley California Insured Municipal Income Trust, Morgan Stanley California Quality Municipal Securities, Morgan Stanley Insured California Municipal Securities, Morgan Stanley Insured Municipal Bond Trust, Morgan Stanley Insured Municipal Income Trust, Morgan Stanley Insured Municipal Securities, Morgan Stanley Insured Municipal Trust, Morgan Stanley New York Quality Municipal Securities, Morgan Stanley Quality Municipal Income Trust, Morgan Stanley Quality Municipal Investment Trust, Morgan Stanley Quality Municipal Securities, Morgan Stanley Institutional Fund Trust, Morgan Stanley Institutional Liquidity Funds, Morgan Stanley Institutional Fund, Inc., The Universal Institutional Funds, Inc., Morgan Stanley Emerging Markets Domestic Debt Fund, Inc., The Turkish Investment Fund, Inc., Morgan Stanley Asia-Pacific Fund, Inc., Morgan Stanley China ''A'' Share Fund, Inc., Morgan Stanley Eastern Europe Fund, Inc., Morgan Stanley Emerging Markets Debt Fund, Inc., Morgan Stanley Emerging Markets Fund, Inc., Morgan Stanley Global Opportunity Bond Fund, Inc., Morgan Stanley High Yield Fund, Inc., Morgan Stanley India Investment Fund, Inc., Morgan Stanley Frontier Emerging Markets Fund, Inc., The Latin American Discovery Fund, Inc., The Malaysia Fund, Inc., The Thai Fund, Inc., Van Kampen Equity Trust, Van Kampen Money Market Fund, Van Kampen Capital Growth Fund, Van Kampen Tax Free Money Fund, Van Kampen Series Fund, Inc., Van Kampen Senior Loan Fund, Van Kampen Corporate Bond Fund, Van Kampen Equity Trust II, Van Kampen High Yield Fund, Van Kampen Trust, Van Kampen Partners Trust, Van Kampen Retirement Strategy Trust, Van Kampen Government Securities Fund, Van Kampen Pennsylvania Tax Free Income Fund, Van Kampen Tax Free Trust, Van Kampen Trust II, Van Kampen Growth and Income Fund, Van Kampen Tax-Exempt Trust, Van Kampen Comstock Fund, Van Kampen Enterprise Fund, Van Kampen Equity and Income Fund, Van Kampen Exchange Fund, Van Kampen Harbor Fund, Van Kampen Life Investment Trust, Van Kampen Limited Duration Fund, Van Kampen Real Estate Securities Fund, Van Kampen U.S. Government Trust, Van Kampen Senior Income Trust, Van Kampen Advantage Municipal Income Trust II, Van Kampen California Value Municipal Income Trust, Van Kampen Dynamic Credit Opportunities Fund, Van Kampen Massachusetts Value Municipal Income Trust, Van Kampen Municipal Opportunity Trust, Van Kampen Municipal Trust, Van Kampen Ohio

Quality Municipal Trust, Van Kampen Pennsylvania Value Municipal Income Trust, Van Kampen Select Sector Municipal Trust, Van Kampen Trust for Insured Municipals, Van Kampen Trust for Investment Grade Municipals, Van Kampen Trust for Investment Grade New Jersey Municipals, Van Kampen Trust for Investment Grade New York Municipals, Van Kampen Bond Fund, Van Kampen High Income Trust II (each, an ''MS Fund''), Citigroup Alternative Investments LLC (the ''Citi Adviser,'' and, together with the MS Advisers, the ''Advisers''), Citigroup Global Markets Inc. (''CGMI''), Citigroup Global Markets Limited, Citigroup Financial Products, Inc., Citibank, N.A., Citibank Canada, Citibank International plc, and LMP Corporate Loan Fund Inc. (the ''LMP Fund'').

DATES: *Filing Dates:* The application was filed on May 4, 2009 and amended on June 16, 2009 and August 10, 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 October 28, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, Stefanie V. Chang Yu, Esq., Morgan Stanley Investment Management Inc., 522 Fifth Avenue, New York, New York 10036 and Marianna Maffucci, Citigroup Global Markets Inc., 388 Greenwich Street, 17th Floor, New York, New York 10013.

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 MS Funds and the LMP Fund (together, the ''Funds'') is an open-end or closed-end management investment company registered under the Act and is organized as a statutory trust, business trust, corporation, or limited partnership under the laws of Delaware, Maryland, Massachusetts, Pennsylvania, or California. The MS Funds and the LMP Fund have a variety of investment objectives, but each may to a greater or lesser degree invest a portion of its assets in fixed-income securities. The fixed-income securities in which the Funds may invest include, but are not limited to, government securities, municipal securities, tender option bonds, taxable and tax-exempt money market securities, repurchase agreements, asset- and mortgage-backed securities, corporate issues and syndicated loans (including assignments thereof and participations therein), each as the Funds' respective investment policies allow.

2. The MS Advisers are direct or indirect wholly-owned subsidiaries of Morgan Stanley, a Delaware corporation. Each MS Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The MS Advisers act as investment advisers to each of the MS Funds and may supervise one or more affiliated or unaffiliated sub-advisers with respect to certain MS Funds.

3. The Citi Adviser is an indirect wholly-owned subsidiary of Citigroup, a Delaware corporation. The Citi Adviser is registered as an investment adviser under the Advisers Act. The Citi Adviser acts as investment sub-adviser to the LMP Fund and may act in the future as adviser to other registered investment companies.

4. MS & Co., a Delaware corporation, is a wholly-owned subsidiary of Morgan Stanley. CGMI, a New York corporation, is an indirect wholly-owned subsidiary of Citigroup. In addition, Citibank, N.A., Citibank Canada, Citibank International plc, Citigroup Global Markets Limited and Citigroup Financial Products Inc. are each wholly-owned subsidiaries (directly or indirectly) of Citigroup (these entities, or their affiliates, together with CGMI, the ''Citi Trading Entity''). Each of MS & Co. (or its affiliates, together, the ''MS Trading Entity'') and the Citi Trading Entity (together with the MS Trading Entity, the ''Trading Entities'') is registered as a broker-dealer with the Commission under the Securities Exchange Act of 1934.

5. On January 13, 2009, Morgan Stanley and Citigroup entered into a joint venture contribution and formation agreement (the ''JV Agreement'') to create Morgan Stanley Smith Barney Holdings LLC (''MSSB'' or the ''Joint Venture''), a Delaware limited liability company of which the equity capitalization consists solely of one class of common membership interests (the ''Interests''). MSSB is a holding company and the sole member of Morgan Stanley Smith Barney LLC, which conducts most of the Joint Venture's domestic operations as a dual-registered broker-dealer and investment adviser. On June 1, 2009, the Joint Venture closed in accordance with the terms of the JV Agreement.

6. Pursuant to the terms of the JV Agreement, Morgan Stanley contributed to the Joint Venture its global wealth management (retail brokerage) and private wealth management businesses (the ''MS Contributed Businesses'') (together with all contracts, employees, property licenses and other assets and liabilities). Citigroup contributed to the Joint Venture its retail brokerage and futures business operated under the name ''Smith Barney'' in the United States and Australia and operated under the name ''Quilter'' in the United Kingdom, Ireland, and the Channel Islands (the ''Citi Contributed Businesses'') (together with all contracts, employees, property licenses and other assets and liabilities). Morgan Stanley now owns indirectly through subsidiaries 51% of the Interests, and Citigroup owns indirectly through CGMI 49% of the Interests. In addition, under the JV Agreement, Morgan Stanley has the option to purchase an additional 14% of the Interests following the third anniversary of the closing, an additional 15% of the Interests after the fourth anniversary, and any remaining Interests held by Citigroup after the fifth anniversary.

7. MSSB provides retail brokerage and a variety of wealth management services, including as an investment adviser, insurance broker, insurance agency and futures broker. MSSB conducts its own businesses, operating separately from the non-MSSB business units of Citigroup and Morgan Stanley (although they may perform certain functions, such as clearing, for MSSB for a certain period of time following the closing of the Joint Venture). Citigroup and Morgan Stanley have preserved their distinct brands and continue to offer independently a wide range of

financial services. Citigroup has no interest in, and will not control (within the meaning of section 2(a)(9) of the Act) directly or indirectly, Morgan Stanley, the MS Advisers, or any other Morgan Stanley entity that is not a MS Contributed Business (together with the MS Advisers, the ''MS Entities''). Morgan Stanley has no interest in, and will not control (within the meaning of section 2(a)(9) of the Act) directly or indirectly, Citigroup, the Citi Adviser, or any other Citigroup entity that is not a Citi Contributed Business (together with the Citi Adviser, the ''Citi Entities'').

8. MSSB is governed by a newly formed board of directors controlled by Morgan Stanley (''MSSB Board''). Currently, the MSSB Board consists of four Morgan Stanley designees and two Citigroup designees (as long as Citigroup owns 10% or more of the Interests) and the president of MSSB. All matters with regard to MSSB generally will be determined by a majority vote of the MSSB Board, although the Joint Venture also includes certain other specified governance and approval rights.[1] Approval of Citigroup is required for amendment to MSSB's limited liability company agreement, as long as Citigroup owns at least 20% of the Interests; thereafter, Citigroup's approval will be required only as to certain specified matters. Citigroup also may put its Interests to Morgan Stanley, in the event of a change of control of Morgan Stanley or after the sixth anniversary of the closing of the Joint Venture transaction if Morgan Stanley has exercised its first two call rights.

9. Subsequent to the closing of the Joint Venture, the Citi Trading Entity and the MS Advisers (and the MS Trading Entity and the Citi Adviser) continue to operate as separate, independent businesses.[2] Applicants state that the Funds and their investors are protected from any undue influence, among other things, by the substantial separation and independent operation of the Trading Entities from each other and from MSSB. Applicants state that none of the Funds will engage in portfolio transactions with MSSB. In addition, applicants state that each of the Advisers has adopted confidentiality policies designed to limit the unnecessary flow of information about client holdings and transactions. Such policies have been extended to prevent unnecessary information sharing between MSSB and each of the MS Advisers and the Citi Adviser. For example, information regarding investment advisory and portfolio execution matters relating to the MS Funds and the Citi Funds are considered by the MS Advisers and the Citi Adviser, respectively, as information that may not be communicated outside of such Adviser except as necessary (e.g., to a potential executing broker or dealer on an actual trade), including to MSSB. Additionally, ''information barriers'' are in place to prevent the dissemination of confidential information between the MS Advisers and other MS Entities and between the Citi Adviser and other Citi Entities, respectively. The separation of the entities is required to be maintained by the ''Structural Conditions'' proposed by the applicants, including that the Citi Trading Entity and the MS Advisers (and the MS Trading Entity and the Citi Adviser) will continue to have separate ownership, officers and employees, will continue to be separately capitalized, and will maintain separate books and records and physically separate offices. Accordingly, applicants submit that neither the Citi Trading Entity nor the MS Trading Entity will be in a position to cause any Securities Transaction (as defined below) by the MS Funds or the Citi Funds (as defined below), respectively.

10. Applicants state that, because of consolidation in the financial services industry, combined with an increase in industry assets, a few major broker-dealers account for a large percentage of the market share in connection with trading in various asset classes. For example, applicants state that the Citi Trading Entity can be responsible for more than 10% of the dollar trading volume of primary offerings and more than 20% of the dollar trading volume of secondary market trading in certain types of fixed income securities. Applicants state that the decline in the number of broker-dealers and banks trading in the securities in which the Funds seek to invest and the increasing importance of the few remaining institutions have increased the importance to the Funds of their relationships with such entities, including the Citi Trading Entity or the MS Trading Entity, as applicable. Applicants note, for example, that certain MS Funds have used the Citi Trading Entity for more than 20% of their dollar trading volume in certain types of fixed-income securities. Applicants assert that the inability of the MS Funds and the Citi Funds to execute Securities Transactions involving the Citi Trading Entity and the MS Trading Entity, respectively (solely as a result of Citigroup's and Morgan Stanley's direct or indirect interest in MSSB), would significantly limit the universe of securities broker-dealers and banks available to the Funds, the universe of underwritings in which the Funds may participate, and the level and number of Securities Transactions in which the Funds may engage. Applicants submit that, as a result, the ability of the Funds to obtain the pricing, terms and quality of service available from a major dealer would be materially limited, which may harm the Funds by preventing them from obtaining best execution.

11. Applicants request an order (''Order''), pursuant to sections 6(c) and 17(b) of the Act exempting Securities Transactions entered into in the ordinary course of business by a MS Fund involving the Citi Trading Entity and by a Citi Fund involving the MS Trading Entity, under the circumstances described in the application, from the provisions of sections 17(a) of the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act permitting the Securities Transactions described below.[3] The Order would apply only

[1] These rights require the approval of Morgan Stanley and, for so long as Citigroup owns at least 20% of MSSB, of Citigroup, with respect to certain specified major decisions, including (but not limited to), generally: (a) Any merger, liquidation or sale of MSSB; (b) any acquisition or disposition of a business representing more than 20% of assets or revenues; (c) related party transactions other than those conducted (i) at arm's length and (ii) in the ordinary course of business (Citigroup may dispute either (i) or (ii)); (d) issuance, repurchase or redemption of equity securities except in certain circumstances; (e) removal or replacement of the president of MSSB or certain other officers; (f) entry into new business lines in certain circumstances; and (g) certain bankruptcy and tax events.

[2] No director, officer or employee of the MS Funds or the MS Advisers also is or will be a director, officer or employee of the Citi Trading Entity. No director, officer or employee of the Citi Funds or the Citi Adviser also is or will be a director, officer or employee of the MS Trading Entity. As noted above, each of Citigroup and Morgan Stanley has the right to designate members of the MSSB Board. Currently, the chairman of MSSB is the co-president of Morgan Stanley.

[3] Applicants seek to extend the Order requested to: (a) Any open-end or closed-end investment company registered under the Act, whether now existing or organized in the future, that is advised by any Adviser or by any existing or future investment adviser controlling, controlled by or under common control with Morgan Stanley or Citigroup other than MSSB (such funds, when advised by a Citigroup entity, are hereafter referred to together with the LMP Fund as the ''Citi Funds'' and, together with the MS Funds are included in the term ''Funds''); (b) the Advisers and any existing or future investment adviser controlling, controlled by or under common control with Morgan Stanley or Citigroup other than MSSB; and (c) the Trading Entities and any existing or future entity controlling, controlled by or under common control with Citigroup or Morgan Stanley other than MSSB, provided that any entity that relies on the Order complies with the terms and conditions set forth in the application as though it were an applicant.

where the Citi Trading Entity is deemed to be an affiliated person of an affiliated person (''second-tier affiliate'') of a MS Fund, or the MS Trading Entity is deemed to be a second-tier affiliate of a Citi Fund, solely because of Citigroup's and Morgan Stanley's direct or indirect ownership interest in MSSB.[4]

12. The ''Securities Transactions'' that are the subject of the Order are: (a) primary and secondary market transactions in fixed-income securities executed on a principal basis between the MS Funds and the Citi Trading Entity and between the Citi Funds and the MS Trading Entity[5] and (b) the following types of transactions in which the Citi Trading Entity or the MS Trading Entity and the MS Funds or the Citi Funds, respectively, might each participate jointly or have a joint interest (referred to as ''Joint Transactions''): (i) Tender option bond trust structures involving municipal bonds; (ii) asset-backed securities (''ABS'') or mortgage-backed securities (''MBS'') transactions; (iii) syndicated loan transactions; and (iv) investments in the same company.

Applicants' Legal Analysis

1. Section 17(a) of the Act, among other things, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company any security or other property and from borrowing money or other property from such investment company. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

2. Section 17(d) of the Act and rule 17d–1 thereunder prohibit any affiliated person of or principal underwriter for a registered investment company or any second-tier affiliate, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the Commission and granted by order. Rule 17d–1 provides that, in passing upon an application for such an order, the Commission will consider whether the participation of a registered investment company in a joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other applicants.

3. Section 6(c) of the Act, in relevant part, authorizes the Commission to exempt any person or transaction, or any class or classes of persons or transactions, from any provision or provisions 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 provision of the Act.

4. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned by, controlled, or held with power to vote, by such person; and (c) any person directly or indirectly controlling, controlled by, or under common control with, such other person.

5. Applicants state that, as a result of the Joint Venture, the Citi Trading Entity would arguably become a second-tier affiliate of the MS Funds (and the MS Trading Entity a second-tier affiliate of the Citi Funds) within the meaning of section 2(a)(3) of the Act. Applicants state that, if the MS Funds are assumed to be under the control of the MS Advisers, and Morgan Stanley also controls MSSB, then MSSB and the MS Funds are affiliated persons (''first-tier affiliates'') by virtue of being under common control. Applicants further state that the Citi Trading Entity also could be viewed as a first-tier affiliate of MSSB, and a second-tier affiliate of the MS Funds, because of CGMI's ownership of more than five percent of the voting securities of MSSB and its control of MSSB. Applicants represent that the affiliation analysis would be generally the same with respect to the Citi Funds and the MS Trading Entity. Applicants submit that, due to their second-tier affiliation, any Securities Transaction by the MS Funds involving the Citi Trading Entity, and by the Citi Funds involving the MS Trading Entity, would be subject to section 17(a) of the Act where it constitutes a principal transaction between them, and for Joint Transactions, section 17(d) of the Act and rule 17d–1 thereunder.

6. Applicants submit that the primary purpose of section 17(a) is to prevent a person with the power to control an investment company from essentially engaging in self-dealing, to the detriment of the investment company's shareholders. Similarly, applicants submit that section 17(d) and rule 17d–1 were intended to prohibit abuses arising from conflicts of interest where rather than being on opposite sides of a transaction, an investment company and its affiliates share ''some element of combination'' in a transaction.

7. Applicants submit that the policies which sections 17(a) and 17(d) of the Act, and rule 17d–1 thereunder, were meant to further are not implicated here because Citigroup and the Citi Trading Entity are not in a position to cause a MS Fund to enter into a Securities Transaction or otherwise influence portfolio decisions by the MS Advisers on behalf of the MS Funds; and, similarly, applicants submit that Morgan Stanley and the MS Trading Entity are not in a position to cause a Citi Fund to enter into a Securities Transaction or otherwise influence portfolio decisions by the Citi Adviser on behalf of the Citi Fund. Applicants state that, as a result, no Trading Entity is in a position to engage in self-dealing or otherwise cause any of the relevant Funds to enter into transactions that are not in the best interests of its shareholders.

8. Applicants state that compliance with the ''Structural Conditions'' set forth below is intended to assure that the MS Advisers and the MS Funds continue to operate independently of, and free of any undue influence by, Citigroup and the Citi Trading Entity and similarly, that the Citi Adviser and the Citi Funds continue to operate independently of, and free of any undue influence by, Morgan Stanley and the MS Trading Entity.

[4] The relief sought would not apply if the transactions would be restricted by section 17 and rule 17d–1 because a Trading Entity is a principal underwriter or promoter of a Fund. No Fund advised or promoted by MSSB, or for which MSSB acts as principal underwriter, would be covered by the Order. MSSB may, however, act as principal underwriter for new closed-end MS Funds or Citi Funds; such role will cease at the time the syndicate terminates and prior to any transactions by such MS Fund involving the Citi Trading Entity or by such Citi Fund involving the MS Trading Entity. In addition, the proposed Order will not apply to transactions between the MS Funds and any Morgan Stanley controlled entity or to transactions between the Citi Funds and any Citigroup controlled entity.

[5] ''Fixed-income securities'' for purposes of the Order include interests in syndicated loans (including loans made directly as a syndicate member, or the acquisition of a loan interest in the form of an assignment or participation), as well as convertible bonds and convertible preferred stock.

9. Applicants state that compliance with the ''Transactional Conditions'' set forth below is designed to assure that the terms of the individual transactions are fair from the perspective of the Funds. For example, applicants note that, at the outset, the conditions require each Fund's board of directors, board of trustees or other governing body of such Fund, as applicable (each, a ''Board''), including a majority of its disinterested directors or trustees, as applicable (''Necessary Majority''), to approve, and the Fund to implement, procedures governing all Securities Transactions pursuant to the Order. Applicants submit that, pursuant to such procedures, the Securities Transactions will be subject to ongoing review by each Fund's chief compliance officer, and will be reviewed by its Board, including the Necessary Majority, on a quarterly basis. In addition, among other procedures, the relevant Adviser will make a determination that each Securities Transaction is consistent with the investment objectives of the relevant Fund and in the best interests of such Fund's shareholders. The conditions also require price quotes from unaffiliated sources to assure fairness of price.

10. Applicants state that the Securities Transactions described in the Application satisfy the standards of sections 6(c) and 17(b). Applicants submit that there is no danger of overreaching or self-dealing by a Trading Entity in connection with a Securities Transaction, and there will be no conflict of interest associated with an Adviser's decision to engage in a Securities Transaction with a Trading Entity on behalf of a Fund. Moreover, applicants state that the Order is consistent with the policies of the Funds and the protection of investors, as the Advisers will manage the Funds in accordance with the policies and investment objectives of the Funds and without any influence by the Trading Entities. Finally, applicants state that permitting the Securities Transactions will be appropriate in the public interest and consistent with general purposes of the Act because the ability to engage in Securities Transactions increases the likelihood of a Fund achieving best price and execution in such transactions and results in none of the abuses that the Act was designed to prevent.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. Structural

1. Citigroup will control none of the MS Advisers or the MS Funds or any principal underwriter for the MS Funds,[6] directly or indirectly, within the meaning of section 2(a)(9) of the Act. The Order will remain in effect only so long as Morgan Stanley, or such other entity not controlling, controlled by or under common control with Citigroup, primarily controls the MS Advisers.

2. Morgan Stanley will control none of the Citi Adviser or the Citi Funds or any principal underwriter for the Citi Funds,[7] directly or indirectly, within the meaning of section 2(a)(9) of the Act. The Order will remain in effect only so long as Citigroup, or such other entity not controlling, controlled by or under common control with Morgan Stanley, primarily controls the Citi Adviser.

3. Citigroup will not directly or indirectly consult with Morgan Stanley, the MS Advisers or any portfolio manager of the MS Advisers concerning securities purchases or sales or the selection of a broker or dealer for any Securities Transaction placed or to be placed on behalf of a MS Fund, or otherwise seek to influence the choice of broker or dealer for any Securities Transaction by a MS Fund other than in the normal course of sales activities of the same nature that are being carried out during the same time period with respect to unaffiliated institutional clients of the Citi Trading Entity, or that existed between the Citi Trading Entity and the MS Advisers prior to consummation of the Joint Venture.

4. Morgan Stanley will not directly or indirectly consult with Citigroup, the Citi Adviser or any portfolio manager of the Citi Adviser concerning securities purchases or sales or the selection of a broker or dealer for any Securities Transaction placed or to be placed on behalf of a Citi Fund, or otherwise seek to influence the choice of broker or dealer for any Securities Transaction by a Citi Fund other than in the normal course of sales activities of the same nature that are being carried out during the same time period with respect to unaffiliated institutional clients of the MS Trading Entity, or that existed between the MS Trading Entity and the Citi Adviser prior to consummation of the Joint Venture.

5. No officer, director or employee of MSSB will directly or indirectly seek to influence in any way the terms of any Securities Transaction covered by the Order.

6. The MS Advisers and the Citi Trading Entity will operate as separate organizations, with separate capitalization, separate books and records, separate officers and employees, and physically separate offices. The Citi Trading Entity will adopt and implement policies that prohibit the Citi Trading Entity from (a) linking any approval or action relating to MSSB to any action by any MS Fund, or by any MS Adviser relating to any MS Fund, or (b) using the existence of MSSB as a basis for seeking to persuade any MS Fund or MS Adviser to engage in business with the Citi Trading Entity. The MS Advisers have adopted policies designed to keep information about client holdings and transactions on a confidential basis, prior to any public disclosure. Pursuant to these policies, the MS Advisers will designate information regarding investment advisory and portfolio execution matters relating to the MS Funds as information that may not be communicated between MSSB, on one hand, and the MS Advisers, on the other hand, prior to any public disclosure.

7. The Citi Adviser and the MS Trading Entity will operate as separate organizations, with separate capitalization, separate books and records, separate officers and employees, and physically separate offices. The MS Trading Entity will adopt and implement policies that prohibit the MS Trading Entity from (a) linking any approval or action relating to MSSB to any action by any Citi Fund, or by any Citi Adviser relating to any Citi Fund, or (b) using the existence of MSSB as a basis for seeking to persuade any Citi Fund or Citi Adviser to engage in business with the MS Trading Entity. The Citi Adviser has adopted policies designed to keep information about client holdings and transactions on a confidential basis, prior to any public disclosure. Pursuant to these policies, the Citi Adviser will designate information regarding investment advisory and portfolio execution matters relating to the Citi Funds as information that may not be communicated between MSSB, on the one hand, and the Citi Adviser, on the other hand, prior to any public disclosure.

8. Citigroup will not adopt any compensation scheme any component of which is based on (a) a factor that treats the MS Funds differently than

[6] MSSB may act as principal underwriter with respect to certain newly organized closed-end MS Funds; however, such role will cease at the time the syndicate terminates and prior to any transactions by such MS Funds involving the Citi Trading Entity.

[7] MSSB may act as principal underwriter with respect to certain newly organized closed-end Citi Funds; however, such role will cease at the time the syndicate terminates and prior to any transactions by such Citi Funds involving the MS Trading Entity.

unaffiliated counterparties or (b) the amount of business done by the Citi Funds with the MS Trading Entity except to the extent such business might affect indirectly the profits or losses of the Citi Adviser.

9. Morgan Stanley will not adopt any compensation scheme any component of which is based on (a) a factor that treats the Citi Funds differently than unaffiliated counterparties or (b) the amount of business done by the MS Funds with the Citi Trading Entity except to the extent such business might affect indirectly the profits or losses of the MS Advisers.

10. The respective legal/compliance departments of the MS Advisers and the Citi Trading Entity, and of the Citi Adviser and the MS Trading Entity, will prepare guidelines for their respective personnel to make certain that Securities Transactions effected pursuant to the Order comply with its conditions, and that the respective Advisers and Trading Entities maintain an arms-length relationship. The respective compliance departments of the Advisers and Trading Entities will monitor periodically the activities of the Advisers and Trading Entities, respectively, to make certain that the conditions to the Order are met.

B. Transactional

With respect to each Securities Transaction entered into or effected pursuant to the Order:

1. Each Fund's Board, including the Necessary Majority, shall approve, and the Fund shall implement, procedures governing all transactions pursuant to the Order and the Fund's Board shall no less frequently than quarterly review all such transactions and receive and review a report of those transactions. Such report, which will be prepared by the Fund's Adviser, and reviewed and approved by the Fund's Chief Compliance Officer, will indicate for each transaction that the conditions of the Order have been satisfied, and will include a discussion of any significant changes in the volume, type or terms of transactions between the relevant Fund and Trading Entity, the reasons for these changes, and a determination that such changes are legitimate.

2. For each transaction, the MS Advisers will adhere to a ''best execution'' standard and will consider only the interests of the MS Funds and will not take into account the impact of a MS Fund's investment decision on the Citi Trading Entity or its affiliates. For each transaction, the Citi Adviser will adhere to a ''best execution'' standard and will consider only the interests of the Citi Funds and will not take into account the impact of a Citi Fund's investment decision on the MS Trading Entity or its affiliates. Before entering into any such transaction, the Adviser will determine that the transaction is consistent with the investment objectives and policies of the Fund and is in the best interests of the Fund and its shareholders.

3. Each Fund will (a) for so long as the Order is relied upon, maintain and preserve in an easily accessible place a written copy of the procedures and conditions (and any modifications thereto) that are described herein, and (b) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any Securities Transaction in which the Fund's Adviser knows that both a Trading Entity and the Fund directly or indirectly have an interest occurs, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold by the Fund, a description of the Trading Entity's interest or role in the transaction, the terms of the transaction, and the information or materials upon which the determination was made that each such transaction was made in accordance with the procedures and conditions set forth herein and in the application.

4. Except as otherwise provided in 4(a) and 4(b) below, before any secondary market principal transaction is entered into between a Fund and a Trading Entity, the Fund's Adviser must obtain a competitive quotation for the same securities (or in the case of securities for which quotations for the same securities are not available, a competitive quotation for Comparable Securities [8]) from at least two unaffiliated dealers that are in a position to quote favorable market prices. For each such transaction, the Adviser will determine, based upon the quotations and such other relevant information (such as available transaction prices and any other information regarding the value of the securities) as is reasonably available to the Adviser, that the price available from the Trading Entity is at least as favorable as that available from other sources.

(a) With respect to each such transaction involving repurchase agreements, a Fund will enter into such agreements only where the Adviser has determined, based upon relevant information reasonably available to the Adviser, that the income to be earned from the repurchase agreement is at least equal to that available from other sources. Before any repurchase agreements are entered into pursuant to the exemption, the Fund or the Adviser must obtain competitive quotations from at least two unaffiliated dealers with respect to repurchase agreements comparable to the type of repurchase agreement involved, except that if quotations are unavailable from two such dealers, only one other competitive quotation is required.

(b) With respect to each such transaction involving variable rate demand notes for which dealer quotes are not ordinarily available, a Fund will only undertake purchases and sales where the Adviser has determined, based on relevant information reasonably available to the Adviser, that the income earned from the variable rate demand note is at least equal to that of variable rate demand notes of comparable quality that are available from other sources.

5. With respect to securities offered in a primary market underwritten transaction, a Fund will undertake such purchase from the Trading Entity only where the Adviser has determined, based upon relevant information reasonably available to the Adviser, that the securities were purchased at a price that is no more than the price paid by each other purchaser of securities from the Trading Entity or other members of the underwriting syndicate in that offering or in any concurrent offering of the securities, and on the same terms as such other purchasers (except in the case of an offering conducted under the laws of a country other than the United States, for any rights to purchase that are required by law to be granted to existing securities holders of the issuer).

6. In the case of an arrangement regarding a tender option bond trust for which a Trading Entity acts as a liquidity provider or remarketing agent and owns an interest (or may own an interest as a result of such capacity):

(a) Where such arrangement was structured prior to the closing of the Joint Venture, the terms of such arrangement will not change after such closing without the approval of the Necessary Majority of the Fund's Board, based on a finding that it is in the best interests of the Fund to continue such arrangement, as proposed to be modified; provided that if the Trading Entity owns the residual interest and a Fund owns the floating rate interest, such Board approval will not be required if: (i) The Fund is eligible to

[8] The term ''Comparable Securities'' refers to securities with substantially identical maturities, credit risk and repayment terms (including floating or fixed-rate coupons, attached options, or any other provisions that affect the expected size or timing of the payments from the securities) as the securities to be purchased or sold.

participate in any discretionary tender on the same basis as any similarly situated holder of floating rate interests; (ii) the Fund must participate in any mandatory tender on the same basis as each similarly situated holder; and (iii) less than 50% of the floating rate interests are owned by Funds (and other discretionary accounts) managed by the Fund's Adviser.

(b) In the case of such arrangements structured after the closing of the Joint Venture:

(i) The Necessary Majority of the Fund's Board will adopt procedures designed to assure that it is in the best interests of the Fund to participate in any such arrangements. Such procedures will take into consideration, among other things, the terms of the arrangement, the nature of the respective interests in the trusts that may be held by the Trading Entity and the Funds, and the circumstances under which the Trading Entity may cause termination of the trust and the transfer of the underlying bonds back to the Fund; and

(ii) where a Trading Entity owns the residual interest and a Fund owns a floating rate interest: (1) The Fund must be eligible to participate in any discretionary tender on the same basis as any similarly situated holder of floating rate interests; (2) the Fund must participate in any mandatory tender on the same basis as each similarly situated holder; and (3) less than 50% of the floating rate interests must be owned by Funds (and other discretionary accounts) managed by the Fund's Adviser.

(c) Before any such arrangements are entered into pursuant to the exemption, where the Fund holds the residual interest, the Fund or the Adviser must obtain competitive quotations from at least two unaffiliated institutions with respect to fees charged by such institutions for acting as liquidity provider or remarketing agent, except that if quotations are unavailable from two such institutions, only one other competitive quotation is required. Any fees paid to the Trading Entity as liquidity provider or remarketing agent will be no greater than the lowest of such quotations, unless the Board finds that such difference is justified by a corresponding difference in the nature of the services provided.

7. With respect to ABS or MBS that are newly issued by special purpose entities sponsored by a Trading Entity (or an affiliate) under circumstances in which both the following are true: (a) The residual interest in the special purpose entity is owned directly or indirectly by the Trading Entity (or an affiliate); and (b) the Trading Entity (or an affiliate) acts as the servicer of assets, purchases of such securities will be made by a Fund only where, based on relevant information that is reasonably available to the Adviser, the Adviser believes that, upon the close of the transaction, Funds (and other discretionary advisory accounts) managed by the Adviser will purchase less than 50% of the dollar amount of securities of each class acquired by the Fund in the aggregate, and the Fund participates in each such class on the same terms as other purchasers of that class.

8. With respect to a syndicated loan facility in which a Fund and a Trading Entity participate in a manner that might otherwise be prohibited by section 17(d) of the Act and rule 17d–1 thereunder: (a) The participation by the Fund and the Trading Entity will involve no coordination between the Fund and the Trading Entity beyond that of a type the Trading Entity engages in with other unaffiliated participants in such facility; (b) the terms of the Fund's participation in the facility (to the extent within the knowledge and control of the Trading Entity) will be on a basis no less advantageous than that of other similarly situated participants (i.e., the Fund will receive the same priority, security, interest rate and fees as other participants in the same tranche or other portion of the loan in which the Fund is a participant), except to the extent such difference is related to services performed with respect to the facility or their role in the facility; and (c) in the case of the primary syndication of a loan facility where the Trading Entity is lead agent with primary responsibility for structuring, arranging or placing such facility, the Fund will participate in the facility only where, based on relevant information that is reasonably available to the Adviser, the Adviser believes that, upon conclusion of allocations to holders of record in the primary syndication of the facility, less than 50% of the participations will be held by Funds (and other discretionary advisory accounts) managed by the Adviser.

9. With respect to situations in which a Fund and a Trading Entity have invested in the same company and that might otherwise be prohibited by section 17(d) of the Act and rule 17d–1 thereunder (other than a syndicated loan transaction, which is subject to condition B.8 above): (a) The Fund's and the Trading Entity's investment will involve no coordination between the Trading Entity and the Fund beyond that of a type the Trading Entity engages in with other unaffiliated investors in such company; and (b) the Fund will participate or invest in a type or class of securities (e.g., equity securities) of the company only where, based on relevant information that is reasonably available to the Adviser, the Adviser believes that, upon the close of the investment transaction, less than 50% of the dollar amount of the securities of such type or class will be owned by Funds (and other discretionary advisory accounts) managed by the Adviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24537 Filed 10–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, October 15, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, October 15, 2009 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Other matters relating to enforcement proceedings;

An adjudicatory matter; and

A post argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 8, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–24702 Filed 10–8–09; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60791; File No. SR–ISE–2009–74]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an Intermarket Sweep Order Credit

October 5, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2009, International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to adopt an Intermarket Sweep Order credit. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to adopt an Intermarket Sweep Order credit. On August 31, 2009, the Exchange implemented the new Options Order Protection and Locked/Crossed Market Plan (''Distributive Linkage'') and the use of Intermarket Sweep Orders (''ISOs''). Consistent with Distributive Linkage and pursuant to ISE rules, the Exchange's Primary Market Makers (''PMMs'') have an obligation to address customer orders when there is a better market displayed on another exchange. ISE's PMMs meet this obligation via the use of ISOs. In meeting their obligations, PMMs may incur fees when they send ISOs, especially when sending ISOs to exchanges that charge ''taker'' fees. To minimize their financial burden and help offset such fees, ISE proposes to compensate the PMM by rebating to the PMM $0.20 per contract on all ISO orders sent to an away market, regardless of the fee charged by the exchange where the ISO order sent away was executed. The proposed fee credit applies to PMMs for classes in which it serves as a PMM.

ISE proposes to implement this fee change on October 1, 2009.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed fee change will offset fees incurred by PMMs when they send ISOs to away markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

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–ISE–2009–74 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–ISE–2009–74. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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–ISE–2009–74 and should be submitted on or before November 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24500 Filed 10–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60794; File No. SR–NASDAQ–2009–084]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Potential Payment Amounts Available Under Nasdaq Rule 4626

October 6, 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 September 25, 2009, The NASDAQ Stock Market LLC (the ''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange 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. 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 filing with the Commission a proposed rule change to modify potential payment amounts available under Nasdaq Rule 4626. Nasdaq will implement the proposed rule change effective November 1, 2009. The text of the proposed rule change is below. Proposed new language is in *italics* and proposed deletions are in brackets.

* * * * *

4626. Limitation of Liability

(a) No Change.

(b) Nasdaq, subject to the express limits set forth below, may compensate users of the Nasdaq Market Center for losses directly resulting from the systems' actual failure to correctly process an order, Quote/Order, message, or other data, provided the Nasdaq Market Center has acknowledged receipt of the order, Quote/Order, message, or data.

[(1) For one or more claims made by a single market participant related to the use of the Nasdaq Market Center on a single trading day, Nasdaq's liability shall not exceed the larger of $100,000, or the amount of any recovery obtained by Nasdaq under any applicable insurance policy.]

[(2) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center on a single trading day, Nasdaq's liability shall not exceed the larger of $250,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.]

[(3)] *(1)* For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center during a single calendar month, Nasdaq's liability shall not exceed the larger of $500,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.

[(4)] *(2)* In the event all of the claims arising out of the use of the Nasdaq Market Center cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided for in this Rule, then the maximum amount will be proportionally allocated among all such claims arising [on a single trading day, or] during a single calendar month [, as applicable].

[(5)] *(3)* All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than [the opening of trading] *12 p.m. ET* on the next business day following the day on which the use of the Nasdaq Market Center gave rise to such claims. Nothing in this rule shall obligate Nasdaq to seek recovery under any applicable insurance policy.

* * * * *

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

Currently, Nasdaq provides a limited exception to its general limitation of liability rules that allows for the payment of claims to users for order processing failures in the Nasdaq Market Center. Nasdaq proposes to modify its process for allocating such payments and extend the time period for users to submit such claims. Under the proposal, Nasdaq will eliminate the $100,000 and $250,000 daily caps on liability and consider all such claims on a monthly basis subject to the already existing $500,000 monthly liability cap. If the total amount of all claims from all users in a calendar month exceeds the $500,000 monthly liability cap, the $500,000 maximum monthly dollar amount will be proportionally allocated among all such claims as set forth in the current rule.

Nasdaq is also proposing to extend, until 12 noon ET on the next business day following the day on which the use of the Nasdaq Market Center gives rise to a claim, the time period during which claims seeking compensation must be submitted.

As Nasdaq analyzes total eligible liability claims on a per-month look-back basis, the proposal, in effect, would allow Nasdaq an increased capability to compensate a market participant(s) up to the monthly cap of $500,000 even though the losses occurred on a single day or were across multiple days for a single participant. The expansion of time to make such compensation claims likewise increases the ability of market participants to submit claims in a timely manner. Finally, Nasdaq notes that other market centers have rules in place to provide

[5] 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).

limited compensation for system malfunctions.[4]

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 Sections 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. As Nasdaq analyzes total eligible liability claims on a per-month look-back basis, the proposal, in effect, would allow Nasdaq an increased capability to compensate a market participant(s) up to the monthly cap of $500,000 even though the losses occurred on a single day or were across multiple days for a single participant. The expansion of time to make such compensation claims likewise increases the ability of market participants to submit claims in a timely manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder.

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 No. SR–NASDAQ–2009–084 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–2009–084. 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–2009–084 and should be submitted on or before November 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24515 Filed 10–9–09; 8:45 am]

BILLING CODE 8011–01–P

[4] *See* NYSE Arca Equities Rule 13.2 and ISE Rule 705.

[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). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied this requirement.

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Delegation of Authority 175–5]

Changes to and Further Assignment of Functions Under Section 208 of Title 18 of the United States Code

AGENCY: Department of State.

ACTION: Changes to and further assignment of functions.

SUMMARY: Delegations of Authority No. 175 and 245–1 delegated authority from the Secretary of State to the Deputy Secretary of State and the Deputy Secretary of State for Management and Resources all authorities vested in the Secretary of State, to include issuing waivers pursuant to 18 U.S.C. 208 to Department of State employees. In 2003, the Deputy Secretary of State redelegated authority to the Legal Adviser to issue certain waivers under 18 U.S.C. 208(b)(1) and (3). In 2006, the Deputy Secretary of State delegated to the Legal Adviser and the Under Secretary for Management the authority to issue financial interest waiver determinations to (1) Seventh Floor principals when the waiver is applicable for a specific activity, when a principal is seeking employment by an international organization, or when the waiver does not exceed six months; and (2) other Department employees (including advisory committee members) under any circumstances. This notice informs the public of the further delegation of authority from the Deputy Secretary for Management and Resource to the Legal Adviser and the Under Secretary for Management to issue all waivers under 18 U.S.C.

208(b)(1) and (3), except for waivers to the Secretary of State.

DATES: These actions are effective immediately.

Delegation of Authority: By virtue of the authority vested in me as Deputy Secretary of State for Management and Resources, including the authorities specified in Delegations of Authority 175 and 245–1, I hereby delegate to the Legal Adviser and the Under Secretary for Management the authority pursuant to 18 U.S.C. 208(b)(1) and (3) to issue waiver determinations with respect to financial interests to Department of State employees, including Seventh Floor principals, regardless of the amount of the affected financial interest. This delegation shall not, however, authorize the issuance of waiver determinations to the Secretary of State.

The Delegation supersedes Delegation of Authority 175–4.

At his or her discretion, the Legal Adviser may refer any waiver request for issuance by the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, or the Under Secretary for Management.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, and the Under Secretary for Management may at any time exercise the functions herein delegated.

This delegation of authority shall be published in the **Federal Register**.

Dated: September 29, 2009.

Jacob J. Lew,

Deputy Secretary of State for Management and Resources, Department of State.

[FR Doc. E9–24541 Filed 10–9–09; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2009–0924]

Airport Compliance Program

AGENCY: Department of Transportation, Federal Aviation Administration.

ACTION: Notice of availability of FAA Order 5190.6B, *Airport Compliance Manual.*

SUMMARY: This notice announces the availability of FAA Order 5190.6B, *Airport Compliance Manual,* issued September 30, 2009. Order 5190.6B cancels and replaces Order 5190.6A, *Airport Compliance Requirements,* issued on October 2, 1989. Order 5190.6B provides current guidance to FAA employees on administration and implementation of the FAA airport compliance program. This program implements FAA's responsibilities for the enforcement of the obligations of airport operators to the United States Government arising from FAA grant agreements and from federal deeds of property for airport use. The order updates cancelled Order 5190.6A by reflecting statutes, policy changes, case decisions and complaint resolution procedural rules issued since 1989 and by including more specific guidance material on a number of compliance subjects. FAA orders are intended for the use of FAA employees.

DATES: FAA Order 5190.6B was issued on September 30, 2009 and was effective upon issuance. Comments received by March 31, 2010 will be considered by the agency in a determination whether any further revision of the order is required.

ADDRESSES: You can get an electronic copy of FAA Order 5190.6B on the FAA Airports Web site at *http://www.faa.gov/airports/resources/publications/orders/compliance_5190.6/.*

You may send comments identified by Docket Number, FAA–2009–0924 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590; between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the notice and comment process, see the **SUPPLEMENTARY INFORMATION** section of this document. Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document. 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 floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Erhard, Manager, Airport Compliance Division, ACO–100, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3187; facsimile: (202) 267–5769; e-mail: *charles.erhard@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy of this notice and all other documents in this docket using the Internet by:

(1) Searching the Federal eRulemaking portal (*http://www.regulations.gov/search*);

(2) Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies.*

Background

Order 5190.6, *Airport Compliance Requirements,* was issued on August 24, 1973. Order 5190.6 was cancelled and replaced by Order 5190.6A, *Airport Compliance Requirements,* on October 2, 1989. Each of these orders, while it was in effect, served as the handbook or manual for FAA employees responsible for monitoring and enforcing the compliance of airport operators with obligations to the federal government. Those obligations most commonly arise from conditions, or assurances, contained in agreements with the FAA for grants in aid to airports, and from the terms in deeds of property transferred by the federal government for airport use.

The current FAA airport grant program is the Airport Improvement Program (AIP), established by the Airport and Airway Improvement Act of 1982 as amended, 49 U.S.C. 47101 *et seq.* (AAIA). Section 47107 requires the Secretary of Transportation to obtain certain assurances from an airport operator as a condition of receiving a grant under the AIP. The FAA implements this requirement with a standard set of grant assurances for airport sponsors, which can be viewed on the FAA Airports Web site at: *http://www.faa.gov/airports/aip/grant_assurances/.*

An airport operator may also have Federal obligations under a deed of property transferred under the Surplus Property Act of 1944, as amended, 49 U.S.C. 47151–47153, or the Federal Airports Act of 1946, as amended, 49 U.S.C. 47125.

Since 1989, there have been substantial changes to the laws and policies relating to the Federal obligations of airport operators, and also changes to the procedures for investigating and resolving complaints

over apparent noncompliance. These changes include:

- New statutory direction on airport rates and charges and on the use of airport revenue, 49 U.S.C. 47107(k) through (p), 47129, and 47133.
- The DOT Policy Regarding the Establishment of Airport Rates and Charges in 1996, as partially voided by a decision of the U.S. court of appeals in 1997 and revised by an agency amendment in 2008;
- Rules of Practice for Federally Assisted Airport Enforcement Proceedings, 14 CFR Part 16, issued in 1996;
- The FAA Policy and Procedures Concerning the Use of Airport Revenue, issued in 1999;
- Enactment of 49 U.S.C. 47134, establishing a pilot program for airport privatization;
- More than 105 determinations issued under 14 CFR Part 16 by the FAA Office of Airport Safety and Standards, the Office of Compliance and Operations, and the Associate Administrator for Airports, as well as decisions by the U.S. Court of Appeals on petitions for review of agency determinations.

To incorporate these changes and provide the most useful and current program guidance to agency employees, the Office of Compliance and Field Operations has updated and revised the manual, and issued the new manual as Order 5190.6B on September 30, 2009.

Request for Public Comment

Order 5190.6B became effective when issued, and FAA employees are using the order as the primary manual for implementation of the FAA airport compliance program. The FAA expects that future changes to the manual may be necessary to reflect new decisions by federal courts, amendments to the agency's authorizing statutes, and the Associate Administrator for Airports' interpretations of agency policy in case determinations issued under 14 CFR part 16. For that reason the agency plans periodic reviews of the manual, with the first review being approximately one year after the issuance date, in September 2010.

While the FAA generally does not request public comment on internal orders, the agency has established a docket for public comments on Order 5190.6B in recognition of the interest of all segments of the airport community in the FAA's airport compliance program. The agency will consider all comments received by March 31, 2010, in this first review of Order 5190.6B. Comments received after that date may be considered if consideration will not delay agency action on the review. The purpose of the review will be to ensure that the summaries of agency policy in the order accurately reflect the current legal authorities that define an airport operator's obligations. Comments that address that purpose will be the most useful to the agency in its review.

Notice of availability

Order 5190.6B, *Airport Compliance Manual,* issued September 30, 2009 is available for review and downloading from the FAA Airports Web site at: *http://www.faa.gov/airports/resources/publications/orders/compliance_5190.6*.

Issued in Washington, DC on October 1, 2009.

Randall S. Fiertz,

Director, Office of Compliance and Field Operations.

[FR Doc. E9–24627 Filed 10–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Certification Guidance for Installation of Non-Essential, Non-Required Aircraft Cabin Systems & Equipment (CS&E), AC 20–XY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and request for public comments on the proposed new Federal Aviation Administration (FAA) Advisory Circular (AC) 20–XY, Certification Guidance for Installation of Non-Essential, Non-Required Aircraft Cabin Systems & Equipment (CS&E). This AC provides primary certification guidance on how to meet the airworthiness requirements for the installation of non-essential, non-required aircraft cabin systems & equipment (CS&E).

DATES: Comments must be received on or before November 27, 2009.

ADDRESSES: Send all comments on the proposed new FAA AC 20–XY to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024. ATTN: John Petrakis, AIR–120. You may deliver comments to: Federal Aviation Administration, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024, or electronically submit comments to the following Internet address: *9-AWA-AVS-AIR120-TechPrograms@faa.gov.* Include in the subject line of your message the following: FAA AC 20–XY, Certification Guidance for Installation of Non-Essential, Non-Required Aircraft Cabin Systems & Equipment (CS&E).

FOR FURTHER INFORMATION CONTACT: John Petrakis, Senior Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024. Telephone (202) 385–6341, FAX (202) 385–6475, or e-mail at: *john.petrakis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the draft order listed in this notice by sending such written data, views, or arguments to the above listed address. Please identify ''FAA AC 20–XY, Certification Guidance for Installation of Non-Essential, Non-Required Aircraft Cabin Systems & Equipment (CS&E)'' as the subject of your comments. You may also examine comments received on the proposals before and after the comment closing date at FAA offices, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before issuing the final document.

Background

The FAA developed this new AC 20–XY with direct industry assistance through RTCA, Inc., Special Committee 210 (SC–210). This proposed AC will provide airworthiness certification guidance for the installation of non-essential, non-required aircraft cabin systems & equipment (CS&E). The proposed AC 20–XY incorporates the guidance in RTCA, Inc. document RTCA/DO–313, *Certification Guidance for Installation of Non-Essential, Non-Required Aircraft Cabin Systems & Equipment,* dated October 2, 2008. This AC will cancel AC 25–10, *Guidance for Installation of Miscellaneous, Nonrequired Electrical Equipment,* dated March 6, 1987.

How To Obtain Copies

You can get an electronic copy via the Internet at *http://www.faa.gov/aircraft/draft_docs/,* and then select Advisory Circulars, or by contacting the person named in the paragraph **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC on October 1, 2009.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. E9–24516 Filed 10–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Hand Fire Extinguishers for Use in Aircraft, AC 20–42D Revision

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and request for public comments on the proposed revision of current Federal Aviation Administration (FAA) Advisory Circular (AC) 20–42C, Hand Fire Extinguishers for use in Aircraft. The proposed revision ''D'' to the AC provides updated guidance for the fire-fighting effectiveness, selection, location, mounting and safe-use of hand fire extinguishers in aircraft. It also identifies three FAA approved replacement agents for Halon 1211.

DATES: Comments must be received on or before November 27, 2009.

ADDRESSES: Send all comments on the proposed revision to FAA AC 20–42D to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024. *attn:* John Petrakis, AIR–120. You may deliver comments to: Federal Aviation Administration, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024, or electronically submit comments to the following Internet address: *9-AWA-AVS-AIR120-TechPrograms@faa.gov.* Include in the subject line of your message the title of the document, Comments FAA AC 20–42D, Hand Fire Extinguishers for use in Aircraft.

FOR FURTHER INFORMATION CONTACT: John Petrakis, Senior Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024. Telephone (202) 385–6341, FAX (202) 385–6475, or e-mail at: *john.petrakis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the draft order listed in this notice by sending such written data, views, or arguments to the above listed address. Please identify ''FAA AC 20–42D, Hand Fire Extinguishers for use in Aircraft'' as the subject of your comments. You may also examine comments received on the proposals before and after the comment closing date at FAA offices, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before implementing the revision.

Background

The FAA developed this proposed revision to AC 20–42C with direct industry assistance through the International Aircraft Systems Fire Protection Working Group (IASFPWG). The proposed revision will provide users with updated guidance on available extinguishing agents. Specifically, the revised AC will provide guidance on the effectiveness and safe-use of Halon 1211 and three FAA approved replacement agents.

It: (1) Establishes an FAA approved minimum performance standard (MPS) for halon replacement agents developed by the FAA Technical Center which requires a hidden fire test and a seat fire/toxicity test; (2) Recommends that users of halon extinguishers transition to using the new halocarbon clean replacement agents in fire extinguishers kept onboard airplanes and rotorcraft; and (3) Provides guidance on how to gain certification for halocarbon clean agent extinguishers intended to replace Halon 1211 hand-held extinguishers.

How To Obtain Copies

You can get an electronic copy via the Internet at *http://www.faa.gov/aircraft/draft_docs/*, and then select Advisory Circulars, or by contacting the person named in the paragraph **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC on October 1, 2009.

Susan J.M. Cabler,

Assistant Manager Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. E9–24517 Filed 10–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 693]

Oral Argument

AGENCY: Surface Transportation Board, Department of Transportation.

ACTION: Notice of oral argument.

SUMMARY: The Surface Transportation Board will hold oral argument on Tuesday, October 27, 2009, at 9:30 a.m., at its offices in Washington, DC, regarding two cases, STB Docket No. 42104, *Entergy Arkansas, Inc. and Entergy Services, Inc.* v. *Union Pacific Railroad Company and Missouri & Northern Arkansas Railroad Company, Inc.,* and STB Finance Docket No. 34914, *DesertXpress Enterprises, LLC—Petition for Declaratory Order.*

Date/Location: Oral argument will begin at 9:30 a.m., Tuesday, October 27, 2009, at the Board's offices at 395 E Street, SW., Washington, DC. A video broadcast of the oral argument will be available via the Board's Web site at *http://www.stb.dot.gov,* under ''Information Center''/''Web cast''/''Live Video'' on the home page.

FOR FURTHER INFORMATION CONTACT: Timothy Strafford, (202) 245–0356. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.

SUPPLEMENTARY INFORMATION: In STB Docket No. 42104, Entergy Arkansas, Inc., and Entergy Services, Inc. (collectively, Entergy), co-owners of a coal-fired utility plant, seek the prescription of a through route (or routes) directing the Missouri & Northern Arkansas Railroad Company, Inc. (MNA) and/or Union Pacific Railroad Company (UP) to interchange traffic with a long-haul carrier other than UP in order to provide adequate and more economic or efficient transportation of coal from Powder River Basin mines to the utility plant near Newark, AR. MNA has filed a motion to dismiss Entergy's complaint and a motion to require Entergy to make the complaint more definite. The Board will hold an oral argument on those two motions.

In STB Finance Docket No. 34914, DesertXpress, a private entity, asked the Board to issue a declaratory order that the construction and operation of its proposed interstate, passenger-rail system between Victorville, CA, and Las Vegas, NV, would be within the Board's jurisdiction under 49 U.S.C. 10501(a) and therefore the Federal preemption of

49 U.S.C. 10501(b) would apply and preempt most State and local laws. By decision served on June 27, 2007, the Board found that the proposed passenger-rail system would be within the Board's exclusive jurisdiction, would require Board authority under 49 U.S.C. 10901, and, if such authority were granted, Federal preemption would apply. California-Nevada Super Speed Train Commission, a bi-state commission and an agency of the State of Nevada, and its private-sector partner, American Magline Group, jointly petitioned to intervene and reopen the 2007 declaratory order, arguing that, because DesertXpress's rail system would not transport any freight or connect to lines on which freight is transported, the Board erred in determining that the line would be part of the interstate rail network and thus subject to its jurisdiction. The Board will hear argument on that petition to intervene and reopen.

The Board will hear argument regarding the above-mentioned proceedings on October 27, 2009. The Board will provide further procedural guidance, including the time allotted for each party to present its argument, in a future decision. The oral argument will be open for public observation, but only counsel for the parties will be permitted to present argument.

The Board will hold another oral argument on Monday, November 23, 2009 at 9:30 a.m. The cases to be argued then will be announced by decision at a later date.

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

Dated: October 7, 2009.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–24519 Filed 10–9–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Announcement of Project Selections of Fiscal Year 2009 Recipients of Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) Grants; Response to Comments

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of project selections; response to comments.

SUMMARY: The American Recovery and Reinvestment Act of 2009 (ARRA) appropriated $100 million for a new discretionary grant program for public transportation projects that reduce a transit system's greenhouse gas emissions or results in a decrease in a transit system's energy use.

This notice announces the selection of the grant recipients and responds to the comments received in response to the request for comments on the program structure and requirements in FTA's Notice of Funding Availability.

FOR FURTHER INFORMATION CONTACT: For general program information, contact Walter Kulyk, Office of Mobility Innovation, (202) 366–4995, *e-mail: walter.kulyk@dot.gov*. Project selectees should contact the appropriate FTA Regional Office in Appendix B for application-specific information and issues.

SUPPLEMENTARY INFORMATION:

FTA published a Notice of Funding Availability (NOFA) on March 24, 2009 (74 FR 12447), seeking program applications for Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) grants and inviting interested parties to comment on the program elements as outlined in the NOFA.

FTA received 224 applications proposing 561 projects, which totaled over $2 billion. Because of the intense demand for the $100 million, FTA was unable to fund all eligible applications, and as stated in the NOFA, to maximize the impact of the program, some applicants were provided with less than the full amount of funding requested in their application.

In this notice, FTA is publishing its list of TIGGER program selectees and responding to comments received in response to the NOFA.

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II. Basis for Allocation
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I. Background and Funding Opportunity Description

The American Recovery and Reinvestment Act (ARRA) (Pub. L. 111–5) provided $8.4 billion to the Federal Transit Administration (FTA) for transit capital improvements and reinvestment. Of this $8.4 billion, $100 million was appropriated for a new program to provide funding to public transit agencies for capital investments to assist in reducing the energy consumption or greenhouse gas emissions of their public transportation systems. In response, FTA developed the Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) program.

Because of statutory provisions for this ARRA funding, the NOFA requested that all proposals be submitted by May 22, 2009, while at the same time seeking comments on the proposed program outline, structure, and requirements. FTA reviewed the comments received during the comment period and determined that no substantive changes to the program were required, although FTA is responding to them in this Notice.

ARRA specified two types of eligible investments under the TIGGER program: first, for capital investments that will assist in reducing the energy consumption of a transit system; and, second, for capital investments that will reduce greenhouse gas emissions of a public transportation system. Proposals for projects were accepted under either or both categories. To ensure that the purposes of the ARRA are met, FTA established a range of funding that will be considered for approval. Each submitted proposal had to meet a minimum threshold of $2,000,000. FTA allowed consolidated proposals from transit agencies to reach this $2,000,000 threshold; thus, individual projects within a proposal may receive less than $2,000,000. Conversely, to ensure a variety of funded projects, FTA established a maximum grant amount of $25,000,000.

II. Basis for Allocation

This notice allocates all ARRA funding for the TIGGER Program. In making these allocations, FTA considered both the specific direction provided in the legislation as well as Congress' and the Administration's general objectives for accountability and transparency in the administration of ARRA funds. These objectives include the prompt and fair distribution of funding, the assurance that funds are being used for authorized purposes, and that instances of waste, fraud, and abuse are avoided.

Energy consumption reduction and greenhouse gas reduction projects were evaluated separately. An applicant could request evaluation under both criteria if it provided the necessary project measurement information. Two criteria were specific to energy consumption reduction projects and one criterion was specific to greenhouse gas reduction projects. The remaining criteria applied to all projects.

A. Project Evaluation Criteria for Energy Consumption Reduction Projects

FTA evaluated projects on total energy consumption savings projected

to result from the project, and projected energy savings of the project as a percentage of the total energy usage of the public transit agency.

B. Project Evaluation Criterion for Greenhouse Gas Emission Reduction Projects FTA

Evaluated projects based on the total amount of greenhouse gas reductions projected to result from the project.

C. Project Evaluation Criteria for All Projects FTA

Evaluated all projects on the following criteria:

(1) Return on Investment. This includes the ratio of energy savings or greenhouse gas reductions per dollar of Federal TIGGER funds invested.

(2) Project Readiness. The Project Is Ready To Implement.

a. Any required environmental work has been initiated for construction projects requiring an Environmental Finding.

b. Implementation plans are ready, including initial design of facilities projects.

c. The Transportation Improvement Plan (TIP) and Statewide Transportation Improvement Plan (STIP) can be amended.

d. Project funding can be obligated and implemented quickly, if selected.

(3) The applicant demonstrates the capacity to carry out the project.

a. The applicant is in fundable status for the FTA grant program

b. The applicant demonstrates the technical capacity to carry out the project including the project approach or project management plan.

c. The applicant has systems and internal controls in place that allow it to separately track and report ARRA funds even used to fund an existing project/activity.

d. The applicant has the ability to collect information and demonstrate the results of the project for at least one year following project implementation. (But note that useful life criteria apply for FTA funded assets.)

(4) Project Innovation

The project identifies a unique, significant, or innovative approach to reducing energy consumption or greenhouse gas emissions not currently in widespread practice within the transit industry or an approach distinct from the other proposals received by FTA.

(5) The national applicability of the project as an example of energy savings or greenhouse gas reductions including whether the project could be replicated by other transit agencies regionally or nationally.

D. Review and Selection Process

After screening projects for eligibility, projects were evaluated based on the established technical criteria. Projects were selected to build a portfolio of a range of technological solutions and national applicability that will maximize the impact of the program. Funding levels, when less that the amount requested, were based on a determination of the amount required for a viable project.

The allocation of TIGGER Program funding is presented in the Appendix A of this notice.

III. General Program and Award Information

A. Award Notices

As set forth in the NOFA, FTA pre-screened all proposals to determine that all required eligibility elements were present. Because FTA will manage TIGGER grants through FTA's TEAM grant management system, selectees must work with the appropriate FTA Regional Office to ensure that they are part of the TEAM grants management system and are in compliance with the standard Federal requirements contained in 49 U.S.C. Chapter 53 and additional requirements specified in ARRA.

B. Administrative and National Policy Requirements

Information about the requirements for FTA grant programs funded by ARRA can be found in **Federal Register** Notice E9–4745 American Recovery and Reinvestment Act of 2009 Public Transportation Apportionments, Allocations and Grant Program Information, (74 FR 9656, March 5, 2009) and subsequent information posted on FTA's Recovery Act webpage at *http://www.fta.dot.gov/recovery*.

1. FTA Grant Requirements

Selectees must comply with the usual and customary FTA grant requirements of 49 U.S.C. Chapter 53, including those of the current version of FTA Circular 5010 and the FTA Master Agreement. Discretionary grants greater than $1,000,000 will go through the Congressional notification process. Technical assistance regarding these requirements is available from each FTA regional office.

All recipients and their sub-awardees are required to have a Dun and Bradstreet Universal Numbering System (DUNS) number (*http://www.dnb.com*) and direct recipients must have a current registration in the Central Contractor Registration database *http://www.ccr.gov.*

Recipients of ARRA funds must have systems and internal controls that allow them to separately track and report ARRA funds even if the funds are being used to fund an existing project/activity.

The Applicant must submit current Certifications and Assurances prior to receiving a grant. The Applicant must assure that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant must acknowledge that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant must understand that Federal laws, regulations, policies, and administrative practices might be modified from time to time and that could affect the implementation of the project. The Applicant must agree that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

2. ARRA Reporting Requirements

As a condition of award, recipients receiving ARRA funds will be required to report on grant activities on a routine basis. FTA recipients will be responsible for reporting up-to-date and accurate grant management information in a milestone status report and financial status report on a quarterly basis, as well as additional data in compliance with Sections 1201 and 1512 of the Act. Additionally, special certifications and grant conditions also will be required of ARRA grant recipients, such as:

a. One-Time Funding. The Recipient acknowledges that receipt of ARRA funds is a ''onetime'' disbursement that does not create any future obligation by the FTA to advance similar funding amounts.

b. Integrity. The Recipient agrees that all data it submits to FTA in compliance with ARRA requirements will be accurate, objective, and of the highest integrity.

c. Violations of Law. The Recipient agrees that it and its subrecipients shall report any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

d. Maintenance of Effort. A Recipient that is a State agrees to comply with the maintenance of effort certification it has

made in compliance with Section 1201 of ARRA.

e. Emblems. The Recipient agrees to identify projects supported by FTA by attaching the appropriate emblems as the Federal Government may require.

f. Reporting Requirements. In addition to other Federal reporting requirements applicable to the type of project undertaken, the Recipient agrees to:

(1) Comply with the periodic reporting requirements consistent with section 1201 of ARRA.

(2) Comply with the quarterly reporting requirements consistent with section 1512 of ARRA.

The Recipient will report on the use of the funds and on the status of compliance with the National Environmental Policy Act by submitting the Standard Form-Performance Progress Report-Recovery form not later than 10 days after the end of each calendar quarter to FTA. The Recipient agree to obtain a DUNS number (*http://www.dnb.com*) for any first tier subrecipient that does not have a DUNS number, and agrees to maintain active and current profiles in the Central Contractor Registration database (*http://www.ccr.gov*).

3. Special TIGGER Reporting Requirements

A recipient of TIGGER funds must report on an annual basis on all active TIGGER grants and must submit a final report at the time of grant close-out:

(1) Actual annual energy consumed within the project scope attributable to the investment, for energy consumption reduction projects;

(2) Actual greenhouse gas emissions within the project scope attributable to the investment, for greenhouse gas reduction projects;

(3) Actual annual reductions or increases in operating costs attributable to the investment, for all projects.

4. Planning Requirements

Applicants must notify the appropriate State Department of Transportation and Metropolitan Planning Organization in areas likely to be served by the project funds made available under this program. Incorporation of funded projects in the long range plans and transportation improvement programs of States and metropolitan areas is required of all funded projects.

5. Period of Availability

ARRA requires that all program funds must be obligated by September 30, 2010. However, to ensure full utilization of program funds, FTA requires that all TIGGER program funds allocated in this notice be obligated by March 31, 2010. FTA reserves the right to reallocate unobligated funds to other TIGGER applications. Under ARRA requirements, all funds must be disbursed by September 30, 2015. Any balances remaining after that date will revert to the U.S. Treasury.

IV. Response to Comments

Comment: Can a county submit a grant application that includes a university as a 'public transit agency' thereby allowing us to address GHG emissions in a more comprehensive way given that we are facing non-attainment designation in the upcoming year? We would also like to include them in any energy efficiency efforts through this grant, as well.

FTA Response: Proposers may involve universities as project partners. However, only public transportation agencies are eligible recipients.

Comment: Please check the accuracy of the carbon footprint conversion that you are referring people to in Appendix D of the NOFA. The carbon footprint of fuel combustion is properly determined stoichiometrically plus a 1% correction factor for incomplete combustion. For diesel, EPA's Web site at: *http://www.epa.gov/OMS/climate/420f05001.htm* shows this calculation in more detail and results in 22.22 lbs CO_2/gal diesel (10.7 kg/gal) and not 9.17 kg/gal as stated in Appendix D.

FTA Response: Calculations based on values given under the EPA Web site are acceptable.

Comment: Guidance to applicants is needed from FTA on what equivalent carbon footprint should be used for diesel combustion during idle and cold starts because the average value of 22 tons (sic) CO_2/gal is unrealistically low.

FTA Response: Although more CO_2 may be emitted during cold engine starts compared to hot starts, this is because more fuel may be consumed during and immediately after a cold start. The (typical) value of 22 pounds CO_2/gal is a function of the carbon content of the fuel itself and is not affected by the amount of fuel used or changes in operating conditions. Proposers are allowed to use data from reliable sources that can be substantiated.

Comment: While it is good FTA is supporting green house gas emissions reductions and energy consumption, this division between the two areas is arbitrary. FTA should only have one area. This could negatively impact smaller or medium sized grantees. Under the ''Project Innovation'' area, the grantee should also provide for an evaluation and dissemination plan. The results of the effort should be conducted in a manner others can review the results. Joint projects with transportation research centers and universities should be encouraged. Under the ''Reporting Requirements'' the guidance asks for annual reports; however, the notice does not mention the numbers of years this data needs to be reported. It would be logical if the reporting requirement should conclude upon final expenditure of the ARRA funds or two years after start of the project.

FTA Response: ARRA provides for grants for capital investments that will assist in reducing the energy consumption or greenhouse gas emissions of their public transportation systems. It is FTA's intent to carry out independent evaluation of select projects whose results will be widely disseminated. Reporting requirements remain until a project is officially closed.

Comment:

a. When 'evaluating the Green house Gas Emissions reductions, are you requiring they be performed on a tank to wheel basis or do you want them performed on a wells to wheels basis?

b. If funds other than these grant funds are used to buy down some of the cost of the project, will the ROI Evaluation be performed only assuming the costs applied from the grant funds?

c. Can these grant funds be applied to refueling station infrastructure construction such as hydrogen (an enabling element of GHG Reduction)? If so how should they show the long term GHG reduction associated with the use of this fuel?

d. Can a Transit agency apply for its normal 80% capital bus subsidy at the cost of a conventional bus and also apply for these grant funds to supplement the premium incremental cost of an advanced technology bus? If so will the Return on Investment (ROI) be evaluated only on the grant request amount?

e. Does the proposal have to identify specifically the buses that will be taken out of the fleet if the grant is for new buses?

f. Can you be more explicit about what you consider mainstream technologies and what you consider unique technologies you would like to see bid on this grant?

FTA Response:

a. Evaluation of project proposals was performed on a ''tank to wheels'' and not on a ''well to wheels'' basis.

b. The Return on Investment (ROI) evaluation criteria only applied to Federal TIGGER funds invested.

c. Construction costs associated with refueling station infrastructure are an eligible program item if they are part of a project also involving the operation of vehicles that need to be refueled through the use of the station. The calculation of the GHG reduction associated with the use of the fuel dispensed at the station would be based on the consumption of the fuel by the vehicle over its useful life.

d. A project proposal can include the incremental cost of an advanced propulsion system, and the associated ROT will be based on requested TIGGER funding.

e. New buses purchased under the TIGGER program must replace those that have achieved their FTA useful life criteria.

f. Mainstream technologies are generally those available from multiple sources and those that have significant operating experience. Unique technologies were not defined under the TIGGER program to avoid bias towards any specific technology.

Comment: I have one comment and question. Teaming projects are encouraged yet it is unclear to me how entities that team transit agencies, such as consortia, participate in program. My question is, can a consortia team a number of transit agencies together for a proposed submission, and then distribute a selected project to the team of transit agencies? Such teamed projects can gain knowledge and experience with a new technology in a very beneficial way by a highly communicative teaming strategy. How do ''teamers'' charge for administering teamed-projects?

FTA Response: Under the TIGGER program, grant recipients are limited to single public transit agencies who will be responsible for conducting a project. However, other transit agencies can participate in a project as subrecipients, and their administrative costs are eligible if they contribute to the project.

Comment: We remain concerned that in describing eligible expenses in section 1I.0 of the NOFTA, FTA has excluded fleet expansion, assuming the impact on transit agency emissions and energy consumption would be increased. We believe FTA should instead acknowledge that a fleet expansion, conducted in conjunction with fleet replacement, could reduce overall emissions and energy consumption where, for example, eight inefficient buses were replaced with nine highly efficient buses. The nine new buses in the expanded fleet could still accomplish the program goals.

FTA Response: The purpose of the TIGGER program is to encourage reduction of energy consumption and greenhouse gas (GHG) reduction to the best extent possible without sacrificing service. Fleet expansions were discouraged under the program as they would reduce the competitiveness of the proposed project since the incremental energy use and GHG emission over the life of the expanded fleet would be higher than a replacement fleet of the original size.

Comment: I believe our organization's experience with advanced vehicle technology project-management, performance data collection protocols, project public relations, education, and awareness campaigns, and all FTA recipient requirements would be a valuable asset to individual or multiple transit agencies as they develop and implement Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) projects. In this regard, I would like to point out a possible administrative weakness of the program and suggest a solution.

Typically, transit agencies and the other eligible recipients listed are not set up to serve as the prime contractor for large projects involving other transit agencies and other states. A project involving multi-city deployment with multiple agencies serving as contractors, for example, would be unwieldy and very difficult to manage for both the agencies and the FTA. However, this challenge can be met by an organization like ours, which can serve as the prime contractor for all of the agencies in this scenario. By providing a centralized, nonprofit project management team, we can better help the FTA ensure that multi-agency TIGGER projects are well planned, executed, reported, and evaluated.

We would like to know if the structure of the program can be changed to allow us to play this Prime Contractor role for potential multiple transit agency demonstration projects.

FTA Response: Under ARRA requirements for TIGGER, only public transit agencies could receive grants directly from FTA.

Comment:

1. Section IV. A. Project Evaluation Criteria for Energy Consumption Reduction Projects: FTA will evaluate projects on total energy consumption savings projected to result from the project, and projected energy savings of the project as a percentage of the total energy usage of the public transit agency. Evaluating the project as a percentage of the total energy usage of the public—transit agency is inconsistent with the examples given under Section III. B.(3). ''For example, a project could consist of replacing 10 buses in a 100 vehicle bus fleet with more energy efficient buses. In this case, measurement would focus on the 10 vehicles, not the entire fleet''.

2. Section IV C. (4) Project Innovation. The project identifies a unique, significant, or innovative approach to reducing energy: This criterion is more consistent with pilot or experimental grant projects that may not have long term benefits or sustainability. In addition, this criterion needs specific examples in order to clarify the intent. Examples given under Section III.B.(3) such as making the buses more energy efficient are good projects but don't appear to be consistent with the language provided under Section IV C.(4). We recommend that this section be reworded to encourage purchasing more energy efficient buses such as hybrid.

FTA Response: (1) In order to keep comparisons among different proposals to a common norm, project evaluations were based on total energy consumption savings from the project and the energy savings of the project as a percentage of the total energy usage at the public transit agency. Actual projections on what would be achieved in terms of energy reduction were limited to what the project introduced and did not include non-project elements. The examples given were not inconsistent with this project evaluation approach.

(2) The criterion addressing project innovation was deliberately worded towards non-biasing a particular project or technology.

Comment: My organization's 15 years of experience with advanced vehicle technology project management, performance data collection protocols, project public relations, education, and awareness campaigns, and all FTA presentation and reporting requirements should continue to be a valuable asset to the FTA and its transit agency partners as they develop and implement Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) projects. Organizations like mine are capable of assuring that TIGGER projects are well planned, executed, and reported. With this in mind, we respectfully submit two questions: (1) Is our role as a subcontractor to transit agencies in the development and execution of TIGGER projects an acceptable one? And (2) If acceptable, will the FTA endorse this role with interested transit agencies?

FTA Response: (I) It is entirely up to the transit agency seeking TIGGER funds to form its team and decide what each member of the team will do. FTA did not limit or suggest how the transit agency should form its team or conduct

its project. 2. FTA does not endorse any organization for a formal role in the TIGGER program projects.

Comment: Under the NOFA, can applicants submit proposals that include plans to purchase transit buses that would fit the goals of the program, but have not yet gone through Altoona testing, so do not yet meet FMVSS? The idea is that the prospective vehicle type will have gone through this testing and be put into service within the funding period.

FTA Response: FTA did not limit the type of vehicles that can be purchased. However, the purchase will have to meet the FTA Capital Program requirements before any Federal funding can be committed. We also note FTA's long-standing requirement that buses must certify compliance with applicable FMVSS requirements prior to starting Altoona testing.

Issued on: Oct. 6, 2009.

Peter M. Rogoff,

Administrator.

APPENDIX A. TIGGER ALLOCATIONS

Project ID	City	State	Transit Agency	Project Name	Allocation
D2009-TGGR-001	Montgomery	AL	Montgomery Area Transit System	Hybrid buses	$2,675,000
D2009-TGGR-002	Hayward	CA	AC Transit	Photovoltaic capacity installation to generate hydrogen	$6,400,000
D2009-TGGR-003	Santa Clarita	CA	City of Santa Clarita	Photovoltaic modules on transit maintenance facility	$4,620,000
D2009-TGGR-004	Los Angeles	CA	Los Angeles County Metropolitan Transportation Authority (LACMTA)	Wayside energy storage system	$4,466,000
D2009-TGGR-005	San Diego County	CA	North County Transit District	PV solar implementation at facilities	$2,000,000
D2009-TGGR-006	Aurora	CO	Denver Regional Transportation District	Heating upgrades at East Metro bus maintenance facility	$770,000
D2009-TGGR-007	Boulder	CO	Denver Regional Transportation District	Heating upgrades at Boulder bus maintenance facility	$325,000
D2009-TGGR-008	Statewide	CT	Connecticut Department of Transportation	Stationary fuel cells and transit buses hybrid features	$7,000,000
D2009-TGGR-009	Statewide	DE	Delaware Transit Corporation	Solar panel installations	$1,500,000
D2009-TGGR-010	West Palm Beach	FL	Palm Tran - Palm Beach County	Diesel bus efficiency improvements with thermal motor fans	$320,000
D2009-TGGR-011	Pompano Beach	FL	Broward County Transit	Diesel bus efficiency improvements bus cooling system retrofits	$2,000,000
D2009-TGGR-012	Atlanta	GA	Metropolitan Atlanta Rapid Transit Authority	Bus facility solar canopies	$10,800,000
D2009-TGGR-013	Ames	IA	Ames Transit Agency (CyRide)	Hybrid buses incremental costs	$1,600,000

D2009-TGGR-014	Statewide	IL	Champaign-Urbana Mass Transit District (MTD); Rockford MTD; St. Clair County MTD; Springfield MTD; PACE Suburban Bus; Rock Island County MTD; Bloomington-Normal Public Transit System (Proposal submitted by Illinois DOT)	Statewide paratransit hybrid buses	$4,030,000
D2009-TGGR-015	Chicago	IL	Chicago Transit Authority	Electric power delivery system for outdoor bus parking	$1,500,000
D2009-TGGR-016	Rock Island	IL	Rock Island Metro	Solar thermal system	$600,000
D2009-TGGR-017	Champaign-Urbana	IL	Champaign-Urbana Mass Transit District (CUMTD)	Facility upgrade with geothermal heat pump system	$450,000
D2009-TGGR-018	Lafayette	IN	Greater Lafayette Public Transportation Corporation	Wind energy project	$2,180,000
D2009-TGGR-019	Lowell	MA	Lowell Regional Transit Authority	Solar photovoltaic system	$1,500,000
D2009-TGGR-020	Boston	MA	Massachusetts Bay Transportation Authority	Renewable wind energy	$2,500,000
D2009-TGGR-021	Statewide	MD	Maryland Transit Administration	Halon 1301 replacement	$522,000
D2009-TGGR-022	Alpena	MI	Thunder Bay Transportation Authority (TBTA)	Plug-in hybrid buses	$2,590,000
D2009-TGGR-023	Flint	MI	Flint Mass Transportation Authority	Ultra-light zero emissions buses	$2,200,000
D2009-TGGR-024	Fergus Falls	MN	Productive Alternatives/ Transit Alternatives - Fergus Falls, MN	Energy reduction consolidated projects	$845,000
D2009-TGGR-025	Minneapolis	MN	Minneapolis-St. Paul Metropolitan Council	Hybrid buses	$1,100,000
D2009-TGGR-026	Charlotte	NC	City of Charlotte -- Charlotte Area Transit System	Hybrid buses	$3,000,000

D2009-TGGR-027	Statewide	NJ	NJ TRANSIT	Efficient air compressor systems at NJ TRANSIT facilities	$250,000
D2009-TGGR-028	Reno	NV	Regional Transportation Commission of Washoe County	Hybrid buses	$3,000,000
D2009-TGGR-029	Albany	NY	Capital District Transportation Authority	Hybrid buses incremental costs	$3,520,000
D2009-TGGR-030	New York City	NY	New York City Transit Department of Subways	Remote 3rd rail heaters monitoring and control system	$2,000,000
D2009-TGGR-031	Cleveland	OH	Greater Cleveland Regional Transit Authority	Improve energy efficiency of facilities	$2,257,000
D2009-TGGR-032	Eugene	OR	Lane Transit District	Hybrid buses incremental costs	$3,000,000
D2009-TGGR-033	Portland	OR	Tri-County Metropolitan Transportation District of Oregon	Bus efficiency improvements with cooling system retrofits	$750,000
D2009-TGGR-034	Lancaster	PA	Red Rose Transit Authority (RRTA)	Improve energy efficiency of RRTA's operations and administrative Center	$2,450,000
D2009-TGGR-035	Statewide	RI	Rhode Island Public Transportation Authority (RIPTA)	Lighting conversion and upgrades for facilities	$345,000
D2009-TGGR-036	Chattanooga	TN	Chattanooga Area Regional Transportation Authority	Lighting upgrades for facilities	$650,000
D2009-TGGR-037	San Antonio	TX	VIA Metropolitan Transit of San Antonio, TX	Composite body electric buses	$5,000,000
D2009-TGGR-038	Arlington	VA	Arlington Transit (ART)	Hybrid buses	$1,500,000
D2009-TGGR-039	Everett	WA	Snohomish County Public Transit Benefit Area (Community Transit)	Hybrid buses incremental costs	$3,000,000
D2009-TGGR-040	Chelan-Wenatchee	WA	Link Transit	Battery powered - zero emission buses	$2,925,000
D2009-TGGR-041	Vancouver	WA	Clark County Public Transportation Benefit Area	Improve energy efficiency of facilities	$1,500,000

D2009-TGGR-042	Madison	WI	Madison Metro Transit	Lighting upgrades in bus storage and maintenance garage areas.	$150,000
D2009-TGGR-043	Milwaukee	WI	Milwaukee County Department of Transportation and Public Works	Hybrid vans	$210,000
				TOTAL	**$100,000,000**

Appendix B. Regional Contact Information

Richard H. Doyle Regional Administrator Region 1-Boston Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142-1093 Tel. 617 494-2055 States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Robert C. Patrick Regional Administrator Region 6-Ft. Worth 819 Taylor Street, Room 8A36 Ft. Worth, TX 76102 Tel. 817 978-0550 States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas
Brigid Hynes-Cherin Regional Administrator Region 2-New York One Bowling Green, Room 429 New York, NY 10004-1415 Tel. No. 212 668-2170 States served: New Jersey, New York New York Metropolitan Office Region 2-New York One Bowling Green, Room 428 New York, NY 10004-1415 Tel. 212-668-2202	Mokhtee Ahmad Regional Administrator Region 7-Kansas City, MO 901 Locust Street, Room 404 Kansas City, MO 64106 Tel. 816 329-3920 States served: Iowa, Kansas, Missouri, and Nebraska
Letitia Thompson Regional Administrator Region 3-Philadelphia 1760 Market Street, Suite 500 Philadelphia, PA 19103-4124 Tel. 215 656-7100 States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia Philadelphia Metropolitan Office Region 3-Philadelphia 1760 Market Street, Suite 500 Philadelphia, PA 19103-4124	Terry Rosapep Regional Administrator Region 8-Denver 12300 West Dakota Ave., Suite 310 Lakewood, CO 80228-2583 Tel. 720-963-3300 States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

Tel. 215-656-7070 Washington, D.C. Office 1990 K St NW Suite 510 Washington, DC 20006 Phone: (202) 219-3562 or (202) 219-3565 Fax: (202) 219-3545	
Yvette Taylor Regional Administrator Region 4-Atlanta 230 Peachtree Street, NW Suite 800 Atlanta, GA 30303 Tel. 404 562-3500 States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands	Leslie T. Rogers Regional Administrator Region 9-San Francisco 201 Mission Street, Suite 1650 San Francisco, CA 94105-1926 Tel. 415 744-3133 States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands Los Angeles Metropolitan Office Region 9-Los Angeles 888 S. Figueroa Street, Suite 1850 Los Angeles, CA 90017-1850 Tel. 213-202-3952
Marisol Simon Regional Administrator Region 5-Chicago 200 West Adams Street, Suite 320 Chicago, IL 60606 Tel. 312 353-2789 States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin Chicago Metropolitan Office Region 5-Chicago 200 West Adams Street, Suite 320 Chicago, IL 60606 Tel. 312-353-2789	Rick Krochalis Regional Administrator Region 10-Seattle Jackson Federal Building 915 Second Avenue, Suite 3142 Seattle, WA 98174-1002 Tel. 206 220-7954 States served: Alaska, Idaho, Oregon, and Washington

[FR Doc. E9–24479 Filed 10–9–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Request for an Extension of an Informational Filing

In accordance with Title 49 Code of Federal Regulations (CFR) 236.913, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for extension of an informational filing from the Union Pacific Railroad Company (UP) to permit continued field testing of the railroad's processor-based train control systems. For informational purposes only, the original informational filing is briefly described below, including the submitting party and the requisite docket number where the original informational filing, the informational filing extension request and any related information may be found. These documents are also available for public inspection; however, FRA is not accepting public comment on the documents.

Union Pacific Railroad Company

[Docket Number FRA–2007–27322]

UP has submitted an informational filing to FRA to permit field testing of the railroad's processor-based train control systems identified as Vital-Train Management System (V–TMS). The informational filing addresses the requirements under 49 CFR 236.913(j)(1).

Specifically, the informational filing contains a description of the V–TMS product and an operational concepts document, pursuant to 49 CFR 236.913(j)(1). V–TMS is a locomotive-centric, vital train control system designed to be overlaid on existing methods of operation and intended to provide a high level of railroad safety through enforcement of authority limits, permanent speed restrictions and temporary speed restrictions.

UP requests that the formal test and demonstration period for this informational filing be extended until December 31, 2015, or until such time as this informational filing is superseded by an FRA approved PTC Implementation Plan.

Interested parties are invited to review the informational filing and associated documents at the following locations:

- *Web site: http://www.regulations.gov.* Follow the instructions for a simple search on the DOT electronic docket site (Docket Number FRA–2007–27322). All documents in the public docket that are associated with the informational filing are available on the web site for inspection and copying.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://www.regulations.gov.*

Issued in Washington, DC on October 6, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–24478 Filed 10–9–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0091]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MER SEA.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0091 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 12, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–XXXX. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant, the intended service of the vessel MER SEA is:

Intended Commercial Use of Vessel: ''Private charters in Southern California.''

Geographic Region: ''California''.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: October 5, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. E9–24476 Filed 10–9–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0092]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MAGNIFICAT.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0092 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 12, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0092. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MAGNIFICAT is:

Intended Commercial Use of Vessel: ''Carrying passengers for hire on a 38 foot sailing catamaran uninspected vessel for small charters for sightseeing, team building and sailing instruction.''

Geographic Region: ''Primarily in the San Francisco area, but with some offshore charters that would include California, Washington & Oregon waters''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: October 5, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. E9–24477 Filed 10–9–09; 8:45 am]

BILLING CODE 4910–81–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on Thursday, October 29, and Friday, October 30, 2009, to consider various matters.

The RRSC was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The management of the Tennessee Valley reservoirs and the lands adjacent to them has long been integral components of TVA's mission. As part of implementing the TVA Environmental Policy, TVA is developing a Natural Resource Plan (NRP) and Environmental Impact Statement (EIS) under the process established by the National Environmental Policy Act (NEPA) that will help prioritize techniques for the management of TVA's sustainable land use activities, natural resource management activities, and water resource protection and improvement activities. TVA would like to utilize the RRSC as a key stakeholder group throughout the EIS period to advise TVA on the issues, tradeoffs, and focus of environmental stewardship activities. At the October meeting, TVA will be seeking advice from the Council on issues regarding the scope and direction of the study.

TVA will also be seeking recommendations and advice on the NRP objectives and activities that complement the use of public lands with the protection of these natural resources.

The meeting agenda includes the following:

1. Introductions.
2. Informational Items and Project Updates (Kingston Fly Ash Recovery Efforts, Integrated Resource Plan status, and carbon legislation).
3. RRSC Discussion Topic: Natural Resource Plan (*e.g.* Natural Resource Management, Sustainable Land Use, and Water Protection).
4. Public Comments.
5. Council Discussion and Advice.

The TVA RRSC will hear opinions and views of citizens by providing a public comment session. The public comment session will be held at 10 a.m., EDT, on Friday, October 30. Persons wishing to speak are requested to register at the door by 9 a.m., on Friday, October 30, and will be called on during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT–11B, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Thursday, October 29, from, 8 a.m. to 4:30 p.m., and Friday, October 20, from 8 a.m.–12 Noon, EDT.

ADDRESSES: The meeting will be held at the Auditorium of the TVA Headquarters at 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Beth Keel, 400 West Summit Hill Drive, WT–11B, Knoxville, Tennessee 37902, (865) 632–6113.

Dated: October 6, 2009.

Anda A. Ray,

Senior Vice President, Office of Environment and Research, Tennessee Valley Authority, WT 11A–K.

[FR Doc. E9–24588 Filed 10–9–09; 8:45 am]

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Federal Register

Tuesday,
October 13, 2009

Part II

Department of Commerce

48 CFR Ch. 13

Commerce Acquisition Regulation (CAR): Plain Language Rewrite; Proposed Rule

DEPARTMENT OF COMMERCE

48 CFR Chapter 13

[Document Number: 080730954–8955–01]

RIN 0605–AA26

Commerce Acquisition Regulation (CAR): Plain Language Rewrite; Proposed Rule

AGENCY: Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The Commerce Acquisition Regulation (CAR) was originally codified March 30, 1984, and amended by subsequent regulations published in the **Federal Register**. The Department of Commerce (DOC) proposes to update the entire CAR through FAC–2005–21. This proposed rule will bring the CAR in alignment with the FAR through FAC 2005–21 and streamline DOC internal policy and guidance.

DATES: Comments on the proposed rule should be submitted on or before December 14, 2009 to be considered in the formulation of the final rule.

ADDRESSES: Comments may be submitted through any of the following:

- *Federal Rulemaking Portal: http://www.Regulations.gov*. Please follow the instructions for submitting a comment.
- *Mail:* Virna Evans, U.S. Department of Commerce, Room 1854, 1401 Constitution Avenue, NW., Washington, DC 20230.

All comments should indicate that they are submitted in response to RIN 0605–AA26.

FOR FURTHER INFORMATION CONTACT: Virna Evans, 202–482–3483.

SUPPLEMENTARY INFORMATION:

Drafting Information

The Department of Commerce used the FAR version dated November 7, 2007, updated through FAC 2005–21 and located on the *http://farsite.hill.af.mil/* Web site as the reference FAR during development.

Background

The CAR is the Department of Commerce acquisition regulation that implements or supplements the FAR.. The CAR was originally codified March 30, 1984 and last updated by **Federal Register** Notice on September 12, 1995. The update will bring the CAR in alignment with the FAR through FAC 2005–21 and streamline Department of Commerce policies and procedures.

The following is a discussion of common changes made throughout the CAR. Various sections of the CAR have been renumbered and/or renamed to align with the FAR. Significant information has been added to address those instances where the FAR indicates that agency procedures are required or instructs the agency to act in accordance with agency procedures. Many references to chapters of the Department's internal guidance document called Commerce Acquisition Manual, or CAM, have been added to provide a relationship between the FAR, the CAR, and DOC internal guidance. Information was also added to clarify roles and responsibilities across the agency and within the Department of Commerce's 5 Operating Units authorized to operate contracting offices (National Institute of Standards and Technology (NIST), National Oceanic and Atmospheric Administration (NOAA), Office of the Secretary, U.S. Census Bureau, and Patent and Trademark Office (PTO)), usually in the form of a reference to the CAM outlining delegations of authority. In addition, numerous new clauses have been added that correspond to new requirements added to the CAR. Finally, the authority citations for the CAR have been revised to correspond to current authority. A summary of the changes by CAR Part follows.

Part 1301: Department of Commerce Acquisition Regulations System

We propose to renumber various sections of Part 1301 to align with the FAR. We propose to add sections 1301.3 and 1301.4 to clarify the location and format of agency policy and guidance, the role of bureaus in issuing directives, and the designees authorized to approve deviations. We propose to expand section 1301.6 to highlight significant agency policy and guidance related to contracting authority; ratification practices; and selection, appointment, and termination of appointment of Contracting Officers. The first references are made to internal guidance documents CAM 1301.70 and CAM 1301.6. We propose to add the following clauses:

1352.201–70 Contracting Officer's Authority
1352.201–71 Ratification Release
1352.201–72 Contracting Officer's Representative (COR)

Part 1302: Definitions of Words and Terms

We propose to add Part 1302 in order to clarify significant and/or frequently used terms and acronyms within the agency and foster common understanding and proper usage across the agency.

Part 1303: Improper Business Practices and Personal Conflicts of Interest

We propose to renumber and rename various sections of Part 1303 to align with the FAR. We propose to add multiple new sections to the Part in order to clarify roles and responsibilities, agency process, and legal requirements.

Part 1304: Administrative Matters

We propose to add Part 1304 in order to describe procedures related to accountable personal property and to provide a reference to CAM chapters describing Federal Procurement Data System reporting procedures and contract closeout, storage, handling, and disposal procedures.

Part 1305: Publicizing Contract Actions

We propose to add Part 1305 in order to clarify various roles and responsibilities related to publicizing contract actions.

Part 1306: Competition Requirements

We propose to add Part 1306 in order to clarify various roles and responsibilities related to competition, and to highlight internal processes and legal requirements involving sole source acquisitions.

Part 1307: Acquisition Planning

We propose to add Part 1307 in order to clarify agency head responsibilities in relation to FAR 7.103, describe agency policy related to inherently governmental functions, and to provide a reference to internal Web sites and/or CAM chapters covering acquisition planning and competitive sourcing policy and procedures.

Part 1308: Required Sources of Supplies and Services

We propose to add Part 1308 in order to clarify the designee authorized as the Department's central printing authority. We propose to add the following clause related to the new provision:

1352.208–70 Restrictions on Printing and Duplicating

Part 1309: Contractor Qualifications

We propose to redesignate current section 1309.106–70 *Preaward surveys for ship construction, ship alteration, and ship repair* to Part 1371 of the CAR, which addresses specialty procurements. We propose to add multiple references to CAM 1301.70 that define responsibilities and delegations of authority related to qualification requirements, debarment, suspension and ineligibility, and organizational and consultant conflicts of interest. We propose to remove 1309.470–4,

Procedures on Debarment and 1309.470–7, *Procedures on Suspension*, and update this information in redesignated Sections 1309.406, *Debarment,* and 1309.407, *Suspension*. We propose to add Subpart 1309.5, Organizational and Consultant Conflicts of Interest to address waivers, procedures and the process for addressing organizational conflicts of interest (OCI). We also propose to add the following provisions and clauses:

1352.209–70 Potential Organizational Conflict of Interest
1352.209–71 Limitation of Future Contracting
1352.209–72 Restrictions Against Disclosure
1352.209–73 Compliance with the Laws
1352.209–74 Organizational Conflict of Interest
1352.209–75 Title 13 and Non-Disclosure Requirements

Part 1311: Describing Agency Needs

We propose to add Part 1311 in order to clarify roles and responsibilities related to market acceptance and liquidated damages.

Part 1312: Acquisition of Commercial Items

We propose to add Part 1312 in order to define the individual with the authority to approve requests to tailor provisions, clauses or terms and conditions that are inconsistent with customary commercial practice.

Part 1313: Simplified Acquisition Procedures

We propose to update Part 1313 to align the CAR with the FAR and current agency practices. Such updates include updating the title of the part; adding references to the CAM chapters that define the authority for delegating micro-purchase authority and the training required by DOC employees prior to being delegated micro-purchase authority; adding references to the CAM chapter covering departmental procedures for the use and control of the Governmentwide commercial purchase card; and outlining agency policy related to contractor acceptance of purchase order modifications, purchases under BPAs, third-party drafts, and imprest funds.

The following clauses were added to this part:

1352.213–70 Evaluation Utilizing Simplified Acquisition Procedures
1352.213–71 Instructions for Submitting Quotations Under the Simplified Acquisition Threshold—Non-Commercial

Part 1314: Sealed Bidding

We propose to add Part 1314 to define roles and responsibilities and legal requirements for rejection of bids, mistakes in bids, and information to bidders.

Part 1315: Contracting by Negotiation

We propose to revise Part 1315 to align with the FAR and current agency practices. Revisions include defining roles and responsibilities related to granting exceptions from the uniform contract format, waiving examination of records requirement, define responsibilities, permissions, and other requirements related to source selection; redesignating section 1315.5, originally amended Sept. 12, 1995, as subpart 1315.6 Unsolicited Proposals to describe procedures for unsolicited proposals, and deleting subpart 1315.504 Advance Guidance.

We also propose to add the following provisions and clauses:

1352.215–70 Proposal Preparation
1352.215–71 Instructions for Oral Presentations
1352.215–72 Inquiries
1352.215–73 Evaluation Quantities—Indefinite Quantity Contract
1352.215–74 Best Value Evaluation
1352.215–75 Evaluation Criteria
1352.215–76 Cost or Pricing Data

Part 1316: Types of Contracts

We propose to revise Part 1316 by redesignating section 1316.404–2 as 1316.405–2 and adding associated clause 1352.216–72 Determination of Award Fee; define roles and responsibilities for use of economic price adjustment clause, use of fixed-ceiling-price contracts with retroactive price redetermination, designation of task order ombudsman, approval of time-and-materials contracts, and approval of letter contracts; and addressing FAR requirements of agencies related to contract type.

We also propose to add the following provisions and clauses:

1352.216–70 Estimated and Allowable Costs
1352.216–71 Level of Effort (Cost-Plus-Fixed Fee, Term Contract)
1352.216–72 Determination of Award Fee
1352.216–73 Distribution of Award Fee
1352.216–74 Task Orders
1352.216–75 Minimum and Maximum Contract Amounts
1352.216–76 Placement of Orders
1352.216–77 Ceiling Price

Part 1317: Special Contracting Methods

We propose to revise Part 1317 to include references to CAM 1301.70 that define responsibilities and delegations of authority. We propose housing all specialty procurements in new Part 1370, *Universal Solicitation Provisions and Contract Clauses*. Subpart 1317.70, *Contracts for Ship Construction, Ship Alteration, and Ship Repair* has been redesignated as Part 1371, *Acquisitions Involving Ship Construction and Ship Repair*.

Part 1318: Emergency Acquisitions

We propose to add Part 1318 in order to clarify agency procedures and expectations related to emergency acquisitions. We propose to add references to CAM 1301.70 that define responsibilities and delegations of authority.

Part 1319: Small Business Programs

We propose to update Part 1319 to align with the FAR and current agency practices. Such updates include clarifying agency policy, procedures and expectations related to setting aside acquisitions for small businesses; providing the procedure for determining lack of competency; providing the procedure for reviewing subcontracting plans; and providing the procedure for contracting with the Small Business Administration 8(a) Program.

We also propose to add the following and clauses:

1352.219–70 Section 8(a) Direct Award (Deviation)
1352.219–71 Notification To Delay Performance (Deviation)
1352.219–72 Notification of Competition Limited to Eligible 8(a) Concerns, Alternative III (Deviation)

Part 1322: Application of Labor Laws to Government Acquisitions

We propose to add Part 1322 in order to define roles and responsibilities and approval chains for notification of potential labor disputes, approval of requests for overtime, determination of liquidated damages, modifications of wage determinations, processing labor standards investigations, and requesting exemptions or waivers of labor standards. We also set forth the proposing instructions detailing when and from whom contracting officers should seek legal advice and assistance for potential or actual labor disputes, and removal of items affected by work stoppage.

Part 1323: Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace

We propose to add Part 1323 in order to clarify roles and responsibilities, and to reference the CAM chapters that describe the agency's affirmative procurement program and the procedures for granting exceptions to

procurement of an Energy Star or Federal Energy Management Program designated product or exceptions to Electronic Product Environmental Assessment Tool requirements indicated under FAR Part 23.705(c).

Part 1324: Protection of Privacy and Freedom of Information

We propose to add Part 1324 in order to provide a cross-reference to the CFR title describing the agency's implementation of the Freedom of Information Act.

Part 1325: Foreign Acquisition

We propose to add Part 1325 in order to define roles and responsibilities for various actions and to define procedures related to exceptions to the Buy American Act for supplies.

Part 1326: Other Socioeconomic Programs

We propose to add Part 1326 in order to define the designee authorized to determine that transitioning response, relief, and/or reconstruction activity to local firms is not feasible or practicable.

Part 1327: Patents, Data, and Copyrights

We propose to add Part 1327 in order to define roles and responsibilities for various actions and to permit contracting officers to place limitations or restrictions on the contractor's exercise of its rights in data first produced in the performance of a contract. We also propose to add the following clause:

1352.227–70 Rights in Data, Assignment of Copyright

Part 1328: Bonds and Insurance

We propose to add Part 1328 in order to define multiple roles and responsibilities related to various actions and to define the legal entity from which to obtain opinion when determining acceptability of individual surety. We also propose to add the following provisions and clauses:

1352.228–70 Insurance Coverage
1352.228–71 Deductibles Under Required Insurance Coverage—Cost Reimbursement
1352.228–72 Deductibles Under Required Insurance Coverage—Fixed Price
1352.228–73 Loss of or Damage to Leased Aircraft
1352.228–74 Fair Market Value of Aircraft
1352.228–75 Risk and Indemnities
1352.228–76 Approval of Group Insurance Plans

Part 1329: Taxes

We propose to add Part 1329 in order to define the process for DOC and its contractors for purchases of spirits tax-free for non-beverage Government use. We also propose to define the group to whom contracting officers should refer legal questions relating to tax issues. We also propose to identify responsibility for review of proposed designation of a contractor as an agent of the Government.

Part 1330: Cost Accounting Standards Administration

We propose to add Part 1330 in order to clarify roles and responsibilities related to Cost Accounting Standards program requirements.

Part 1331: Contract Cost Principles and Procedures

We propose to add Part 1331 in order to clarify roles and responsibilities for approval of individual deviations concerning cost principles, and waiver of cost allowability limitations. We also propose adding the following clauses:

1352.231–70 Precontract Costs
1352.231–71 Duplication of Effort

Part 1332: Contract Financing

We propose to revise Part 1332 to clarify roles and responsibilities across multiple actions. We propose to permit, under 1332.003, contract financing for purchases made under the authority of FAR Part 13. Under 1332.702, we propose to clarify the contract funding process and the individual who represents the responsible fiscal authority. We also propose to reference the various agency policies and procedures that need to be followed when using the Governmentwide commercial purchase card.

Part 1333: Protests, Disputes, and Appeals

We propose to revise all of Part 1333 to make the Part current to agency policy and procedures. Revisions include defining roles and responsibilities for protest decisions and determinations related to disputes and appeals, and defining legal review and handoff procedures. We also propose to add the following clauses:

1352.233–70 Agency Protests
1352.233–71 GAO and Court of Federal Claims Protests

Part 1334: Major System Acquisition

We propose to add Part 1334 in order to identify the designated authority and procedures for acquiring major systems. We propose to clarify policy and dollar thresholds regarding the FAR regulation requiring Earned Value Management Systems.

Part 1335: Research and Development Contracting

We propose to add Part 1335 in order to define terms for research and development contracting and identify procedures. We also propose to add the following provisions and clauses:

1352.235–70 Protection of Human Subjects
1352.235–71 Protection of Human Subjects—Exemption
1352.235–72 Protection of Human Subjects—Institutional Approval
1352.235–73 Research Involving Human Subjects—After Initial Contract Award

Part 1336: Construction and Architect-Engineer Contracts

We propose to define the acceptable composition of permanent and ad hoc architect-engineer evaluation boards, the appropriate means for selecting firms for contracts not expected to exceed the simplified acquisition threshold, and the appropriate means for designating the selection authority.

We propose to define the designee authorized to make the determination described at FAR 36.609–1(c).

Part 1337: Service Contracting

We propose to refer to the CAM chapter outlining agency procedures for personnel security processing for contractors performing services on or within a Department of Commerce facility or through and information technology (IT) system. We propose to refer to the CAM chapter that indicates the designee authorized to make the determinations described under FAR 37.204.

We propose to add the following clauses:

1352.237–70 Security Processing Requirements—High or Moderate Risk Contracts
1352.237–71 Security Processing Requirements—Low Risk Contracts
1352.237–72 Security Processing Requirements—National Security Contracts
1352.237–73 Foreign National Visitor and Guest Access to Departmental Resources
1352.237–74 Progress Reports
1352.237–75 Key Personnel

Part 1339: Acquisition of Information Technology

We propose to describe agency procedures and provision/clause options for processing contractors that are competing for and winning information technology service acquisitions over the micro-purchase threshold, and/or will require electronic access to Department of Commerce information technology systems. We also propose to add the following provisions and clauses:

1352.239–70 Software License Addendum

1352.239–71 Electronic and Information Technology
1352.239–72 Security Requirements for Information Technology Resources.

Part 1341: Acquisition of Utility Services

We propose to add Part 1341 to clarify the roles and responsibilities for entering into contracts with utility providers and making determinations related to contracts and agreements of utility services.

Part 1342: Contract Administration

We propose to revise Part 1342 to define roles and responsibilities related to contract administration and certification of indirect cost rates. We propose to add the following provision:

1352.242–70 Postaward Conference

Part 1344: Subcontracting Policies and Procedures

We propose to add Part 1334 to identify the designee authorized to lower or raise the $25 million sales threshold for performing a review to determine if a Contractors Purchasing Systems Review is needed.

Part 1345: Government Property

We propose to add Part 1345 in order to address when government property is to be furnished to the contractor. We propose to add the following clause:

1352.245–70 Government Furnished Property

Part 1346: Quality Assurance

We propose requiring DOC operating units to develop instructions and procedures related to material inspection and receiving reports. We also propose to authorize contracting officers to approve the use of warranties. We propose adding the following clause:

1352.246–70 Place of Acceptance

Part 1348: Value Engineering

We propose to add Part 1348 in order to clarify the policy for processing Value Engineering Change Proposals (VECPs). We also propose to define the roles and responsibilities related to VECP processing and to granting exemptions from the requirements of FAR Part 48 for a contract or class of contracts.

Part 1349: Termination of Contracts

We propose to revise Part 1349 to reflect current agency procedures for dealing with default terminations and terminations involving fraud or other criminal conduct.

Part 1350: Extraordinary Contractual Actions

We propose to add Part 50 in order to define roles and responsibilities for various actions.

Part 1352: Solicitation Provisions and Clauses

We propose to revise Part 1352 in order to reflect currently approved provisions and clauses. The clauses we propose to add for each CAR Part are identified in the discussion of each CAR Part summary. An agency-specific matrix, similar in format and intent to the FAR Part 52 matrix (*See* CAR Part 1352.3), is added to assist users identify the location of the provision and clause for each prescription in the CAR. The changes made to existing CAR provisions and clauses are summarized in the table below.

Existing CAR provision or clause number and title	Action taken
1352.217–90, Inspection and Manner of Doing Work	Revised and moved to CAR Part 1371.
1352.217–91, Delivery of Vessel to the Contractor	Revised, renamed *Delivery and Shifting of the Vessel,* and moved to CAR Part 1371.
1352.217–92, Performance	Revised and moved to CAR Part 1371.
1352.217–93, Delays	Revised and moved to CAR Part 1371.
1352.217–94, Minimization of Delay Due to Government Furnished Property.	Revised and moved to CAR Part 1371.
1352.217–95, Additional Provisions Relating to Government Property	Removed.
1352.217–96, Liability and Insurance	Revised and moved to CAR Part 1371.
1352.217–97, Title	Revised and moved to CAR Part 1371.
1352.217–98, Discharge of Liens	Revised and moved to CAR Part 1371.
1352.217–99, Department of Labor Occupational Safety and Health Standards for Ship Repairing.	Revised and moved to CAR Part 1371.
1352.217–100, Regulations Governing Asbestos Work	Removed.
1352.217–101, Complete and Final Equitable Adjustments	Removed.
1352.217–102, Government Review, Comment, Acceptance, and Approval.	Revised and moved to CAR Part 1371.
1352.217–103, Access to the Vessel(s)	Revised and moved to CAR Part 1371.
1352.217–104, Documentation of Requests for Equitable Adjustment	Revised and moved to CAR Part 1371.
1352.217–105, Change Proposals	Removed.
1352.217–106, Lay Days	Revised and moved to CAR Part 1371.
1352.217–107, Changes—Ship Repair	Revised and moved to CAR Part 1371.
1352.217–108, Default—Ship Repair	Removed.
1352.217–109, Insurance Requirements	Revised and moved to CAR Part 1371.
1352.217–110, Guarantees	Revised and moved to CAR Part 1371.
1352.217–111, Temporary Services	Revised and moved to CAR Part 1371.
1352.217–112, Self-Insurance Information	Removed.
1352.233.2, Service of Protest	Revised and renumbered 1352.233–70.

Part 1353: Forms

We propose to revise Part 1353 in order to align the part with current agency procedures and acquisition-related forms.

Part 1370: Universal Solicitation Provisions and Contract Clauses

We propose to add Part 1370 in order to group the provisions and contract clauses that have prescriptions applicable to more than one FAR Part. We propose to insert the following provisions and clauses:

1352.270–70 Period of Performance
1352.270–71 Pre-Bid/Pre-Proposal Conference and Site Visit

Part 1371: Acquisitions Involving Ship Construction and Ship Repair

We propose to add Part 1371 in order to group the unique provisions and contract clauses that pertain to ship

construction and ship repair. We propose to insert the following provisions and clauses:

1352.271–70 Inspection and Manner of Doing Work
1352.271–71 Method of Payment and Invoicing Instructions for Ship Repair
1352.271–72 Additional Item Requirements (AIR)—Growth Work
1352.271–73 Schedule of Work
1352.271–74 Foreseeable Cost Factors Pertaining to Different Shipyard Locations
1352.271–75 Delivery and Shifting of the Vessel
1352.271–76 Performance
1352.271–77 Delays
1352.271–78 Minimization of Delay Due to Government Furnished Property
1352.271–79 Liability and Insurance
1352.271–80 Title
1352.271–81 Discharge of Liens
1352.271–82 Department of Labor Occupational Safety and Health Standards for Ship Repair
1352.271–83 Government Review, Comment, Acceptance and Approval
1352.271–84 Access to the Vessel
1352.271–85 Documentation of Requests for Equitable Adjustment
1352.271–86 Lay Days
1352.271–87 Changes—Ship Repair
1352.271–88 Guarantees
1352.271–89 Temporary Services
1352.271–90 Insurance Requirements

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, Regulatory Planning and Review.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule would update the Commerce Acquisition Regulations; it does not directly regulate any small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This rule does not impose any new information collections subject to review and approval by OMB under the Paperwork Reduction Act. Notwithstanding any other provision 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 PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

48 CFR Part 1301

Acquisition regulations, Federal acquisition regulations, Government procurement, Government contracts, Procurement, Reporting and recordkeeping requirements.

48 CFR Part 1302

Definitions, Government procurement, Terms.

48 CFR Part 1303

Antitrust, Conflict of interests, Ethical conduct, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1304

Classified information, Computer technology, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1305

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1306

Government procurement, Justifications, Sole source acquisitions.

48 CFR Part 1307

Acquisition planning, Government procurement, Inherently governmental functions, Reporting and recordkeeping requirement.

48 CFR Part 1308

Government procurement, Printing.

48 CFR Part 1309

Debarment, Government procurement, Suspension, Reporting and recordkeeping requirement.

48 CFR Part 1311

Government procurement, Liquidated damages, Market acceptance.

48 CFR Part 1312

Government procurement, Tailoring clauses, Tailoring provisions, Tailoring terms and conditions.

48 CFR Part 1313

BPA, Blanket purchase agreement, Government procurement, Imprest funds, Micro-purchase authority, Purchase order modifications, Small business, Third-party drafts, Training.

48 CFR Part 1314

Equipment inspection, Government procurement, Pre-bid conference, Pre-proposal conference, Reporting and recordkeeping requirements, Site visit.

48 CFR Part 1315

Evaluation, Indefinite quantity, Inquiries, Government procurement, Oral presentations, Proposal preparation, Reporting and recordkeeping requirements, Should-cost review, Source selection, Unsolicited proposals.

48 CFR Part 1316

Government procurement, Ombudsman.

48 CFR Part 1317

Multi-year contract, Congressional notification, Interagency agreement.

48 CFR Part 1318

Emergency procurement, Reporting and recordkeeping requirements, Contingency operation, Warrants.

48 CFR Part 1319

Partnership agreement, Set aside, Small business, SBA.

48 CFR Part 1322

Aged, Child labor, Civil rights, Equal employment opportunity, Government procurement, Individuals with disabilities, Labor, Labor disputes, Prisoners, Reporting and recordkeeping requirements, Veterans, Wages, Work stoppages.

48 CFR Part 1323

Affirmative procurement program, Air pollution control, Drug abuse, Drug-free workplace, Energy conservation, Environmental, Government procurement, Hazardous substances, Recycling, Renewable energy, Water pollution control.

48 CFR Part 1324

Freedom of Information, Government procurement, privacy.

48 CFR Part 1325

Buy American Act, Customs duties and inspection, Foreign currencies, Foreign trade, Government procurement.

48 CFR Part 1326

Disaster assistance, Government procurement.

48 CFR Part 1327

Copyright, Government procurement, Inventions and patents, Reporting and recordkeeping requirements.

48 CFR Part 1328

Government procurement, Insurance, Reporting and recordkeeping requirements, Surety bonds.

48 CFR Part 1329

Government procurement, Reporting and recordkeeping requirements, Taxes, Tax exemptions.

48 CFR Part 1330

Accounting, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1331

Accounting, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1332

Electronic funds transfer, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1333

Administrative practice and procedure, Claims, Government procurement.

48 CFR Part 1334

Earned value management, EVM, EVMS, Major system acquisition.

48 CFR Part 1335

FFRDC, Human subject.

48 CFR Part 1336

Evaluation boards, Government procurement, Reporting and recordkeeping requirements, Selection.

48 CFR Part 1337

Contractor processing, Government Procurement, Information Technology, Security, Service contracting, Standards.

48 CFR Part 1339

Contractor processing, Government procurement, Information Technology, Security, Service contracting.

48 CFR Part 1341

Government procurement, Reporting and recordkeeping requirements, Utilities.

48 CFR Part 1342

Accounting, Government procurement, Indirect cost rates, Postaward conference, Reporting and recordkeeping requirements.

48 CFR Part 1344

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1345

Government procurement, Government property, Reporting and recordkeeping requirements.

48 CFR Part 1346

Government procurement, Inspection, Reporting and recordkeeping requirements, Warranties.

48 CFR Part 1347

Freight, Government procurement, Marking, Reporting and recordkeeping requirements, Transportation.

48 CFR Part 1348

Government procurement, Reporting and recordkeeping requirements, Value Engineering Change Proposals (VECP).

48 CFR Part 1349

Criminal conduct, Default, Fraud, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1350

Government procurement, Hazardous risk, National defense, Nuclear risk, Reporting and recordkeeping requirements.

48 CFR Part 1352

Government procurement, Matrix, Reporting and recordkeeping requirements.

48 CFR Part 1353

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1370

Period of performance, Pre-bid conference, Pre-proposal conference, Site visit.

48 CFR Part 1371

Inspection, Guarantees, Liability, Liens, Ship construction, Ship repair, Vessel, Insurance.

Dated: September 4, 2009.

John F. Charles,

Deputy Assistant Secretary for Administration.

For the reasons stated in the preamble, the Department of Commerce proposes to revise 48 CFR Chapter 13 to read as follows:

CHAPTER 13—DEPARTMENT OF COMMERCE

SUBCHAPTER A—GENERAL

Part

1301 Department of Commerce Acquisition Regulations System.
1302 Definitions of words and terms.
1303 Improper business practices and personal conflicts of interest.
1304 Administration matters.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

1305 Publicizing contact actions.
1306 Competition requirements.
1307 Acquisition planning.
1308 Required sources of supplies and services.
1309 Contractor qualifications.
1311 Describing agency needs.
1312 Acquisition of commercial items.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

1313 Simplified acquisition procedures.
1314 Sealed bidding.
1315 Contracting by negotiation.
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1301.707 Signatory authority.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

1301.000 Scope of part.

This part sets out general Department of Commerce Acquisition Regulation (CAR) policies, including information regarding the maintenance and administration of the CAR, acquisition policies and practices, and procedures for deviation from the CAR and the Federal Acquisition Regulation (FAR) This part describes the Commerce Acquisition Regulation in terms of establishment, relationship to the Federal Acquisition Regulation, arrangement, applicability, and deviation procedures.

Subpart 1301.1—Purpose, Authority, Issuance

1301.101 Purpose.

The CAR establishes uniform acquisition policies and procedures that implement and supplement the FAR. If there is a discrepancy between the CAR and FAR, the FAR will take precedence.

1301.103 Authority.

The CAR is issued under the authority of section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b), and FAR Subpart 1.3 by the Department Procurement Executive pursuant to a delegation initiating from the Secretary of Commerce.

1301.104 Applicability.

The CAR applies to all Department of Commerce (DOC) acquisitions as defined in Part 2 of the FAR, except where expressly excluded.

1301.105 Issuance.

1301.105–1 Publication and Code Arrangement.

(a) The CAR is published in the **Federal Register**, in cumulative form in the Code of Federal Regulations (CFR), and is available online at the U.S. Department of Commerce, Office of Acquisition Management Web site.

(b) The CAR is issued as Chapter 13 of Title 48 of the CFR.

1301.105–2 Arrangement of regulations.

(a) *General.* The CAR is divided into the same parts, subparts, sections, and subsections as the FAR.

(b) *Numbering.* If the DOC does not have supplemental regulations there will be no corresponding coverage in the CAR, and there will be gaps in the CAR numbering system.

1301.105–3 Copies.

(a) Copies of the CAR in **Federal Register** or CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(b) The CAR is available online at the U.S. Department of Commerce, Office of Acquisition Management Web site.

Subpart 1301.3—Agency Acquisition Regulations

1301.301 Policy.

(a) The designee authorized to prescribe the CAR is set forth in the Commerce Acquisition Manual (CAM) 1301.70.

(b) The DOC internal operating guidance and procedures are contained in the CAM and other policy guidance documents issued by the Procurement Executive relating to acquisitions. The DOC Contracting Offices may issue additional guidance and procedures.

1301.303 Publication and codification.

(a) The CAR parallels the FAR in format, arrangement and numbering system. Coverage within the CAR is identified by the prefix ''13'' or ''130'' followed by the complete FAR citation to the subsection level (*e.g.*, CAR coverage of FAR 1.602–1 is cited as 1301.602–1).

(b) Supplementary material without a FAR counterpart will be codified using 70 and up as appropriate for the part, subpart, section, or subsection number (*e.g.*, Part 1370, subpart 1301.70, section 1301.370 or subsection 1301.301–70).

1301.304 Agency control and compliance procedures.

Operating unit counsel shall limit issuance of directives that restrain the flexibilities found in the FAR.

Subpart 1301.4—Deviations From the FAR

1301.403 Individual deviations.

The designee authorized to approve individual deviations from the FAR is set forth in CAM 1301.70.

1301.404 Class deviations.

The designee authorized to approve class deviations from the FAR is set forth in CAM 1301.70.

Subpart 1301.6—Career Development, Contracting Authority, and Responsibilities

1301.601 General.

The agency head for procurement matters is the Chief Financial Officer/Assistant Secretary for Administration (CFO/ASA), unless prohibited by statute. The authority for agency head for procurement matters is delegated to the Procurement Executive as the authority to establish lines of contracting authority within DOC and to implement policies and procedures related to the acquisition process. Specific contracting authorities are set forth in CAM 1301.70.

1301.602 Contracting officers.

1301.602–1 Authority.

In accordance with CAM 1301.70, only individuals who have been certified as contracting officers through issuance of a Certificate of Appointment by the Senior Bureau Procurement Official may exercise the authority of DOC contracting officers. In addition to the authority to enter into, administer, and terminate contracts, contracting officers have been delegated certain functions as set out in Appendix A to CAM 1301.70.

1301.602–170 Provisions and clauses.

Insert clause 1352.201–70, *Contracting Officer's Authority*, in all solicitations and contracts.

1301.602–3 Ratification of unauthorized commitments.

(a) Insert clause 1352.201–71, *Ratification Release*, in a contract document under which payment is made for unauthorized commitments after a ratification has been processed.

(b)(1) Unauthorized commitments occur when the Department accepts goods or services in the absence of an enforceable contract entered into by an authorized official. It is the policy of DOC that all acquisitions are to be made only by Government officials having authority to make such acquisitions. Acquisitions made by other than authorized personnel are contrary to Departmental policy and the Department is not bound by any formal or informal type of agreement or contractual commitment which is made by persons who are not delegated contracting authority. Payment for goods or services accepted in the absence of an authorized commitment may be made only through the ratification process. Unauthorized commitments may be considered matters of serious misconduct and may subject the responsible employees to appropriate disciplinary actions.

(2) The delegation of the ratification authority is set forth in CAM 1301.70. All requests for ratification must fully explain the circumstances that gave rise to the unauthorized commitment and detail, if appropriate, any disciplinary action taken with respect to any responsible employee. Ratifications may be approved only if all criteria in FAR 1.602–3 have been met.

1301–602–370 Ratification approval by Procurement Counsel.

Ratifications may not be approved unless the concurrence of Procurement Counsel is obtained.

1301.603 Selection, appointment, and termination of appointment.

1301.603–1 General.

The Department's procurement career management program and system for the selection, appointment, and termination of appointment of contracting officers are described in CAM 1301.6.

1301.603–2 Selection.

In addition to the criteria set forth in FAR 1.603–2, selection of contracting officers shall be based upon Section 4 of CAM 1301.6.

1301.603–3 Appointment.

In addition to the criteria set forth in FAR 1.603–3, appointment of contracting officers shall be based upon Section 4 of CAM 1301.6.

1301.603–4 Termination.

In addition to the criteria set forth in FAR 1.603–4, termination of contracting officers shall be based upon Section 4 of CAM 1301.6.

1301.670 Appointment of contracting officer's representative (COR).

The Department's Contracting Officer's Representative certification program for the nomination, appointment and cancellation of CORs is described in CAM 1301.670.

1301.670–70 Provisions and clauses.

Insert clause 1352.201–72, *Contracting Officer's Representative (COR),* in all solicitations and contracts where a COR will be appointed.

1301.671 Assignment of program and project managers.

The Department's Program and Project Manager certification program for the assignment and certification of Program and Project Managers is described in CAM 1301.671.

Subpart 1301.7—Determinations and Findings

1301.707 Signatory authority.

Signatory authority for determinations and findings (D&Fs) is specified in the FAR for the associated subject matter unless otherwise noted in CAM 1301.70.

PART 1302—DEFINTIONS OF WORDS AND TERMS

Subpart 1302.1—Definitions

Sec.

1302.101 Definitions.
1302.170 Abbreviations.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1302.1—Definitions

1302.101 Definitions.

Accountable Personal Property means all personal property for which responsibility for control is formally assigned to an individual, and official property records are maintained as set forth in DOC PPMM Chapter 4.

Agency Head (or Head of Agency) (HA) means the Secretary of Commerce, except, pursuant to Department Organization Order (DOO) 10–5, *Chief Financial Officer and Assistant Secretary for Administration,* the head of the agency for procurement matters shall be the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA), unless a statute provides that the authority of the Secretary is non-delegable.

Chief Acquisition Officer (CAO) means the Department's executive-level non-career employee designated pursuant to the *Services Acquisition Reform Act* to advise and assist the head of the agency and other agency officials to ensure the mission of the agency is achieved through the management of the agency's acquisition activities. The CFO/ASA has been designated by the Head of the Agency as the Chief Acquisition Officer for the Department of Commerce.

Civilian Agency Acquisition Council (CAAC) means the council that assists the Administrator of General Services in developing and maintaining the Federal Acquisition Regulation (FAR) System by developing or reviewing all proposed changes to the FAR. The Council is comprised of a representative designated by each of several Federal departments and agencies, including the DOC. The CAAC coordinates its activities with the Defense Acquisition Regulations Council (DARC). The CAAC is authorized under 48 CFR 1.2.

Commerce Acquisition Manual (CAM) means non-regulatory uniform policies and procedures for internal operations associated with acquiring supplies and services within the Department that implements and supplements the FAR and CAR.

Commerce Acquisition Regulation (CAR) means uniform acquisition policies and procedures, which implement and supplement the FAR.

Contracting Activity means the operating units identified under the definition of ''Operating Units'' below. Contracting activities may or may not have authority to operate contracting offices (*see* definition for *Contracting Office*).

Contracting Office means an office that awards or executes contracts for supplies or services and performs post-

award functions. The operating units authorized to operate contracting offices are identified in DAO 208–2.

Contracting Officer means an individual designated authority by the Senior Bureau Procurement Official (BPO) to enter into, administer, and/or terminate contracts and make related determinations and findings. Only those individuals who have been certified as contracting officers, through the issuance of a Certificate of Appointment (Contracting Officer Warrant (SF 1402)), by the BPO in accordance with the requirements and procedures of the CAR and the CAM may exercise the authorities of contracting officers. However, by virtue of their positions, the Head of the Agency, the Procurement Executive, and the Heads of Operating Units are also designated as contracting officers.

Department or Departmental or DOC means the Department of Commerce.

Head of Agency (HA)—see definition for ''Agency Head.''

Head of Contracting Office (HCO) means those individuals designated by the BPO to head the contracting offices within each operating unit that has designated contracting authority to award and administer contracts. In performing their duties, HCOs are empowered to the full limits of the Department's contracting authority. The HCO must be a procurement professional in the GS–1102 occupational series (or equivalent OPM occupational designation). BPOs will issue each HCO a Contracting Officer Warrant that delegates the authority to enter into, administer, and/or terminate contracts and to make related determinations and findings.

Head of the Contracting Activity (HCA) means, for purposes of delegation of contracting authority, officials who are designated as Heads of Operating Units (those who are assigned by the President or by the Secretary to manage the primary or constituent operating units of the DOC) in orders establishing the respective operating units, with the exception of the Office of the Secretary. Such officials are designated as the HCA for procurements initiated in support of the procurement activities of that operating unit. The Chief Financial Officer and Assistant Secretary for Administration has been designated as the HCA for procurements initiated in support of the programs and activities of the Office of the Secretary and all other Secretarial Offices and Departmental Offices.

Office of Small and Disadvantaged Business Utilization (OSDBU), The means the advocacy and advisory office responsible for promoting the use of small, small disadvantaged, 8(a), women-owned, veteran-owned, service-disabled veteran-owned, and HUBZone small businesses within the Department acquisition process.

Office of the Assistant General Counsel for Administration, Employment & Labor Law Division means the Department Legal Office that provides advice and guidance to management regarding employment and labor law issues, including the legal standards for taking adverse and performance-based actions.

Office of the Assistant General Counsel for Administration, Ethics Law and Program Division means the Department Legal Office that provides advice and guidance regarding conflict of interest statutes, ethics regulations, and related laws.

Operating Units are organizational entities outside the Office of the Secretary charged with carrying out specified substantive functions (*i.e.,* programs) of the Department and are identified in DAO 208–2.

Procurement Counsel means, except for the Patent and Trademark Office (PTO), the Office of the Assistant General Counsel for Finance & Litigation, Contract Law Division, the office responsible for providing legal review of applicable contract actions and procurement legal advice to all operating units, and handling procurement-related litigation. ''Procurement Counsel'' for all PTO procurement-related actions means Office of General Law.

Procurement Executive (or Senior Procurement Executive (PE)) means the official appointed pursuant to Executive Order 12931 and the Services Acquisition Reform Act of 2003 to carry out the responsibilities identified in both the Executive Order and the Act. The Director for Acquisition Management is the Procurement Executive for the Department of Commerce.

Senior Bureau Procurement Official (BPO) means the senior career procurement official, within each operating unit that has been delegated contracting authority, who is designated as the Senior Bureau Procurement Official. The BPO must be a procurement professional who has both experience and training in the area of Federal procurement and contracting. HCAs may designate one BPO within their organization to carry out the day-to-day functions of managing the contracting activity. BPOs may also serve as the Head of Contracting Office. The Procurement Executive will issue each BPO a Contracting Officer Warrant which delegates the authority to enter into, administer, and/or terminate contracts and to make related determinations and findings.

1302.170 Abbreviations.

AIR Additional Item Requirements
BPO Senior Bureau Procurement Official
CAAC Civilian Agency Acquisition Council
CAM Commerce Acquisition Manual
CAO Chief Acquisition Officer
CAR Commerce Acquisition Regulation
CFO/ASA Chief Financial Officer/ Assistant Secretary for Administration
CFR Code of Federal Regulations
CO Contracting Officer
COR Contracting Officer's Representative
DAO Departmental Administrative Order
DOC Department of Commerce
DOO Departmental Organizational Order
D&F Determination and Findings
EVMS Earned Value Management System
FAR Federal Acquisition Regulation
HCA Head of Contracting Activity
HCO Head of Contracting Office
IRB Institutional Review Board
JOFOC Justification for Other than Full and Open Competition
NIST National Institute of Standards and Technology
NOAA National Oceanic and Atmospheric Administration
OCI Organizational Conflict of Interest
OCIO Office of the Chief Information Officer
OFPP Office of Federal Procurement Policy
OIG Office of Inspector General
OMB Office of Management and Budget
OS Office of the Secretary
OSDBU Office of Small and Disadvantaged Business Utilization
PE Procurement Executive
PTO Patent and Trademark Office
RFP Request for Proposals
SBA Small Business Administration
OU Operating Unit

PART 1303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1303.1—Safeguards

Sec.
1303.101 Standards of conduct.
1303.101–2 Solicitation and acceptance of gratuities by government personnel.
1303.101–3 Agency regulations.
1303.104 Procurement integrity.
1303.104–4 Disclosure, protection and marking of contractor bid or proposal information and source selection information.

1303.104–7 Violations or possible violations.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting suspected violations of the gratuities clause.
1303.204 Treatment of violations.

Subpart 1303.3—Reports of Suspected Antitrust Violations.

1303.303 Reporting suspected antitrust violations.

Subpart 1303.4—Contingent Fees.

1303.405 Misrepresentations or violations of the covenant against contingent fees.

Subpart 1303.5—Other Improper Business Practices.

1303.502 Subcontractor kickbacks.
1303.502–2 Subcontractor kickbacks.

Subpart 1303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them.

1303.602 Exceptions.

Subpart 1303.7—Voiding and Rescinding Contracts.

1303.704 Policy.
1303.705 Procedures.

Subpart 1303.8—Limitation on the Payment of Funds To Influence Federal Transactions.

1303.804 Policy.
1303.806 Processing suspected violations.

Subpart 1303.9—Whistleblower Protections for Contractor Employees.

1303.905 Procedures for investigating complaints.
1303.906 Remedies.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1303.1—Safeguards

1303.101 Standards of conduct.

1303.101–2 Solicitation and acceptance of gratuities by government personnel.

(a) Suspected violations of the prohibition on soliciting and accepting gratuities shall be reported to the Office of the Inspector General in accordance with DAO 207–10, *Inspector General Investigations.*

(b) To obtain legal advice regarding the solicitation and acceptance of gratuities, contact the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division.

1303.101–3 Agency regulations.

The Department has issued rules implementing Executive Order 11222 prescribing employee standards of conduct (*see* DOC Office of General Counsel Web site).

1303.104 Procurement integrity.

1303.104–4 Disclosure, protection and marking of contractor bid or proposal information and source selection information.

Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with FAR Parts 3, 14 and 15, and CAM 1315.3.

1303.104–7 Violations or possible violations.

Suspected violations of the Procurement Integrity Act shall be reported to the individuals designated in CAM 1301.70.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting suspected violations of the gratuities clause.

Suspected violations of the Gratuities clause shall be reported to the HCA in writing detailing the circumstances. The report must identify the contractor and personnel involved, provide a summary of the pertinent evidence and circumstances that indicate a violation, and include any other available supporting documentation. The HCA will evaluate the report, and, if the allegations appear to support a violation, the matter will be referred to the Head of Contracting Office with copies provided to the Senior Procurement Executive and the DOC Office of Inspector General. *See* DAO 207–10 for procedures.

1303.204 Treatment of violations.

(a) The designee authorized to determine violations of the Gratuities clause is set forth in CAM 1301.70.

(b) Upon receipt of an allegation or evidence of a violation of the Gratuities clause, the designee shall conduct a fact-finding. If there is a basis for further action, a signed notice shall be prepared and sent to the contractor by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. If a reply is not received from the contractor within 45 calendar days of sending the notice, a decision shall be made on the appropriate action to be taken. If a reply is received from the contractor within 45 calendar days of sending the notice, the information in the reply must be considered before making a decision on the appropriate action to be taken. Upon request of the contractor, the contractor shall be provided an opportunity to appear in person to present information concerning the matter. A report shall be prepared following the presentation and the information must be considered when making a decision. A decision shall be made on the basis of all information available, including findings of fact and oral or written information submitted by the contractor. All mitigating factors shall be considered prior to making a final decision concerning what action will be taken.

Subpart 1303.3—Reports of Suspected Antitrust Violations

1303.303 Reporting suspected antitrust violations.

Suspected anti-competitive practices and antitrust law violations, as described in FAR 3.301 and FAR 3.303, shall be reported to the Contract Law Division, by the HCO. A copy of the report shall be sent to the Procurement Executive concurrently with the submission to the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division. The Office of the Assistant General Counsel will submit any required reports to the Attorney General.

Subpart 1303.4—Contingent Fees

1303.405 Misrepresentations or violations of the covenant against contingent fees.

If the contracting officer has specific evidence or other reasonable basis to believe that a violation of the Covenant Against Contingent Fees has occurred, the matter shall be referred to the HCO, who shall, in appropriate circumstances, take one or more of the actions described in FAR 3.405(b). The HCO shall also refer the matter to the DOC Office of the Inspector General as well as the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division. The Office of the Assistant General Counsel for Administration, Ethics Law and Program Division shall refer the matter to the Department of Justice, as appropriate.

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

1303.502–2 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act of 1986 shall be reported to the DOC Office of Inspector General.

Subpart 1303.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

1303.602 Exceptions.

The designee authorized to make an exception to the policy in FAR 3.601 is set forth in CAM 1301.70.

Subpart 1303.7—Voiding and Rescinding Contracts

1303.704 Policy.

The designee authorized to declare void and rescind contracts, in cases in which there has been a final conviction for any violation of 18 U.S.C. 201–224, is set forth in CAM 1301.70.

1303.705 Procedures.

The designee authorized to declare a contract void and rescinded is set forth in CAM 1301.70. The DOC will follow the procedures set forth in FAR 3.705.

Subpart 1303.8—Limitation on the Payment of Funds To Influence Federal Transactions

1303.804 Policy.

The original OMB Form LLL, Disclosure of Lobbying Activities, shall be retained in the contract file and a copy shall be submitted to the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division.

1303.806 Processing suspected violations.

Suspected violations of 31 U.S.C. 1352 shall be referred to the DOC Office of Inspector General and the Senior Procurement Executive.

Subpart 1303.9—Whistleblower Protections for Contractor Employees

1303.905 Procedures for investigating complaints.

The designee authorized to take specified actions related to Inspector General findings regarding whistleblower complaints of contractor employees is set forth in CAM 1301.70.

1303.906 Remedies.

The designee authorized to determine whether a contractor has subjected an employee to reprisal and to determine the appropriate remedy is set forth in CAM 1301.70.

PART 1304—ADMINISTRATIVE MATTERS

Subpart 1304.2—Contract Distribution

Sec.
1304.201 Procedures.
1304.201–70 Accountable personal property.

Subpart 1304.6—Contract Reporting

1304.602 General.
1304.602–70 Federal Procurement Data System.

Subpart 1304.8—Government Contract Files

1304.804 Closeout of contract files.
1304.804–70 Contract closeout procedures.
1304.805 Storage, handling, and disposal of contract files.
1304.805–70 Storage, handling, and disposal of contract files.

Subpart 1304.13—Personal Identity Verification

1304.1301 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1304.2—Contract Distribution

1301.201 Procedures.

1304.201–70 Accountable personal property.

Provide one copy of all contracts and purchase orders for accountable personal property to the appropriate Departmental property management office(s) for inclusion in the Department's personal property system in accordance with the DOC Personal Property Management Manual. Accountable personal property purchased with a Governmentwide commercial purchase card is also to be reported to the property management office.

Subpart 1304.6—Contract Reporting

1304.602 General.

1304.602–70 Federal Procurement Data System.

Departmental Federal Procurement Data System reporting procedures are set forth in CAM 1304.602.

Subpart 1304.8—Government Contract Files

1304.804 Closeout of contract files.

1304.804–70 Contract closeout procedures.

CAM 1304.804 supplements FAR 4.804 with the Department's contract closeout procedures.

1304.805 Storage handling and disposal of contract files.

1304.805–70 Storage, handling, and disposal of contract files.

CAM 1304.804 supplements FAR 4.805 with the Department's procedures for storage, handling, and disposal of contract files.

Subpart 1304.13—Personal Identity Verification

1304.1301 Policy.

(a) Implementation of Federal Information Processing Standards Publication (FIPS PUB) 201 and OMB guidance M–05–24 is set forth in DOC Personal Identify Verification (PIV) Implementation Guidance, which is available on the Office of Security Web site.

(b) The DOC official responsible for verifying contractor employee personal identity is set forth in the DOC Personal Identify Verification (PIV) Implementation Guidance.

Subchapter B—Competition and Acquisition Planning

PART 1305—PUBLICIZING CONTRACT ACTIONS

Subpart 1305.2—Synopses of Proposed Contract Actions.

Sec.
1305.202 Exceptions.

Subpart 1305.4—Release of Information

1305.403 Requests from Members of Congress.
1305.404 Release of long range acquisition estimates.
1305.404–1 Release procedures.

Subpart 1305.5—Paid Advertisements

1305.502 Authority.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1305.2—Synopses of Proposed Contract Actions

1305.202 Exceptions.

The designee authorized to decide, in writing, that advance notice through the GPE (Governmentwide Point of Entry) is not appropriate or reasonable is set forth in CAM 1301.70.

Subpart 1305.4—Release of Information

1305.403 Requests from Members of Congress.

Requests from Members of Congress shall be handled in accordance with the policies and procedures outlined in DAO 218–2.

1305.404 Release of long-range acquisition estimates.

1305.404–1 Release procedures.

The designee authorized to release long-range acquisition estimates is set forth in CAM 1301.70.

Subpart 1305.5—Paid Advertisements

1305.502 Authority.

The designee authorized to provide authorization for publication of paid advertisements in newspapers is set forth in CAM 1301.70. The contracting officer shall obtain written authorization from the designee.

PART 1306—COMPETITION REQUIREMENTS

Subpart 1306.2—Full and Open Competition After Exclusion of Sources

Sec.
1306.202 Establishing or maintaining alternative sources.

Subpart 1306.3—Other Than Full and Open Competition

1306.302 Circumstances permitting other than full and open competition.
1306.302–5 Authorized or required by statute.
1306.303 Justification.
1306.303–70 Documentation and legal review of justifications.
1306.304 Approval of the justification.

Subpart 1306.5—Competition Advocates

1306.501 Requirement.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1306.2—Full and Open Competition After Exclusion of Sources

1306.202 Establishing or maintaining alternative sources.

The authority to exclude a source from a contract action in order to establish or maintain an alternate source is set forth in CAM 1301.70

Subpart 1306.3—Other Than Full and Open Competition

1306.302 Circumstances permitting other than full and open competition.

1306.302–5 Authorized or required by statute.

In accordance with Executive Order 13457, a sole source acquisition may not be justified on the basis of any earmark included in any non-statutory source, except when otherwise required by law or when an earmark meets the criteria for funding set out in Executive Order 13457.

1306.303 Justifications.

1306.303–70 Documentation and legal review of justifications.

The justification for providing for other than full and open competition in accordance with FAR 6.303–2 shall be provided on Form CD–492, *Justification for Other than Full and Open Competition.* If the estimated value of the procurement is over legal review thresholds, concurrence by the Procurement Counsel is required.

1306.304 Approval of the justification.

The designee authorized to approve justifications for other than full and open competition at the dollar thresholds in FAR 6.304 is set forth in CAM 1301.70.

Subpart 1306.5—Competition Advocates

1306.501 Requirement.

The designee authorized to designate a Competition Advocate for the Department and each procuring activity is set forth in CAM 1301.70.

PART 1307—ACQUISITION PLANNING

Subpart 1307.1—Acquisition Plans

Sec.
1307.102 Policy.
1307.103 Agency head responsibilities.
1307.105 Contents of written acquisition plans.

Subpart 1307.3—Contractor versus Government Performance

1307.302 Policy.

Subpart 1307.5—Inherently Governmental Functions

1307.503 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1307.1—Acquisition Plans

1307.102 Policy.

In accordance with FAR 7.102, it is the Department's policy to perform acquisition planning and conduct market research in order to promote the acquisition of commercial items and provide for full and open competition.

1307.103 Agency-head responsibilities.

The designee authorized as responsible for compliance with FAR 7.103 is set forth in CAM 1301.70.

1307.105 Contents of written acquisition plans.

Information on the contents of Acquisition Plans is set forth in CAM 1307.1.

Subpart 1307.3—Contractor versus Government Performance

1307.302 Policy.

The Department's competitive sourcing policy and procedures are set forth in CAM 1307.370.

Subpart 1307.5—Inherently Governmental Functions

1307.503 Policy.

All procurement request packages submitted by program offices to initiate a procurement action for services shall contain a written determination by the designated requirements official that affirms that none of the functions to be performed in the statement of work are inherently governmental. This policy applies to all services other than personal services issued under statutory authority. If the contracting officer determines that there are substantial questions whether the work statement involves performance of inherently governmental functions, the contracting officer shall submit the matter for review by Procurement Counsel. Disagreements regarding the determination shall be resolved by the Head of Contracting Office (HCO) after consultation with counsel.

PART 1308—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1308.8—Acquisition of Printing and Related Supplies

Sec.
1308.802 Policy.
1308.802–70 Printing.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1308.8 –Acquisition of Printing and Related Supplies

1308.802 Policy.

The designee authorized as the Department's central printing authority is set forth in CAM 1301.70.

1308.802–70 Printing.

Insert clause 1352.208–70, *Restrictions on Printing and Duplicating,* in all solicitations and contracts when printing documents may be required in the performance of the contract.

PART 1309—CONTRACTOR QUALIFICATIONS

Subpart 1309.2—Qualifications Requirements

Sec.
1309.202 Policy.
1309.206 Acquisitions subject to qualification requirements.
1309.206–1 General.

Subpart 1309.4—Debarment, Suspension, and Ineligibility

1309.403 Definitions.
1309.405 Effect of listing.
1309.405–1 Continuation of current contracts.
1309.405–2 Restrictions on subcontracting.
1309.406 Debarment.

1309.406–1 General.
1309.406–3 Procedures.
1309.407 Suspension.
1309.407–1 General.
1309.407–3 Procedures.

Subpart 1309.5—Organizational and Consultant Conflicts of Interest

1309.503 Waiver.
1309.503–70 Waiver.
1309.506 Procedures.
1309.507 Solicitation provisions and contract clauses.
1309.507–1 Solicitation provisions.
1309.507–2 Contract clauses.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1309.2—Qualifications Requirements

1309.202 Policy.

(a) The designee authorized to establish qualification requirements is set forth in CAM 1301.70.

(b) The designee authorized to waive the requirements of 9.202 (a)(1)(ii) through (4) for up to 2 years with respect to the item subject to the qualification requirement is set forth in CAM 1301.70. This waiver authority does not apply to the qualification requirements contained in a qualified product list, qualified manufacturer list, or qualification bidders list.

(c) The designee authorized to approve proceeding with a procurement, rather than delay the award in order to provide a potential offeror an opportunity to demonstrate its ability to meet the standards specified in the qualifications, is set forth in CAM 1301.70.

1309.206 Acquisitions subject to qualification requirements.

1309.206–1 General.

When the designee authorized in CAM 1301.70 determines that an emergency exists, or elects before or after award not to enforce a qualification requirement it had established, the qualification requirement may not be thereafter enforced unless the agency complies with FAR 9.202(a).

Subpart 1309.4—Debarment, Suspension, and Ineligibility

1309.403 Definitions.

The designees authorized as the Debarring and Suspending Officials are set forth in CAM 1301.70.

1309.405 Effect of listing.

(a) Contracting officers shall review the Excluded Parties List System (EPLS) listing for contractors after the opening of bids or receipt of proposals and, again, immediately prior to award.

(b) The designee authorized to determine that a compelling reason exists to do business with a debarred/suspended contractor is set forth in CAM 1301.70. This designation does not apply to FAR 23.506(e).

1309.405–1 Continuation of current contracts.

(a) The designee authorized to direct the discontinuance of a contract or subcontract because of a debarment, suspension or proposed debarment is set forth in CAM 1301.70.

(b) A written determination must be issued by the designee authorized in CAM 1301.70 before the following actions can be taken with a contractor that is debarred, suspended or proposed for debarment:

(1) Place any orders exceeding the maximum on an indefinite delivery contract;

(2) Place orders under Federal supply schedule contracts, blanket purchase orders or basic ordering agreements; or

(3) Add new work or exercise options that extend the duration of a current contract or order.

1309.405–2 Restrictions on subcontracting.

The designee authorized to provide, in writing, compelling reasons for allowing Government consent to subcontracts with a contractor who is debarred, suspended or proposed for debarment is set forth in CAM 1301.70.

1309.406 Debarment.

1309.406–1 General.

Debarments and proposed debarments shall be effective throughout the Executive branch of the Government unless the designee authorized in CAM 1301.70 states in writing compelling reasons justifying DOC doing business with the contractor.

1309.406–3 Procedures.

(a) *Investigation and referral.* DOC employees shall immediately refer any cause that might serve as the basis for debarment through the contracting officer to the debarring official.

(b) *Decision-making process.* (1) Procedures shall afford the contractor, and any named affiliates, an opportunity to submit information and argument in opposition to the proposed debarment. This may be done in person, in writing or through a representative.

(2) In actions not based upon a conviction or civil judgment, where the contractor's submission raises a genuine dispute over facts material to the proposed debarment, the following procedures will be followed:

(i) Provide the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person the agency presents;

(ii) A transcribed record of the proceeding will be made, unless the agency and contractor mutually agree to waive the requirement for a transcript. This transcribed record is available to the contractor at cost.

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official in accordance with FAR 9.406–3(c)(1) through (7).

(d) *Debarring official's decision.* (1) For actions based upon a conviction or civil judgment, or when there is no authentic dispute over material facts, the debarring official's decision shall be based on all of the information in the administrative record plus any contractor-submitted data. If there is no suspension in effect, the decision shall be rendered within 30 working days after receipt of any information and argument submitted by the contractor. The debarring official can extend this timeframe for good cause.

(2)(i) When necessary, written findings of fact shall be prepared as to disputed material facts. The debarring official will utilize the information in the written findings of fact, the data submitted by the contractor plus any other information in the administrative record to develop the decision.

(ii) While the debarring official may refer matters involving disputed material facts to another official for findings of fact, the debarring official can disregard any such findings in whole or in part upon a determination that they are clearly erroneous.

(iii) After the conclusion of proceedings with respect to disputed facts, the debarring official will make a decision.

(3) When the proposed debarment is not based upon a conviction or civil judgment, the reason for debarment must be based on a preponderance of the evidence.

(e) *Notice of debarring official's decision.* FAR 9.406–3(e)(1) establishes the notification procedures when a debarment has been imposed, while FAR 9.406–3(e)(2) establishes the procedure when a debarment is not imposed.

(f) Procurement counsel shall assist and advise the debarring official at each stage of the decision-making process.

1309.407 Suspension.

1309.407–1 General.

Suspensions shall be effective throughout the executive branch of the Government, unless the designee set

forth in CAM 1301.70 states in writing compelling reasons for continuing to do business with a suspended contractor.

1309.407–3 Procedures.

(a) *Investigation and referral.* DOC employees shall immediately refer any cause that might serve as the basis for suspension through the contracting officer to the suspending official.

(b) *Decision-making process.* (1) Procedures shall afford the contractor, and any named affiliates, an opportunity to submit information and argument in opposition to the proposed suspension. This may be done in person, in writing or through a representative.

(2) In actions not based upon an indictment, where the contractor's submission raises a genuine dispute over facts material to the proposed suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the following procedures will be followed:

(i) Provide the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person the agency presents;

(ii) A transcribed record of the proceeding will be made, unless the agency and contractor mutually agree to waive the requirement for a transcript. This transcribed record is available to the contractor at cost.

(c) *Notice of suspension.* A notice of suspension shall be issued by the suspending official in accordance with FAR 9.407–3(c)(1) through (6).

(d) *Suspending official's decision.* (1) For actions based upon an indictment, when there is no authentic dispute over material facts, in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all of the information in the administrative record plus any contractor-submitted data.

(2)(i) When necessary, written findings of fact shall be prepared as to the disputed material facts. The suspending official will utilize the information in the written findings of fact, the data submitted by the contractor plus any other information in the administrative record to develop the decision.

(ii) While the suspending official may refer matters involving disputed material facts to another official for findings of fact, the suspending official can disregard any such findings in whole or in part upon a determination that they are clearly erroneous.

(iii) After the conclusion of proceedings with respect to disputed facts, the suspending official will make a decision.

(3) The suspension may be modified or terminated by the suspending official. However such a decision shall be without prejudice to the subsequent imposition of:

(i) Suspension by any other agency; or

(ii) Debarment by any agency.

(4) The suspending official's decision shall be sent to the contractor and any affiliates involved, in writing, by certified mail, return receipt requested.

(e) Procurement counsel shall assist and advise the suspending official at each stage of the decision-making process.

Subpart 1309.5—Organizational and Consultant Conflicts of Interest

1309.503 Waiver.

1309.503–70 Waiver.

(a) The need for a waiver of an organizational conflict of interest (OCI) may be identified by the contracting officer or by a written request submitted by an offeror or contractor. The contracting officer shall review all of the relevant facts and shall refer the matter to the Senior Bureau Procurement Official, who shall make a written recommendation to the Head of Contracting Activity whether a waiver should be granted to allow for a contract award or for continuation of an existing contract.

(b) Criteria for Waiver of OCIs. Issuance of a waiver shall be limited to those situations in which:

(1) The work to be performed under contract is vital to the agency;

(2) There is no party other than the conflicted party that can perform the contract at issue; and

(3) Contractual and/or technical review and supervision methods cannot be employed to mitigate the conflict.

1309.506 Procedures.

The contracting officer shall resolve an actual or potential OCI in a manner consistent with the approval or direction of the designee authorized in CAM 1301.70. If the responsible contracting officer is also the authorized designee in CAM 1301.70, the contracting officer must obtain approval from the Senior Bureau Procurement Official.

1309.507 Solicitation provisions and contract clauses.

1309.507–1 Solicitation provisions.

(a) Insert provision 1352.209–70, *Potential Organizational Conflict of Interest*, substantially as written, in solicitations when the contracting officer determines there is a potential organizational conflict of interest.

(b) Insert the clause with its Alternate I when the contracting officer determines the basic clause should not be modified.

1309.507–2 Contract clauses.

(a) In accordance with FAR 9.507–2, insert clause 1352.209–71, *Limitation of Future Contracting*, substantially as written, when the contractor's eligibility for future prime contract or subcontract awards shall be restricted because of services being provided as stated in FAR 9.505–1 through 9.505–4.

(1) Insert the basic clause when the contractor will be providing systems engineering and/or technical direction. (*See* FAR 9.505–1)

(2) Insert the clause with its Alternate I when the contractor will be preparing specifications or work statements. (*See* FAR 9.505–2)

(3) Insert the clause with its Alternate II when the contractor will be providing technical evaluation or advisory and assistance services. (*See* FAR 9.505–3)

(4) Insert the clause with its Alternate III when the contractor will be obtaining access to proprietary information. (*See* FAR 9.505–4)

(5) Insert the clause with its Alternate IV when the contract is a task order contract. The contracting officer may modify Alternate IV to include a list of systems for which task orders may be issued and indicate which organizational conflict of interest provision in paragraph (a)(2) of this clause shall apply.

(6) Insert the clause with its Alternate V when the contract provides for delivery orders. The contracting officer shall indicate in each delivery order which organizational conflict of interest provision in paragraph (a)(2) of this clause shall apply.

(7) Insert the language in Alternate VI when it is necessary to have the restrictions of this clause included in all or some subcontracts, teaming arrangements, and other agreements calling for performance of work related to the contract.

(b) Insert clause 1352.209–72, *Restrictions against Disclosure*, in service contracts, including architect-engineer contracts, and supply and construction contracts requiring a restriction on the release of information

developed or obtained in connection with performance of the contract.

(c) Insert the clause 1352.209–73, *Compliance with the Laws*, in all solicitations and contracts.

(d) Insert the clause 1352.209–74, *Organizational Conflict of Interest*, in all solicitations and contracts.

(e) Insert clause 1352.209–75, *Title 13 and Non-Disclosure Requirements*, in all solicitations and contracts for services where the contractor will have access to Title 13 data.

PART 1311—DESCRIBING AGENCY NEEDS

Subpart 1311.1—Selecting and Developing Requirements Documents

Sec.
1311.103 Market acceptance.

Subpart 1311.5—Liquidated Damages.

1311.501 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1311.1—Selecting and Developing Requirements Documents

1311.103 Market acceptance.

The designee authorized as the head of the agency is set forth in CAM 1301.70.

Subpart 1311.5—Liquidated Damages

1311.501 Policy.

The designee authorized as the head of the agency is set forth in CAM 1301.70.

PART 1312—ACQUISITION OF COMMERCIAL ITEMS

Subpart 1312.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.
1312.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1312.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

1312.302 Tailoring of provisions and clauses for the acquisition of commercial items.

The authority for approving a request for waiver to tailor a clause, or otherwise include any additional terms or conditions in a solicitation or contract in a manner that is inconsistent with customary commercial practice, is set forth in CAM 1301.70.

Subchapter C—Contracting Methods and Contract Types

PART 1313—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 1313.1—Procedures

Sec.
1313.106 Soliciting competition, evaluation of quotations or offers, award and documentation.
1313.106–2–70 Evaluation of solicitations.

Subpart 1313.2—Actions At or Below the Micro Purchase Threshold

1313.201 General.

Subpart 1313.3—Simplified Acquisitions Methods

1313.301 Governmentwide commercial purchase card.
1313.302 Purchase orders.
1313.302–1–70 Non-commercial purchase orders.
1313.302–3 Obtaining contractor acceptance and modifying purchase orders.
1313.303 Blanket purchase agreements (BPAs).
1313.303–5 Purchases under BPAs.
1313.305 Imprest funds and third party drafts.
1313.305–1 General.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1313.1—Procedures

1313.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

1313.106–2–70 Evaluation of solicitations.

All solicitations using simplified acquisition procedures in FAR Part 13 must include provision 1352.213–70, *Evaluation Utilizing Simplified Acquisition Procedures*, or similar language setting out evaluation criteria.

Subpart 1313.2—Actions At or Below the Micro Purchase Threshold

1313.201 General.

DOC employees, other than warranted contracting officers, must be delegated micro-purchase authority by the designee set forth in CAM 1301.70 according to FAR 1.603–3(b), and must be trained pursuant to CAM 1313.301.

Subpart 1313.3—Simplified Acquisitions Methods

1313.301 Governmentwide commercial purchase card.

The Department's procedures for the use and control of the Governmentwide commercial purchase card are set forth in CAM 1313.301.

1313.302 Purchase orders.

1313.302–1–70 Non-commercial purchase orders.

Insert provision 1352.213–71, *Instructions for Submitting Quotations under the Simplified Acquisition Threshold—Non-Commercial*, or similar language in all solicitations for non-commercial purchase orders under the simplified acquisition threshold. The contracting officer shall indicate whether electronic submissions of quotations will be accepted. Paragraph (b)(4) of provision 1352.213–71 may be tailored based on the evaluation factors.

1313.302–3 Obtaining contractor acceptance and modifying purchase orders.

A contractor's written acceptance of a purchase order modification is required, unless the contracting officer determines otherwise.

1313.303 Blanket Purchase Agreements (BPAs).

1313.303–5 Purchases under BPAs.

(a) Individual purchases shall not exceed the simplified acquisition threshold, subject to the following:

(1) The limitations for individual purchases against BPAs established against Federal Supply Schedule contracts shall be those set forth in the terms and conditions of the schedule contract.

(2) The limitations for individual purchases for commercial item acquisitions against BPAs established under FAR Subpart 13.5 ''Test Program for Certain Commercial Items'' is the simplified acquisition threshold set forth in FAR Subpart 13.5.

1313.305 Imprest funds and third party drafts.

1313.305–1 General.

(a) *Third-Party Drafts.* Third-party drafts are not authorized for use by Department of Commerce agencies.

(b) *Imprest Funds.* The *Imprest Fund Policy Directive*, issued November 9, 1999, by the Department of Treasury, required that all Federal agencies eliminate agency use of imprest funds by October 1, 2001, except where provided under the *Imprest Fund Policy Directive.* Requests for exceptions to the requirements of the Imprest Fund Policy Directive should be addressed to DOC's Director of Financial Management. In the case of an approved exception, DOC's procedures for using imprest funds can be found in the Cash Management Policies and Procedures Handbook, available at the Department of Commerce, Office of Financial Management Web site. A copy of all approved exceptions shall be submitted

to the Senior Bureau Procurement Official.

PART 1314—SEALED BIDDING

Subpart 1314.2—Solicitation of Bids

Sec.
1314.201 Preparation of invitation for bids.
1314.201–7 Contract clauses.

Subpart 1314.4—Opening of Bids and Awards of Contracts.

1314.404 Rejection of bids.
1314.404–1 Cancellation of invitations after opening.
1314.407 Mistakes in bids.
1314.407–3 Other mistakes disclosed before award.
1314.409 Information to bidders.

1314.409–1 Award of unclassified contracts.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1314.2—Solicitation of Bids

1314.201 Preparation of invitation for bids.

1314.201–7 Contract clauses.

The designee authorized to waive the requirement for inclusion of FAR clause 52.214–27 ''Price Reduction for Defective Cost and Pricing Data—Modifications—Sealed Bidding'' in a contract with a foreign government or agency of that government is set forth in CAM 1301.70.

Subpart 1314.4—Opening of Bids and Awards of Contracts

1314.404 Rejection of bids.

1314.404–1 Cancellation of invitations after opening.

The designee authorized to make the determinations prescribed in FAR 14.401–1(c) and (f) are set forth in CAM 1301.70.

1314.407 Mistakes in bids.

1314.407–3 Other mistakes disclosed before award.

The designee authorized to make the determinations prescribed in FAR 14.407–3(a), (b), (c) and (d) is set forth in CAM 1301.70. Concurrence of Procurement Counsel shall be obtained before issuance of any determination under this section.

1314.409 Information to bidders.

1314.409–1 Award of unclassified contracts.

Requests for records shall be governed by the procedures outlined in DAO 205–14 and 15 CFR Part 4.

PART 1315—CONTRACTING BY NEGOTIATION

Subpart 1315.2—Solicitation and Receipt of Proposals and Information.

Sec.
1315.204 Contract format.
1315.204–570 Part IV representations and instructions.
1315.209 Solicitation provisions and contract clauses.

Subpart 1315.3—Source Selection.

1315.303 Responsibilities.
1315.305 Proposal evaluation.

Subpart 1315.4—Contract Pricing.

1315.407 Special cost or pricing areas.
1315.407–4 Should-cost review.

Subpart 1315.6—Unsolicited Proposals.

1315.602 Policy.
1315.603 General.
1315.604 Agency points of contact.
1315.606 Agency procedures.
1615.606–2 Evaluation.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1315.2—Solicitation and Receipt of Proposals and Information

1315.204 Contract format.

The designee authorized to grant exemptions from the uniform contract format is set forth in CAM 1301.70.

1315.204–570 Part IV representations and instructions.

(a) *Section L, Instructions, conditions, and notices to offerors or respondents.* (1) The contracting officer shall insert the provision 1352.215–70, *Proposal Preparation*, in all solicitations. Contracting officers should tailor the provision to best meet the Government's needs. Information requested from offerors in Volume II–Technical Proposal, must correspond to the evaluation factors. Contracting officers should not request information that will not be evaluated in accord with the stated technical evaluation factors. Should electronic submission be allowed by the CO, specific instructions must be added.

(2) Insert a provision similar to 1352.215–71, *Instructions for Oral Presentations,* in solicitations when oral presentations will be used. Contracting officers shall tailor the provision to suit their acquisition.

(3) The contracting officer shall insert the provision 1352.215–72, *Inquiries,* in solicitations as determined by the CO. This provision may be modified to satisfy the needs of specific procurements.

(b) *Section M, Evaluation factors for award.* (1) The contracting officer shall insert provision 1352.215–73, *Evaluation Quantities—Indefinite Quantity Contract,* in solicitations for indefinite quantity and requirements contracts, as appropriate. This provision may be modified to satisfy the needs of specific procurements.

(2) The contracting officer shall insert the provision similar to 1352.215–74, *Best Value Evaluation,* for competitive, best value procurements, tailoring the language as appropriate. If clause 1352.215–74, *Best Value Evaluation,* is used, then clause 1352.215–75 *Evaluation Criteria,* must be used.

(3) The contracting officer shall insert a provision in all solicitations similar to 1352.215–75, *Evaluation Criteria,* to specify evaluation criteria, tailoring the language as appropriate. If the basis for award is lowest price technically acceptable, this must be stated.

(4) The contracting officer shall insert provision 1352.215–76, *Cost or Pricing Data,* in all solicitations when cost or pricing data is required under FAR subpart 15.4.

1315.209 Solicitation provisions and contract clauses.

The designee authorized to waive the examination of records by the Comptroller General is set forth in CAM 1301.70.

Subpart 1315.3—Source Selection

1315.303 Responsibilities.

The contracting officer is designated as the source selection authority for competitive negotiated acquisitions of less than $10,000,000. The source selection authority for large dollar competitive negotiated acquisitions of $10,000,000 or more is the head of the operating unit. The head of the operating unit may re-delegate the authority to a Department manager who is at an organizational level above the contracting officer and who has sufficient rank and professional experience to effectively carry out the functions of a source selection authority.

1315.305 Proposal evaluation.

At the discretion of the contracting officer, cost information may be provided to members of the technical evaluation team.

Subpart 1315.4—Contract Pricing

1315.407 Special cost or pricing areas.

1315.407–4 Should-cost review.

The should-cost review report shall include all elements listed in FAR 15.407–4(a)(1) and be provided to the contracting officer for use in negotiations.

Subpart 1315.6—Unsolicited Proposals

1315.602 Policy.

In accord with FAR 16.602, the DOC encourages the submission of new and innovative ideas which support the DOC mission.

1315.603 General.

DOC will accept for review and consideration unsolicited proposals from any entity. DOC will not pay any costs associated with the preparation of unsolicited proposals. Proposals which do not meet the definition and applicable content and marking requirements of FAR 15.6 will not be considered under any circumstances and will be returned to the submitter. Unsolicited proposals may not be submitted electronically.

1315.604 Agency points of contact.

(a) Unsolicited proposals are to be submitted to the appropriate DOC contracting office. Any person or entity considering the submission of an unsolicited proposal should first determine, based on the subject matter of the proposal, to which DOC operating unit the proposal applies. Proposers should contact the applicable operating unit contracting office to determine procedures for submission and to whom to send the proposal.

(b) Program offices must immediately transmit any unsolicited proposals sent to them to their contracting office. If there is a question concerning which operating unit should evaluate an unsolicited proposal, the contracting office shall identify the proper office, in coordination with the Office of Acquisition Management, if necessary, and transmit the proposal to the applicable contracting office.

1315.606 Agency procedures.

(a) The operating unit contracting office is designated as the point of contact for receipt of unsolicited proposals. Persons within DOC (*e.g.* technical personnel) who receive unsolicited proposals shall forward all documents to their cognizant contracting office.

(b) Within ten working days after receipt by the contracting office of an unsolicited proposal, the contracting office shall review the proposal and determine whether the proposal meets the content and marking requirements of FAR 15.6. If the proposal does not meet these requirements, it shall be returned to the submitter, giving the reasons for noncompliance.

1315.606–2 Evaluation.

(a) If the contracting officer determines, upon initial review, that the unsolicited proposal meets all criteria in FAR 15.606–1, the contracting officer will acknowledge receipt of the proposal, coordinate evaluation with the program office, and provide to the submitter an estimated date that evaluation of the proposal is expected to be completed. The contracting officer shall transmit the proposal to the program office for evaluation, marking it in accord with FAR 15.609(d). If the estimated date for completion of the evaluation cannot be met, the submitter should be informed in a timely manner and provided with a revised evaluation completion date.

(b) The evaluating office shall not reproduce or disseminate the proposal to other offices without the consent of the contracting officer. If the evaluating office requires additional information from the proposer, the evaluator shall request the information through the contracting officer, who will contact the proposer. The evaluator shall not communicate directly with the proposer.

(c) Evaluators shall notify the contracting officer of their recommendations when the evaluation is complete. Following evaluation, the contracting officer shall proceed in accord with FAR 15.607.

PART 1316—TYPES OF CONTRACTS

Subpart 1316.1—Selecting Contract Types

Sec.
1316.103 Negotiating contract type.
1316.103–70 Identifying contract type.

Subpart 1316.2—Fixed Price Contracts

1316.203 Fixed price contracts with economic price adjustment.
1316.203–4 Contract clauses.
1316.206 Fixed-ceiling-price contracts with retroactive price redetermination.
1316.206–3 Limitations.

Subpart 1316.3—Cost-Reimbursement Contracts

1316.307 Contract clauses.

Subpart 1316.4—Incentive Contracts

1316.405 Cost-reimbursement incentive contracts.
1316.405–2 Cost-plus-award-fee contracts.
1316.406 Contract clauses.

Subpart 1316.5—Indefinite Delivery Contracts

1316.501–2–70 Task orders.
1316.505 Ordering.
1316.506 Solicitation provisions and contract clauses.

Subpart 1316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1316.601 Time-and-materials contracts.
1316.601–70 Contract clauses.
1316.602 Labor-hour contracts.
1316.602–70 Contract clauses.
1316.603 Letter contracts.
1316.603–2 Application.
1316.603–3 Limitations.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1316.1—Selecting Contract Types

1316.103 Negotiating contract type.

1316.103–70 Identifying contract type.

The type of contract shall be stated in each contract awarded.

Subpart 1316.2—Fixed-Price Contracts

1316.203 Fixed-price contracts with economic price adjustment.

1316.203–4 Contract clauses.

Contracting officers shall use an economic price adjustment clause based on cost indexes of labor or material after obtaining approval for use of the clause from the head of the contracting office.

1316.206 Fixed-ceiling-price contract with retroactive price redetermination.

1316.206–3 Limitations.

The designee authorized to approve use of fixed-ceiling-price contracts with retroactive price redetermination is set forth in CAM 1301.70.

Subpart 1316.3—Cost-Reimbursement Contracts

1316.307 Contract clauses.

(a) Insert a clause that is substantially the same as 1352.216–70, *Estimated and Allowable Costs,* in all cost-reimbursement contracts.

(b) Insert a clause similar to 1352.216–71, *Level of Effort (Cost-Plus-Fixed-Fee, Term Contract),* in Cost-Plus-Fixed-Fee, Level of Effort contracts.

Subpart 1316.4—Incentive Contracts

1316.405 Cost-reimbursement incentive contracts.

1316.405–2 Cost-plus-award-fee contracts.

Insert clause 1352.216–72, *Determination of Award Fee,* in all cost-plus-award-fee contracts.

1316.406 Contract clauses.

Insert a clause substantially the same as 1352.216–73, *Distribution of Award Fee,* in all cost-plus-award-fee solicitations and contracts, as determined by the contracting officer.

Subpart 1316.5—Indefinite-Delivery Contracts

1316.501–2–70 Task orders.

Insert clause 1352.216–74, *Task Orders,* or a substantially similar clause in task order solicitations and contracts, making changes, as appropriate.

Contracting officers are encouraged to make appropriate modifications to the time requirements and procedures to meet the Government's needs.

1316.505 Ordering.

The department's Task and Delivery Order Ombudsman is designated in CAM 1301.70.

1316.506 Solicitation provisions and contract clauses.

(a) Insert clause 1352.216–75, *Minimum and Maximum Contract Amounts,* in all indefinite quantity contracts, including requirements contracts, if feasible.

(b) Insert a clause similar to 1352.216–76, *Placement of Orders,* in indefinite-delivery solicitations and contracts.

Subpart 1316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1316.601 Time-and-materials contracts.

The designee authorized to approve a time-and-materials contract prior to the execution of the base period when the base period plus any option periods exceeds three years is set forth in CAM 1301.70.

1316.601–70 Contract clauses.

Insert clause 1352.216–77, *Ceiling Price,* in all time-and-materials contracts.

1316.602 Labor-hour contracts.

1316.602–70 Contract clauses.

Insert clause 1352.216–77, *Ceiling Price,* in all labor-hour contracts, including, if feasible, requirements contracts.

1316.603 Letter contracts.

1316.603–2 Application.

(a) With the written approval from the authorized designee in CAM 1301.70, in extreme cases, the contracting officer may authorize an additional period for contract definitization.

(b) If, after exhausting all reasonable efforts, the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement as to price or fee, the contracting officer may determine a reasonable price or fee with approval from the authority designated in CAM 1301.70.

1316.603–3 Limitations.

The designee authorized to determine that a letter contract is suitable so that work can begin immediately is set forth in CAM 1301.70.

PART 1317—SPECIAL CONTRACTING METHODS

Subpart 1317.1—Multi-Year Contracting

Sec.
1317.104 General.
1317.105 Policy.
1317.105–1 Uses.
1317.108 Congressional notification.

Subpart 1317.2—Options

1317.203 Solicitations.

Subpart 1317.5—Interagency Acquisitions under the Economy Act

1317.502 General.
1317.502–70 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1317.1—Multi-Year Contracting

1317.104 General.

The designee authorized to modify requirements of FAR Subpart 17.1 and FAR 52.217–2 is set forth in CAM 1301.70.

1317.105 Policy.

1317.105–1 Uses.

The designee authorized to make the determination to enter into a multi-year contract is set forth in CAM 1301.70.

1317.108 Congressional notification.

Written notification to Congress shall be handled in accordance with the policies and procedures outlined in DAO 218–2.

Subpart 1317.2—Options

1317.203 Solicitations.

The designee authorized to limit option quantities for additional supplies greater than 50 percent of the initial quantity of the same contract line item is set forth in CAM 1301.70.

Subpart 1317.5—Interagency Acquisitions under the Economy Act

1317.502 General.

1317.502–70 Policy.

All Interagency Acquisitions shall adhere to the policy set forth in CAM 1317.570.

PART 1318—EMERGENCY ACQUISITIONS

Subpart 318.2—Emergency Acquisitions Flexibilities

Sec.
1318.201 Contingency operation.
1318.202 Defense or recovery from certain attacks.
1318.270 Emergency acquisition flexibilities.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1318.2—Emergency Acquisition Flexibilities

1318.201 Contingency operation.

The designee authorized to serve as the Head of the Agency under FAR 18.201(b) and (c) is set forth in CAM 1301.70.

1318.202 Defense or recovery from certain attacks.

The designee authorized to serve as the Head of the Agency under FAR 18.202(a), (b) and (c) is set forth in CAM 1301.70.

1318.270 Emergency acquisition flexibilities.

(a) *Authorizing Emergency Acquisition Flexibilities.* The process for authorizing the use of emergency procurement flexibilities within the Department of Commerce may vary depending on the nature and type of the emergency situation. However, generally, if a Senior Bureau Procurement Official (BPO) determines that emergency acquisition flexibilities are required to meet contracting needs during an emergency situation, the BPO must obtain the Senior Procurement Executive's concurrence. In the event that increased warrant authority is needed, the BPO should contact the Senior Procurement Executive.

(b) *Continuity of Operations Plan.* Each Contracting Activity shall have an updated Continuity of Operations Plan, in place designating emergency personnel with warrant levels.

(c) *Management Controls.* Senior BPOs must take affirmative steps to ensure that emergency flexibilities are used solely for requirements that have a clear and direct relationship to the emergency situation, and that appropriate management controls are established and maintained to support the use of the increased thresholds. The Office of Acquisition Management will conduct periodic reviews of transactions made pursuant to the expanded authorities to evaluate whether the transactions:

(1) Were in support of the emergency situation;

(2) Were made by an authorized individual;

(3) Were appropriately documented; and

(4) Provided the maximum practicable opportunity for small business participation.

Subchapter D—Socioeconomic Programs

PART 1319—SMALL BUSINESS PROGRAMS

Subpart 1319.2—Policies

Sec.
1319.201 General policy.
1319.202 Specific policies.
1319.202–70 Small business set-aside review form.

Subpart 1319.5—Set-Asides For Small Business

1319.502 Setting aside acquisitions.
1319.502–3 Partial set-asides.
1319.505 Rejecting Small Business Administration recommendations.

Subpart 1319.6—Certificates of Competency and Determination of Responsibility

1319.602 Procedures.
1319.602–1 Referral.

Subpart 1319.7—The Small Business Subcontracting Program

1319.705 Responsibilities of the contracting officer under the subcontracting assistance program.
1319.705–4 Reviewing the subcontracting plan.

Subpart 1319.8—Contracting with the Small Business Administration (the 8(a) Program)

1319.800 General.
1319.811 Preparing the contracts.
1319.811–3 Contract clauses.
1319.812 Contract administration.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1319.2–Policies

1319.201 General policy.

(a) The DOC Office of Small and Disadvantaged Business Utilization (OSDBU) is headed by a Director who shall report and be responsible to the Deputy Secretary on matters of policy and legislative requirements.

(b) Each Contracting Office shall appoint Small Business Specialists to assist the HCA in effectively implementing the small business programs, including achieving program goals.

1319.202 Specific policies.

Procurement actions valued above $100,000 will be reviewed by the Director, OSDBU, or designee for the purpose of making recommendations for solicitation/award under FAR Part 19.

1319.202–70 Small business set-aside review form.

Form CD 570, Small Business Set-Aside Review, shall be submitted for approval to the Operating Unit Counsel Small Business Specialist, and forwarded to the OSDBU for approval. If applicable, the Form CD 570 will be submitted to the SBA Procurement Center Representative (PCR) for review. The Form CD 570 is required for:

(a) Procurement actions valued above $100,000;

(b) Modifications to existing contracts that add new work valued over $550,000 or that increase the total contract cost to over $550,000;

(c) Consolidation of two or more procurement requirements for goods and services.

Subpart 1319.5—Set-Asides for Small Business

1319.502 Setting aside acquisitions.

1319.502–3 Partial set-asides.

A partial set-aside shall not be made if there is a reasonable expectation that only two capable concerns (one large and one small) will respond with offers unless the set-aside is authorized by the designee set forth in CAM 1301.70.

1319.505 Rejecting Small Business Administration recommendations.

(a) The designee authorized to render a decision on the Small Business Administration's appeal of the contracting officer's decision is set forth in CAM 1301.70.

(b) In response to SBA's appeal to the agency head, the designee authorized in CAM 1301.70 shall forward justification for their decision to the agency head.

(c) The designee authorized in CAM 1301.70 shall reply to the SBA within 30 working days after receiving the appeal. The decision of the designee shall be final.

Subpart 1319.6—Certificates of Competency and Determination of Responsibility

1319.602 Procedures.

1319.602–1 Referral.

When the contracting officer determines that the successful small business offeror lacks certain elements of responsibility, the contracting officer will withhold award and refer the matter to the cognizant Small Business Administration Government Contracting Area Office. A copy of the referral shall be provided to the Director of the OSDBU.

Subpart 1319.7—The Small Business Subcontracting Program

1319.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1319.705–4 Reviewing the subcontracting plan.

The prime contractor's proposed subcontracting plan shall be reviewed by the contracting officer for adequacy, ensuring that the required information, goals, and assurances are included. The contracting officer may obtain advice and recommendations from the SBA procurement center representative, the contracting activity's small business specialist and the DOC OSDBU. The CO shall give the reviewers sufficient time and information to review the plan and ask questions.

Subpart 1319.8—Contracting with the Small Business Administration (the 8(a) Program)

1319.800 General.

(a) By Partnership Agreement between the Small Business Administration (SBA) and the Department of Commerce, the SBA delegated authority to the Senior Procurement Executive to enter into 8(a) prime contracts and purchase orders. To implement this authority, the Senior Procurement Executive has authorized a class FAR deviation to applicable portions of FAR Subpart 19.8 and FAR Part 52. Under the class deviation, the authority to enter into 8(a) prime contracts and purchase orders is re-delegated to contracting officers.

(b) When awarding 8(a) contracts and purchase orders, contracting officers shall operate in accordance with the terms of the Partnership Agreement and take full advantage of the streamlined procedures in the agreement. Contracting officers shall review the responsibilities and procedures for 8(a) awards as outlined in the Partnership Agreement and work closely with their respective Small Business Specialists and the OSDBU.

(c) The Partnership Agreement contains the procedures for submitting an offer letter to the appropriate SBA office. Contracting officers shall provide a copy of all offering letters to the OSDBU when they are transmitted to SBA.

1319.811 Preparing the contracts.

1319.811–3 Contract clauses.

(a) The contracting officer shall insert the clause 1352.219–70, *Section 8(a) Direct Award (Deviation),* in direct contracts and purchase orders processed under the Partnership Agreement. The clauses at FAR 52.219–11, Special 8(a) Contract Conditions, 52.219–12, Special 8(a) Subcontract Conditions, and 52.219–17, Section 8(a) Award, *shall not be used.*

(b) The contracting officer shall insert the clause 1352.219–71, *Notification to Delay Performance (Deviation),* in solicitations and purchase orders issued under the Partnership Agreement.

(c) The contracting officer shall insert the clause 1352.219–72, *Notification of Competition Limited to Eligible 8(a) Concerns, Alternate III (Deviation),* when the acquisition is processed under the Partnership Agreement.

1319.812 Contract administration.

Awards under the Partnership Agreement are subject to 15 U.S.C. 637(a)(21). These contracts shall contain the clause 1352.219–70, *Section 8(a) Direct Award (Deviation),* which requires the contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 1322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1322.1—Basic Labor Policies

Sec.
1322.101 Labor relations.
1322.101–1 General.
1322.101–3 Reporting labor disputes.
1322.101–4 Removal of items from contractor's facilities affected by work stoppages.
1322.103 Overtime.
1322.103–4 Approvals.

Subpart 1322.3—Contract Work Hours and Safety Standards Act

1322.302 Liquidated damages and overtime pay.

Subpart 1322.4—Labor Standards for Contracts Involving Construction

1322.404 Davis-Bacon Act wage determination.
1322.404–6 Modification of wage determination.
1322.406 Administration and enforcement.
1322.406–8 Investigations.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.604 Exemptions.
1322.604–2 Regulatory exemptions.

Subpart 1322.8—Equal Employment Opportunity

1322.805 Procedures.
1322.807 Exemptions.

Subpart 1322.10—Service Contract Act of 1965, as amended

1322.1001 Definitions.

Subpart 1322.13—Special Disabled Veterans of the Vietnam Era, and Other Eligible Veterans

1322.1305 Waivers.

Subpart 1322.14—Employment of Workers with Disabilities

1322.1403 Waivers.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1322.1—Basic Labor Policies

1322.101 Labor relations.

1322.101–1 General.

The designee authorized to designate programs or requirements for contractors notifying the Government of actual or potential labor disputes is set forth in CAM 1301.70.

1322.101–3 Reporting labor disputes.

(a) The designee authorized to report any potential or actual labor disputes that may interfere with performing any contracts under its cognizance is designated in CAM 1301.70

(b) The contracting officer shall seek legal advice and assistance from Procurement Counsel when a potential or actual labor dispute that may interfere with the contract performance occurs.

1322.101–4 Removal of items from contractors' facilities affected by work stoppages.

The contracting officer shall obtain approval from the head of the contracting office and seek legal advice before initiating any action in accordance with FAR 22.101–4.

1322.103 Overtime.

1322.103–4 Approvals.

Approval of use of overtime may be granted by the approving official as set forth in CAM 1301.70.

Subpart 1322.3—Contract Work Hours and Safety Standards Act

1322.302 Liquidated damages and overtime pay.

The designee authorized to find that the administratively determined liquidated damages due under FAR 22.302(a) are incorrect or that the contractor or subcontractor inadvertently violated the Contract Work Hours and Safety Standards Act is set forth in CAM 1301.70.

Subpart 1322.4—Labor Standards for Contracts Involving Construction

1322.404 Davis-Bacon Act wage determination.

1322.404–6 Modification of wage determination.

The designee authorized to request an extension beyond 90 days after bid opening from the Department of Labor Administrator, Wage and Hour Division is set forth in CAM 1301.70.

1322.406 Administration and enforcement.

1322.406–8 Investigations.

The designee authorized to process a contracting officer's report on labor standards investigations is set forth in CAM 1301.70.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.604 Exemptions.

1322.604–2 Regulatory exemptions.

The designee authorized to request that the Secretary of Labor exempt a contract or class of contracts from Walsh-Healey Act stipulations is set forth in CAM 1301.70.

Subpart 1322.8—Equal Employment Opportunity

1322.805 Procedures.

The designee authorized to approve award without pre-award clearance is set forth in CAM 1301.70.

1322.807 Exemptions.

The designee authorized to exempt a contract from all or part of Executive Order 11246 for national security purposes is set forth in CAM 1301.70.

Subpart 1322.10—Service Contract Act of 1965, as Amended

1322.1001 Definitions.

The DOC labor advisor is the Assistant General Counsel for Administration/Employment & Labor Law Division.

Subpart 1322.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

1322.1305 Waivers.

(a) The designee authorized to waive any requirement in FAR 22.13 if it is determined that the contract is essential to national security is set forth in CAM 1301.70.

(b) The contracting officer must submit requests for waivers to the designee authorized under 1322.1305 (a). The request shall include a justification for the waiver and be available in electronic format.

Subpart 1322.14—Employment of Workers with Disabilities

1322.1403 Waivers.

(a) The designee authorized to waive any or all terms of the clause at FAR 52.222–36 is set forth in CAM 1301.70.

(b) The designee authorized, with the concurrence of the Deputy Assistant Secretary of Labor, to waive any requirement of FAR Subpart 22.14 when it is determined that the contract is essential to the national security, is set forth in CAM 1301.70.

(c) The contracting officer must submit requests for waivers to the

designee authorized under 48 CFR 1322.1403 (a) and (b). The request shall include a justification for the waiver and be available in electronic format.

PART 1323—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 1323.2—Energy and Water Efficiency and Renewable Energy

Sec.
1323.204 Procurement exemptions.

Subpart 1323.4—Use of Recovered Materials

1323.404 Agency affirmative procurement programs.
1323.404–70 DOC affirmative procurement program.

Subpart 1323.5—Drug-Free Workplace

1323.506 Suspension of payments, termination of contract and debarment and suspension actions.

Subpart 1323.7—Contracting for Environmentally Preferable and Energy Efficient Products and Services

1323.705 Electronic products environmental assessment tool.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1323.2—Energy and Water Efficiency and Renewable Energy

1323.204 Procurement exemptions.

The designee authorized to exempt the procurement of an ENERGY STAR or Federal Energy Management Program (FEMP)-designated product as described in FAR 23.203 is set forth in CAM 1301.70.

Subpart 1323.4—Use of Recovered Materials

1323.404 Agency affirmative procurement programs.

1323.404–70 DOC affirmative procurement program.

The Department of Commerce's affirmative procurement program is described in CAM 1323.70.

Subpart 1323.5—Drug-Free Workplace

1323.506 Suspension of payments, termination of contract and debarment and suspension actions.

The designee authorized to waive a determination to suspend contract payments, terminate a contract for default, or debar or suspend a contractor for Drug-Free Workplace violations, is set forth in CAM 1301.70. This authority may not be delegated.

Subpart 1323.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

1323.705 Electronic products environmental assessment tool.

The procedures for granting exceptions to the requirement in FAR 23.705 are set forth in CAM 1323.70

PART 1324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1324.1—Protection of Individual Privacy

Sec.
1324.103 Procedures.

Subpart 1324.2—Freedom of Information Act

1324.203 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1324.1—Protection of Individual Privacy

1324.103 Procedures.

DOC rules implementing the Privacy Act of 1974 are described in 15 CFR Part 4.

Subpart 1324.2—Freedom of Information Act

1324.203 Policy.

DOC's implementation of the Freedom of Information Act is described in 15 CFR Part 4 and DAO 205–14.

PART 1325—FOREIGN ACQUISITION

Subpart 1325.1—Buy American Act—Supplies

Sec.
1325.103 Exceptions.
1325.105 Determining reasonableness of cost.

Subpart 1325.2—Buy American Act—Construction Materials

1325.204 Evaluating offers of foreign construction material.

Subpart 1325.10—Additional Foreign Acquisition Regulations

1325.1001 Waiver of right to examination of records.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1325.1—Buy American Act—Supplies

1325.103 Exceptions.

(a) The designee authorized to make a determination that domestic preference would be inconsistent with the public interest in a case where the DOC has an agreement with a foreign government providing a blanket exception to the Buy America Act is set forth in CAM 1301.70.

(b)(1) The contracting officer shall submit documentation supporting a nonavailability determination to the DOC's representative to the Civilian Agency Acquisition Council (CAAC). The DOC representative shall forward the documentation to the CAAC for possible removal of the product from the product nonavailablity list at FAR 25.104.

(2) The contracting officer shall submit documentation supporting a determination that nonavailabilty of an article is likely to affect future acquisitions to the DOC's representative to the CAAC for possible addition to the product nonavailability list at FAR 25.104.

1325.105 Determining reasonableness of cost.

The designee authorized to make a written determination that the use of higher evaluation factors than those in FAR 25.105(b) is appropriate is set forth in CAM 1301.70.

Subpart 1325.2—Buy American Act—Construction Materials

1325.204 Evaluating offers of foreign construction material.

The designee authorized to specify a percentage higher than the 6 percent that the contracting officer must add to the cost of any foreign construction material proposed for exception from the requirements of the Buy America Act is set forth in CAM 1301.70.

Subpart 1325.10—Additional Foreign Acquisition Regulations

1325.1001 Waiver of right to examination of records.

The designee authorized to execute a determination and findings in accordance with FAR 25.1001(a)(2)(iii) set forth in CAM 1301.70.

PART 1326—OTHER SOCIOECONOMIC PROGRAMS

Subpart 1326.2—Disaster or Emergency Assistance Activities

Sec.
1326.203 Transition of work.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1326.2—Disaster or Emergency Assistance Activities

1326.203 Transition of work.

The designee authorized to determine that transitioning response, relief, and/or reconstruction activity to a local firm, or firms, is not feasible or practicable is set forth in CAM 1301.70.

Subchapter E—General Contracting Requirements

PART 1327—PATENTS, DATA, AND COPYRIGHTS

Subpart 1327.2—Patents and Copyrights

Sec.
1327.201 Patent and copyright infringement liability.
1327.201–2 Contract clauses.

Subpart 1327.3—Patent Rights under Government Contracts

1327.303 Contract clauses.
1327.304 Procedures.
1327.304–4 Appeals.
1327.305 Administration of patent rights clauses.
1327.305–2 Administration by the Government.

Subpart 1327.4—Rights in Data and Copyrights

1327.404 Basic rights in data clause.
1327.404–4 Contractor's release, publication, and use of data.
1327.404–5 Unauthorized, omitted, or incorrect markings.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1327.2—Patents and Copyrights.

1327.201 Patent and copyright infringement liability.

1327.201–2 Contract clauses.

The designee authorized to approve the insertion of clause 52.227–5, *Waiver of Indemnity,* in solicitations and contracts is set forth in CAM 1301.70.

Subpart 1327.3—Patent Rights under Government Contracts

1327.303 Contract clauses.

(a) The designee authorized to determine, at contract award, that it would be in the national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement is set forth in CAM 1301.70.

(b) The designee authorized to determine that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of chapter 18 of title 35 of the United States Code is set forth in CAM 1301.70.

(c) The designee authorized to determine, at contract award, that it would be in the national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement is set forth in CAM 1301.70.

1327.304 Procedures.

1327.304–4 Appeals.

The designee authorized to provide the contractor with a written statement of the basis for taking the actions described in FAR 27.304–5(a) is set forth in CAM 1301.70.

1327.305 Administration of patent rights clauses.

1327.305–2 Administration by the Government.

The contracting officer shall promptly furnish all invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses to the DOC Patent Attorney.

Subpart 1327.4—Rights in Data and Copyrights

1327.404 Basic rights in data clause.

1327.404–4 Contractor's release, publication, and use of data.

(a) Insert clause 1352.227–70, *Rights in Data, Assignment of Copyright,* in all solicitations and contracts if FAR Clause 52.227–17 has been used in the solicitation or contract and the contracting officer wants the contractor to assign copyright to the Government.

(b) In appropriate cases, the contracting officer may place limitations or restrictions on the contractor's exercise of its rights in data first produced in the performance of the contract, including a requirement to assign copyright to the Government or another party

1327.404–5 Unauthorized, omitted, or incorrect markings.

The designee authorized to concur with the contracting officer's determination that markings are not authorized is set forth in CAM 1301.70.

PART 1328—BONDS AND INSURANCE

Subpart 1328.1—Bonds and Other Financial Protections

Sec.
1328.101 Bid guarantees.
1328.101–1 Policy on use.
1328.105 Other types of bonds.
1328.106 Administration.
1328.106–2 Substitution of surety bonds.
1328.106–6 Furnishing information.

Subpart 1328.2—Sureties and Other Security for Bonds.

1328.203 Acceptability of individual sureties.
1328.203–7 Exclusion of individual sureties.

Subpart 1328.3—Insurance

1328.305 Overseas workers' compensation and war-hazard insurance.
1328.310 Contract clause for work on a Government installation.
1328.310–70 Solicitation provisions and contract clauses.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1328.1—Bonds and Other Financial Protections

1328.101 Bid guarantees.

1328.101–1 Policy on use.

The designee authorized to make a class waiver for the requirement to obtain a bid guarantee when a performance bond or a performance and payment bond is required is set forth in CAM 1301.70.

1328.105 Other types of bonds.

The designee authorized to approve using other types of bonds in connection with acquiring particular supplies or services is set forth in CAM 1301.70.

1328.106 Administration.

1328.106–2 Substitution of surety bonds.

The designee authorized to approve substituting a new surety bond for the previously approved original bond is set forth in CAM 1301.70.

1328.106–6 Furnishing information.

When a payment bond has been provided for a contract, the designee authorized to furnish a certified copy of the bond and the contract to any person who makes a proper request is set forth in CAM 1301.70.

Subpart 1328.2—Sureties and Other Security for Bonds

1328.203 Acceptability of individual sureties.

(a) Contracting officers shall obtain the opinion of the Procurement Counsel as to the adequacy of the documents pledging the assets of an individual surety prior to accepting bid guarantee and payment and performance bonds.

(b) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the DOC Office of Inspector General. Policies and procedures for the initiation and conduct of investigations by the Office of Inspector General are prescribed in DAO 207–10, *Inspector General Investigations.*

1328.203–7 Exclusion of individual sureties.

The designee authorized to exclude an individual from acting as a surety on bonds submitted by offerors on procurements by the executive branch of the Federal Government is set forth in CAM 1301.70.

Subpart 1328.3—Insurance

1328.305 Overseas workers' compensation and war-hazard insurance.

The designee authorized to recommend a waiver to the Secretary of Labor is set forth in CAM 1301.70.

1328.310 Contract clause for work on a Government installation.

1328.310–70 Solicitation provisions and contract clauses.

(a) Insert clause 1352.228–70, *Insurance Coverage,* in all contracts when:

(1) Government property is involved;

(2) The contract amount is expected to be over the simplified acquisition threshold, and

(3) The contract will require work on a Government installation.

(b)(1) The clause is not required in fixed-price solicitations and contracts if:

(i) Only a small amount of work is required on the Government installation (*e.g.,* a few brief visits per month); or

(ii) All the work on the Government installation is to be performed outside the United States, its possessions and Puerto Rico.

(2) The contracting officer may increase the dollar limits established in the clause when it is determined to be in the best interest of the Government. Prior to increasing the dollar limits the contracting officer shall seek the advice of Procurement Counsel.

(c) Insert clause 1352.228–71, *Deductibles Under Required Insurance Coverage—Cost-Reimbursement,* in all cost-reimbursement contracts when the clause at 1352.228–70, *Insurance Coverage,* is used.

(d) Insert clause 1352.228–72, *Deductibles Under Required Insurance Coverage—Fixed Pri*ce, in all fixed-price contracts when the clause at 1352.228–70, *Insurance Coverage,* is used.

(e) Insert clauses 1352.228–73 through 1352.228–75, unless otherwise indicated by the specific instructions for their use below, in any contract for the lease of aircraft.

(f) Insert clause 1252.228–73, *Loss of or Damage to Leased Aircraft,* in any contract for the lease of aircraft, except in the following circumstances:

(1) When the hourly rental rate does not exceed $250 and the total rental cost for any single transaction is not in excess of $2,500:

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(g) Insert clause 1352.228–74, *Fair Market Value of Aircraft,* in all aircraft lease/rentals.

(h) The contracting officer shall insert the clause at 1352.228–75, *Risk and Indemnities,* in any contract for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(i) Insert clause 1352.228–76, *Approval of Group Insurance Plans,* in all cost reimbursable contracts.

(j) The contractor shall submit the plan to the CO for approval under cost-reimbursement contracts, before buying insurance under a group insurance plan. Any change in benefits provided under an approved plan that can reasonably be expected to increase significantly the cost to the Government shall require similar approval.

PART 1329—TAXES

Subpart 1329.1—General

Sec.
1329.101 Resolving tax problems.

Subpart 1329.2—Federal Excise Taxes.

1329.203 Other Federal tax exemptions.
1329.203–70 DOC Federal tax exemption.

Subpart 1329.3—State and Local Taxes

1329.303 Application of State and local taxes to government contractors and subcontractors.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1329.1—General

1329.101 Resolving tax problems.

Legal questions relating to tax issues should be referred to the Procurement Counsel.

Subpart 1329.2—Federal Excise Taxes

1329.203 Other Federal tax exemptions.

1329.203–70 DOC Federal tax exemption.

(a) The Office of Acquisition Management has obtained a permit from the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives enabling DOC and its contractors to purchase spirits (*e.g.,* specially denatured spirits) tax-free for non-beverage Government use.

(b) When purchasing spirits for non-beverage use by DOC personnel, the contracting officer shall attach a copy of the permit to the contract. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated

Subpart 1329.3—State and Local Taxes

1329.303 Application of State and local taxes to government contractors and subcontractors.

The designee authorized to review a proposed designation of a contractor as an agent of the Government is set forth in CAM 1301.70.

PART 1330—COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 1330.2—CAS Program Requirements

Sec.
1330.201 Contract requirements.
1330.201–5 Waiver.
1330.202 Disclosure requirements.
1330.202–2 Impracticality of submission.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1330.2—CAS Program Requirements

1330.201 Contract requirements.

1330.201–5 Waiver.

The designee authorized to waive the applicability of Cost Accounting Standards for a particular contract or subcontract is set forth in CAM 1301.70.

1330.202 Disclosure requirements.

1330.202–2 Impracticality of submission.

The DOC Head of Agency for Procurement is authorized to determine that it is impractical to secure a Disclosure Statement, although submission is required, and to authorize contract award without obtaining the Statement.

PART 1331—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1331.1—Applicability

Sec.
1331.101 Objectives.

Subpart 1331.2—Contracts with Commercial Organizations

1331.205 Selected costs.
1331.205–6 Compensation for personal services.
1331.205–32 Precontract costs.
1331.205–70 Duplication of effort.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1331.1—Applicability

1331.101 Objectives.

The designee authorized to approve individual deviations concerning cost principles is set forth in CAM 1301.70.

Subpart 1331.2—Contracts with Commercial Organizations

1331.205 Selected costs.

1331.205–6 Compensation for personal services.

The designee authorized to waive cost allowability limitations under certain circumstances regarding compensation of foreign nationals is set forth in CAM 1301.70.

1331.205–32 Precontract costs.

If precontract costs are anticipated, pursuant to negotiations and in anticipation of contract award, insert clause 1352.231–70 *Precontract Costs,* in the contract.

1331.205–70 Duplication of effort.

The Department will not pay any costs for work that is duplicative of costs charged against any other contract, subcontract or Government source. Insert clause 1352.231–71, *Duplication of Effort,* in all cost-reimbursement, time and materials, and labor hour solicitations and contracts when applicable.

PART 1332—CONTRACT FINANCING

Sec.

1332.003 Simplified acquisition procedures financing.
1332.006 Reduction or suspension of contract payments upon finding of fraud.
1332.006–1 General.
1332.006–3 Responsibilities.
1332.006–4 Procedures.
1332.006–5 Reporting.

Subpart 1332.1—Non-Commercial Item Purchase Financing

1332.114 Unusual contract financing.

Subpart 1332.2—Commercial Item Purchase Financing

1332.201 Statutory authority.
1332.202 General.
1332.202–1 Policy.

Subpart 1332.4—Advance Payments for Non-Commercial Items

1332.402 General.
1332.404 Exclusions.
1332.407 Interest.

Subpart 1332.5—Progress Payments Based on Costs

1332.501 General.
1332.501–2 Unusual progress payments.

Subpart 1332.7—Contract Funding

1332.702 Policy.
1332.702–70 Forms.

Subpart 1332.8—Assignment of Claims

1332.802 Conditions.

Subpart 1332.9—Prompt Payment

1332.903 Responsibilities.
1332.906 Making payments.

Subpart 1332.11—Electronic Funds Transfer

1332.1108 Payment by Governmentwide commercial purchase card.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

1332.003 Simplified acquisition procedures financing.

Contract financing may be provided for purchases made under the authority of FAR Part 13. Contract financing shall be made in accordance with FAR Part 32.

1332.006 Reduction or suspension of contract payments under finding of fraud.

1332.006–1 General.

The designee authorized to exercise the responsibility to reduce or suspend contract payments is set forth in CAM 1301.70.

1332.006–3 Responsibilities.

DOC personnel shall immediately report to the Office of Inspector General any apparent or suspected instances where a contractor's request for advance, partial or progress payments is based on fraud in accordance with DAO 207–10, *Inspector General Investigations.*

1332.006–4 Procedures.

(a) The Agency Head as described under 1332.006–4 is set forth in CAM 1301.70.

(b) The Office of Inspector General shall perform the function of the Remedy Coordination Official.

1332.006–5 Reporting.

In accordance with 41 U.S.C. 255, the head of an agency shall prepare a report for each fiscal year in which a recommendation has been received pursuant to FAR 32.006–4(a).

Subpart 1332.1—Non-Commercial Item Purchase Financing

1332.114 Unusual contract financing.

The designee authorized to approve unusual contract financing arrangements is set forth in CAM 1301.70.

Subpart 1332.2—Commercial Item Purchase Financing

1332.201 Statutory authority.

Payment for commercial items may be made under such terms and conditions as the designee authorized in CAM 1301.70 determines are appropriate or customary in the commercial marketplace and are in the best interest of the United States.

1332.202 General.

1332.202–1 Policy.

The designee authorized to approve unusual contract financing is set forth in CAM 1301.70.

Subpart 1332.4—Advance Payments for Non-Commercial Items

1332.402 General.

(a) Advanced payment may be authorized for contracts, other than those at FAR 32.403(a) and (b), only if other types of financing are not reasonably available to the contractor in adequate amounts.

(b) The designee authorized to determine when advance payment is in the public interest or facilitates national defense is set forth in CAM 1301.70.

1332.404 Exclusions.

Advance payments may be authorized for items listed in FAR 32.404(a).

1332.407 Interest.

The designee authorized to approve advance payment without interest is as set forth in CAM 1301.70.

Subpart 1332.5—Progress Payments Based on Costs

1332.501 General.

1332.501–2 Unusual progress payments.

The designee authorized to approve a contractor's request for unusual progress payments is set forth in CAM 1301.70.

Subpart 1332.7—Contract Funding

1332.702 Policy.

Contracting officers shall obtain assurances of available funds only from properly authorized designated certifying officers in accordance with Part 4, Section 1110 of the Treasury Financial Manual.

1332.702–70 Forms.

Contracting officers must obtain an electronic or hardcopy procurement request form on which the availability of adequate funds have been certified by a designated certifying officer. This form must have the name of the certifying official and the certified available funds, as well as the technical and other specifications of the request, administrative approvals, clearances, and information for processing payment.

Subpart 1332.8—Assignment of Claims

1332.802 Conditions.

The designee authorized to receive the written notice of assignment is set forth in CAM 1301.70.

Subpart 1332.9—Prompt Payment

1332.903 Responsibilities.

The designee authorized to establish Prompt Payment policies and procedures is set forth in CAM 1301.70.

1332.906 Making payments.

The designee authorized to allow invoice payments earlier than 7 days prior to the due date as specified in the contract is set forth in CAM 1301.70.

Subpart 1332.11—Electronic Funds Transfer

1332.1108 Payment by Governmentwide commercial purchase card.

Use of the Governmentwide commercial purchase card is subject to the requirements of the FAR, other internal Departmental policies, as well as operating unit policies and procedures related to the purchase card. All purchases made with the purchase card must comply with all procedures and documentation requirements that apply to the procurement action.

PART 1333—PROTESTS, DISPUTES, AND APPEALS

Subpart 1333.1—Protests

Sec.
1333.101 Definitions.
1333.102 General.
1333.103 Protests to the agency.
1333.104 Protests to GAO.
1333.104–70 Protests to GAO and Court of Federal Claims.

Subpart 1333.2—Disputes and Appeals

1333.203 Applicability.
1333.206 Initiation of a claim.
1333.211 Contracting officer's decision.
1333.212 Contracting officer's duties upon appeals.
1333.215 Contract clauses.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1333.1—Protests

1333.101 Definitions.

Protest Decision Authority means agency officials above the level of the contracting officer who have been designated by the Procurement Executive to issue agency protest decisions under Executive Order 12979.

1333.102 General.

(a) Contracting officers shall promptly notify the Procurement Counsel, and seek legal advice upon receiving notice that a protest has been filed in any forum.

(b) The designee authorized to determine that a solicitation, proposed award, or award under protest does not comply with the requirements of law or regulation, and to take the actions specified at FAR 33.102(b) is set forth in CAM 1301.70. Corrective action shall only be taken after consultation with Procurement Counsel.

1333.103 Protests to the agency.

(a) Insert provision 1352.233–70, *Agency Protests,* in all DOC solicitations, except these issued by the U.S. Patent and Trademark Office.

(b) All agency protest decisions shall be reviewed by Procurement Counsel before submission to the protester.

1333.104 Protests to GAO.

1333.104–70 Protests to GAO and Court of Federal Claims.

(a) Insert clause 1352.233–71, *GAO and Court of Federal Claims Protests,* in all DOC solicitations, except those for the U.S. Patent and Trademark Office.

(b) Only Procurement Counsel shall communicate with the Government Accountability Office (GAO), the Court of Federal Claims and the Department of Justice regarding applicable protests. Procurement Counsel shall be responsible for preparation and submission of the agency report to the GAO and litigation reports to the Department of Justice.

(c) The designee authorized to authorize, on a nondelegable basis, the award of a contract when the agency has received notice from the GAO of a preaward protest filed directly with the GAO is set forth in CAM 1301.70.

(d) The designee authorized to authorize, on a nondelegable basis, contract performance notwithstanding protest after award is set forth in CAM 1301.70.

(e) The designee authorized to report and explain the reasons why the agency has not fully implement GAO recommendations with respect to a protest is set forth in CAM 1301.70.

Subpart 1333.2—Disputes and Appeals

1333.203 Applicability.

The designee authorized to determine that the application of the Contract Disputes Act of 1978 to a contract with an international organization or a subsidiary body of that organization would not be in the public interest is set forth in CAM 1301.70.

1333.206 Initiation of a claim.

Contracting officers shall promptly notify Procurement Counsel and seek legal advice upon receiving a contractor claim.

1333.211 Contracting officer's decision.

All contracting officer decisions on claims shall be reviewed by Procurement Counsel before submission to the contractor.

1333.212 Contracting officer's duties upon appeals.

Only Procurement Counsel will communicate with the Civilian Board of Contract Appeals or the Department of Justice regarding appeals of contracting officer decisions. Procurement Counsel shall be responsible for preparation and submission of all filings with the Board.

1333.215 Contract clauses.

Alternate I of FAR 52.233–1, *Disputes,* may be used at the discretion of the contracting officer.

Subchapter F—Special Categories of Contracting

PART 1334—MAJOR SYSTEM ACQUISITION

Subpart 1334.0—General

Sec.
1334.003 Responsibilities.
1334.005 General requirements.
1334.005–6 Full production.

Subpart 1334.2—Earned Value Management System

1334.201 Policy.
1334.201–70 Policy.
1334.202 Integrated baseline reviews.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1334.0—General

1334.003 Responsibilities.

(a) The designee authorized to carry out the responsibilities described under FAR 34.003 is set forth in CAM 1301.70.

(b) Agency procedures related to major system acquisitions are set forth in DAO 208–3.

1334.005 General requirements.

1334.005–6 Full production.

The designee authorized to reaffirm mission need and program objectives and grant approval to proceed with the award of a contract for full production of a successfully tested major system is set forth in CAM 1301.70.

Subpart 1334.2—Earned Value Management System

1334.201 Policy.

1334.201–70 Policy.

(a) In accordance with the Department's Information Technology Investment Performance Measurement and Performance Reporting Policy, the use of an Earned Value Management System (EVMS) is required for major acquisitions for information technology development in which the development/modernization/enhancement costs are anticipated to equal or exceed $25 million over the life of the acquisition. The Chief

Information Officer may require EVMS on other acquisitions if the project merits special attention due to sensitivity, mission criticality, or risk potential.

(b) If a project manager considers the use of an EVMS to be necessary for a major acquisition that does not meet the $25 million threshold, the project manager should conduct a cost/benefit analysis and consult with the OCIO on the advisability of requiring an EVMS.

(c) Project managers, contracting officers, and contracting officer representatives responsible for major acquisitions requiring an EVMS must successfully complete an Earned Value Management course that meets the requirements of the OCIO.

(d) The use of firm-fixed-price type contracts, subcontracts and other agreements are generally not suited to developmental efforts and the use of an EVMS is of limited utility under such arrangements. In the rare cases where a fixed-price type contract is contemplated for a developmental effort, the project manager and contracting officer must consult with the OCIO for guidance to determine whether an EVMS will be required.

(e) The use of an EVMS is generally discouraged for contracts, subcontracts, and other agreements where the period of performance is less than 12 months in duration. Additionally, application of an EVMS to work efforts that are not discrete in nature should be considered on a case-by-case basis.

(f) In cases where the nature of the work does not lend itself to the meaningful use of an EVMS, the OCIO may waive the EVMS requirement if appropriate.

1334.202 Integrated baseline reviews.

An Integrated Baseline Review shall be conducted when an Earned Value Management System is required.

PART 1335—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

1335.001 Definitions.
1335.006 Contracting methods and contract type.
1335.014 Government property and title.
1335.016 Broad agency announcement.
1335.016–70 DOC procedures for the use of broad agency announcement.
1335.017 Federally funded research and development centers.
1335.017–2 Establishing or changing an FFRDC.
1335.017–4 Reviewing FFRDCs.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

1335.001 Definitions.

Human Subject means a living individual about whom an investigator (whether professional or student) conducting research obtains:

(1) Data through intervention or interaction with the individual, or

(2) Identifiable private information.

Intervention includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. ''Private information'' includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (*i.e.,* the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

Research means a systematic investigation, including research, development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

1335.006 Contracting methods and contract type.

(a) Insert provision 1352.235–70, *Protection of Human Subjects,* in all solicitations where research services under the contract might involve the use of human subjects. The provision is mandatory where human subjects may be used in performance of the award and may not be modified without consultation with Program Counsel.

(b) Insert clause 1352.235–71, *Protection of Human Subjects—Exemption,* in all contracts where the agency has determined based on documentation submitted by the offeror in response to provision 1352.235–70, *Protection of Human Subjects,* that the research involving human subjects is exempt from the requirements of 15 CFR Part 27 and does not require Institutional Review Board (IRB) review. The provision is mandatory where an appropriate agency official has determined that the research involving human subjects to be carried out in performance of the award is exempt from 15 CFR Part 27, and may not be modified without consultation with Program Counsel.

(c) Insert clause 1352.235–72, *Protection of Human Subjects—Institutional Approval,* in all contracts where the agency has determined based on documentation submitted by the offeror in response to provision 1352.235–70, *Protection of Human Subjects,* that the research involving human subjects is not exempt from the requirements of 15 CFR Part 27 and requires review by a cognizant Institutional Review Board (IRB). The provision is mandatory where an appropriate Agency official has determined that the research involving human subjects to be carried out in performance of the award is not exempt from 15 CFR Part 27 and requires review by a cognizant IRB, and may not be modified without consultation with Program Counsel.

(d) Insert clause 1352.235–73, *Protection of Human Subjects—After Initial Contract Award,* in all contracts where at the time of award no research involving human subjects is anticipated, but where decisions made in the course of the research may necessitate the addition of research involving human subjects to the work performed. The provision is mandatory where it is possible that the use of human subjects may be required in performance of the award but is not anticipated at the time of award, and may not be modified without consultation with Program Counsel.

1335.014 Government property and title.

The designee authorized to determine that the policies in FAR 35.014(b)(1)–(4) will not apply regarding title to equipment purchased by nonprofit institutions of higher learning and nonprofit organizations whose primary purpose is the conduct of scientific research is set forth in CAM 1301.70.

1335.016 Broad agency announcement.

1335.016–70 DOC procedures for the use of broad agency announcements.

Procedures for the use of broad agency announcements within the Department of Commerce are set forth in CAM 1335.016.

1335.017 Federal funded research and development centers.

1335.017–2 Establishing or changing an FFRDC.

The designee authorized to approve the establishment of an FFRDC, or change its basic purpose and mission, is set forth in CAM 1301.70.

1335.017–4 Reviewing FFRDCs.

The designee authorized to approve the continuation or termination of the sponsorship of an FFRDC is set forth in CAM 1301.70.

PART 1336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1336.2—Special Aspects of Contract for Construction

Sec.
1336.203 Government estimate of construction costs.
1336.270 Special requirements for ship construction.

Subpart 1336.6—Architect-Engineer Services

1336.602 Selection of firms for architect-engineer contracts.
1336.602–2 Evaluation boards.
1336.602–4 Selection authority.
1336.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.
1336.605 Government cost estimate for architect-engineer work.
1336.609 Contract clauses.
1336.609–1 Design within funding limitations.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1336.2—Special Aspects of Contracting for Construction

1336.203 Government estimate of construction costs.

After award, the independent Government estimated price can be released, upon request, to those firms or individuals who submitted proposals.

1336.270 Special requirements for ship construction.

See 48 CFR 1371 for special requirements for acquisition involving ship construction and ship repair.

Subpart 1336.6—Architect-Engineer Services

1336.602 Selection of firms for architect-engineer contracts.

1336.602–2 Evaluation boards.

Permanent and *ad hoc* architect-engineer evaluation boards may include preselection boards. When necessary, members of permanent, *ad hoc,* and preselection boards may be appointed from private practitioners of architecture, engineering, or related professions. Private practitioners may be appointed as deemed necessary by the BPO or higher agency official. The permanent and ad hoc evaluation boards should be comprised of at least a majority of government personnel.

1336.602–4 Selection authority.

Each contracting office shall designate the selection authority based on the complexity of each procurement.

1336.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

(a) In contracts not expected to exceed the simplified acquisition threshold, either or both of the short selection processes set out at FAR 36.602–5 may be used.

(b) Each contracting office shall designate the selection authority based on the complexity of each procurement. The selection authority shall review the selection report and approve it or return it to the chairperson for appropriate revision.

1336.605 Government cost estimate for architect-engineer work.

After award, the independent Government estimated price can be released, upon request, to those firms or individuals who submitted proposals.

1336.609 Contract clauses.

1336.609–1 Design within funding limitations.

The designee authorized to make the determination described at FAR 36.609–1(c)(1) to enable exclusion of the clause at FAR 52.236–22 from the contract is set forth in CAM 1301.70.

PART 1337—SERVICE CONTRACTING

Subpart 1337.1—Service Contracts—General

Sec.
1337.110 Solicitation provisions and contract clauses.
1337.110–70 Personnel security processing requirements.
1337.110–71 Additional DOC clauses related to service contracting.

Subpart 1337.2—Advisory and Assistance Services

1337.204 Guidelines for determining availability of personnel.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1337.1—Service Contracts—General

1337.110 Solicitation provisions and contract clauses.

1337.110–70 Personnel security processing requirements.

(a) CAM 1337.70 establishes procedures for personnel security processing for contractors performing services on or within a Department of Commerce facility or through an information technology (IT) system, as required by the Department of Commerce *Security Manual* and Department of Commerce *Security Program Policy and Minimum Implementation Standards.*

(b) Insert clause 1352.237–70, *Security Processing Requirements—High or Moderate Risk Contracts,* in all service contracts designated as High or Moderate risk that will be performed on a DOC facility or when the contractor will access a DOC IT system.

(c) Insert clause 1352.237–71, *Security Processing Requirements—Low Risk Contracts,* in all service contracts designated as Low Risk that will be performed on or within a Department of Commerce facility or when the contractor will access a DOC IT system.

(d) Insert clause 1352.237–72, *Security Processing Requirements—National Security Contracts,* in all service contracts designated as National Security Contracts that will be performed on or within a Department of Commerce facility or when the contractor will access a DOC IT system.

(e) Insert clause 1352.237–73, *Foreign National Visitor and Guest Access to Departmental Resources,* in all DOC solicitations and contracts for services where foreign national access to any DOC facility or DOC IT system is required. The language of the clause may only be modified by adding more restrictive agency or operating unit counsel-specific guidance.

1337.110–71 Additional DOC clauses related to service contracting.

(a) Insert a clause substantially similar to 1352.237–74, *Progress Reports,* where progress reports are required in order to make periodic payments based upon contract progress made, or if the contracting officer otherwise determines that progress reports are needed.

(b) Insert a clause substantially similar to 1352.237–75, *Key Personnel,* when contract performance requires identification of contractor key personnel.

Subpart 1337.2—Advisory and Assistance Services

1337.204 Guidelines for determining availability of personnel.

The designee authorized to make the determinations described under FAR 37.204 is set forth in CAM 1301.70.

PART 1339—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 1339.1—General

Sec.
1339.107 Contract clauses.
1339.107–70 Information security.

Subpart 1339.2—Electronic and Information Technology

1339.270 Solicitation provisions and contract clauses.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1339.1—General

1339.107 Contract clauses.

Insert clause 1352.239–70, *Software License Addendum,* in all contracts when the primary purpose is to purchase new software licenses or renew existing licenses.

1339.107–70 Information security.

(a) For all service acquisitions over the micro-purchase threshold, contracting professionals shall coordinate with the designated Contracting Officer Representative (COR) to complete the *Information Security in Acquisition Checklist.*

(b) When the *Information Security in Acquisition Checklist* indicates that Clause 1352.239–73, *Security Requirements for Information Technology Resources,* is needed, contracting officers shall insert the clause in the solicitation and contracts. If the checklist indicates that the Certification and Accreditation requirement in Clause 1352.239–73 is not required, the contracting officer shall include the statement ''The Certification and Accreditation (C&A) requirements of Clause 1352.239–73 do not apply, and a Security Accreditation Package is not required'' in the statement of work.

(c) Contracting professionals shall insert the appropriate risk designation clause from CAM 1337.70 into DOC solicitations and contracts for services depending upon the level of contractor access privileges to DOC IT systems. In addition, contracting professionals shall document the official contract file to include the rationale for the designated risk level.

Subpart 1339.2—Electronic and Information Technology

1339.270 Solicitation provisions and contract clauses.

(a) Insert provision substantially similar to 1352.239–71, *Electronic and Information Technology,* in solicitations for Electronic and Information (ET) to which it applies.

(b) Insert clause 1352.239–72, *Security Requirements for Information Technology Resources,* in all DOC solicitations and contracts for Information Technology services. The clause language may only be modified by adding more restrictive agency- or operating unit counsel-specific guidance.

PART 1341—ACQUISITION OF UTILITY SERVICES

Subpart 1341.2—Acquiring Utility Services

Sec.
1341.201 Policy.
1341.202 Procedures.
1341.204 GSA area wide contracts.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1341.2—Acquiring Utility Services

1341.201 Policy.

The designee authorized to enter into a contract pursuant to 42 U.S.C. 8287 (regarding shared energy savings, including cogeneration) is set forth in CAM 1301.70.

1341.202 Procedures.

The designee authorized to approve a determination that a written contract cannot be obtained from a utility supplier refusing to execute a tendered contract, and that the issuance of a purchase order is not feasible, is set forth in CAM 1301.70.

1341.204 GSA Area wide Contracts.

The designee authorized to determine that the use of an area wide contract is not advantageous to the Government is set forth in CAM 1301.70.

Subchapter G—Contract Management

PART 1342—CONTRACT ADMINISTRATION

Subpart 1342.1—Contract Audit Services

Sec.
1342.102 Assignment of contract audit services.
1342.102–70 Interagency contract administration and audit services.

Subpart 1342.2—Contract Administration Services

1342.202 Assignment of contract administration.

Subpart 1342.5—Post award Orientation

1342.503 Postaward conferences.
1342.503–70 Notice of postaward conference.

Subpart 1342.6—Corporate Administrative Contracting Officer

1342.602 Assignment and location.

Subpart 1342.7—Indirect Cost Rates

1342.703 General.
1342.703–2 Certificate of indirect costs.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1342.1—Contract Audit Services

1342.102 Assignment of contract audit services.

1342.102–70 Interagency contract administration and audit services.

(a) Generally, the final invoice shall not be approved until a close-out audit has been performed and all outstanding issues have been negotiated or resolved on the following types of contracts valued at $500,000 and above:

(1) Cost-reimbursement type contracts;

(2) The cost-reimbursement portion of fixed-price contracts;

(3) Letter contracts which provide for reimbursement of costs;

(4) Time-and-materials contracts; and

(5) Labor-hour contracts.

(b) If a close-out audit is not required, an audit may be requested regardless of the contract value when the contracting officer determines that an audit is justified under one of the following circumstances:

(1) There is some evidence of fraud or waste;

(2) The contractor's performance under the contract has been questionable;

(3) The contractor had a high incidence of unallowable costs under a previous contract;

(4) The contract is with a newly-established firm, or a firm that has just begun dealing with the Government.

Subpart 1342.2—Contract Administration Services

1342.202 Assignment of contract administration.

The designee authorized to approve delegations of CAO functions not listed in FAR 42.302 is set forth in CAM 1301.70.

Subpart 1342.5—Postaward Orientation

1342.503 Postaward conferences.

1342.503–70 Notice of postaward conference.

Insert a provision similar to 1352.242–70, *Postaward Conference,* in solicitations when the contracting officer determines that a postaward conference is needed.

Subpart 1342.6—Corporate Administrative Contracting Officer

1342.602 Assignment and location.

The designee authorized to approve the need for a corporate administrative contracting officer is set forth in CAM 1301.70.

Subpart 1342.7—Indirect Cost Rates

1342.703 General.

1342.703–2 Certificate of indirect costs.

The designee authorized to waive the requirement for contractor certification of proposed final indirect cost rates is set forth in CAM 1301.70.

PART 1344—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1344.3—Contractors' Purchasing Systems Reviews

Sec.
1344.302 Requirements.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1344.3—Contractors' Purchasing Systems Reviews

1344.302 Requirements.

The designee authorized to lower or raise the $25 million sales threshold for performing a review to determine if a contractor purchasing system review is needed is set forth in CAM 1301.70.

PART 1345—GOVERNMENT PROPERTY

Subpart 1345.1—General

Sec.
1345.107 Contract clauses.
1345.107–70 Government furnished property.

Subpart 1345.6—Reporting, Reutilization, and Disposal

1345.604 Disposal of surplus property.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1345.1—General

1345.107 Contract clauses.

1345.107–70 Government furnished property.

Insert clause 1352.245–70, *Government Furnished Property,* when Government property is to be furnished to the contractor and the contractor will be accountable for, and have stewardship of, the property.

Subpart 1345.6—Reporting, Reutilization, and Disposal

1345.604 Disposal of surplus property.

Surplus property shall be disposed of in accordance with procedures outlined in the DOC Personal Property Management Manual.

PART 1346—QUALITY ASSURANCE

Subpart 1346.4—Government Contract Quality Assurance

Sec.
1346.401 General.

Subpart 1346.5—Acceptance

1346.503 Place of acceptance.

Subpart 1346.6—Material Inspection and Receiving Reports

1346.601 General.

Subpart 1346.7—Warranties

1346.704 Authority for use of warranties.
1346.705 Limitations.
1346.710 Contract clauses.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1346.4—Government Contract Quality Assurance

1346.401 General.

Agency procedures for documenting government inspection are set forth under Subpart 1346.6.

Subpart 1346.5—Acceptance

1346.503 Place of acceptance.

Insert a clause substantially similar to 1352.246–70, *Place of Acceptance,* in contracts and solicitations to indicate where the acceptance of supplies and/or services will take place.

Subpart 1346.6—Material Inspection and Receiving Reports

1346.601 General.

Each DOC operating unit shall develop instructions and procedures regarding material inspection and receiving reports as appropriate.

Subpart 1346.7—Warranties

1346.704 Authority for use of warranties.

Contracting officers are authorized to approve the use of warranties.

1346.705 Limitations.

Warranties in cost reimbursement contracts are authorized.

1346.710 Contract clauses.

The warranty clauses and alternates under FAR Subpart 46.710 may be used in solicitations and contracts.

PART 1348—VALUE ENGINEERING

Subpart 1348.1—Policies and Procedures

Sec.
1348.102 Policies.

Subpart 1348.2—Contract Clauses

1348.201 Clauses for supply or service contracts.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1348.1—Policies and Procedures

1348.102 Policies.

(a) Contracting activities shall send contractor-submitted Value Engineering Change Proposals (VECPs) to the appropriate technical personnel for review.

(b) Technical personnel shall conduct a comprehensive review of VECPs for technical feasibility, usefulness, and adequacy of the contractor's estimate of cost savings; make a written report; and recommend acceptance or rejection to the contracting officer.

(c) The designee authorized to grant exemptions from value engineering provisions in appropriate supply, service, architect-engineer and construction contracts is set forth in CAM 1301.70.

Subpart 1348.2—Contract Clauses

1348.201 Clauses for supply or service contracts.

The designee authorized to grant exemptions from the requirements of FAR Part 48 for a contract or class of contracts is set forth in CAM 1301.70.

PART 1349—TERMINATION OF CONTRACTS

Subpart 1349.1—General Principles

Sec.
1349.106 Fraud or other criminal conduct.

Subpart 1349.4—Termination for Default

1349.402 Termination of fixed-price contracts for default.
1349.402–3 Procedure for default.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1349.1—General Principles

1349.106 Fraud or other criminal conduct.

If the terminating contracting officer (TCO) suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall immediately discontinue negotiations and prepare a written report concerning the matter. The report shall be submitted to the Bureau Procurement Official, the Office of Inspector General, and the DOC suspension and debarring official. An informational copy shall be provided to Procurement Counsel.

Subpart 1349.4—Termination for Default

1349.402 Termination of fixed-price contracts for default.

1349.402–3 Procedure for default.

No action relating to a default termination, including issuance of a show cause letter, cure notice, or notice of default, shall be taken unless notice has been provided to Procurement Counsel and the Procurement Executive, and the action has been reviewed for legal sufficiency.

PART 1350—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1350.1—Extraordinary Contractual Actions

Sec.
1350.102 Delegation of and limitation on exercise of authority.
1350.102–1 Delegation of authority.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1350.1—Extraordinary Contractual Actions

1350.102 Delegation of and limitation on exercise of authority.

1350.102–1 Delegation of authority.

(a) The designee authorized to approve requests to obligate the government in excess of $55,000 under the extraordinary emergency authority set forth in CAM 1301.70. Such authority may not be delegated below the secretarial level for requests to obligate the Government in excess of $55,000.

(b) The designee authorized to approve any amendment without consideration that increases the contract price or unit price is set forth in CAM 1301.70.

(c) The designee authorized to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, is set forth in CAM 1301.70.

Subchapter H—Clauses and Forms

PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1352.000 Scope of part.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.102 Incorporating provisions and clauses.

Subpart 1352.2—Text of Provisions and Clauses

1352.200 Scope of subpart.
1352.201–70 Contracting officer's authority.
1352.201–71 Ratification release.
1352.201–72 Contracting officer's representative (COR).
1352.208–70 Restrictions on printing and duplicating.
1352.209–70 Potential organizational conflict of interest.
1352.209–71 Limitation on future contracting.
1352.209–72 Restrictions against disclosure.
1352.209–73 Compliance with the laws.
1352.209–74 Organizational conflict of interest.
1352.209–75 Title 13 and non-disclosure requirements.
1352.213–70 Evaluation utilizing simplified acquisition procedures.
1352.213–71 Instructions for submitting quotations under the simplified acquisition threshold—non-commercial.
1352.215–70 Proposal preparation.
1352.215–71 Instructions for oral presentations.
1352.215–72 Inquiries.
1352.215–73 Evaluation quantities—indefinite quantity contract.
1352.215–74 Best value evaluation.
1352.215–75 Evaluation criteria.
1352.215–76 Cost or pricing data.
1352.216–70 Estimated and allowable costs.
1352.216–71 Level of effort (cost-plus-fixed-fee, term contract).
1352.216–72 Determination of award fee.
1352.216–73 Distribution of award fee.
1352.216–74 Task orders.
1352.216–75 Minimum and maximum contract amounts.
1352.216–76 Placement of orders.
1352.216–77 Ceiling price.
1352.219–70 Section 8(a) direct award (Deviation).
1352.219–71 Notification to delay performance (Deviation).
1352.219–72 Notification of competition limited to eligible 8(a) concerns, Alternate III (Deviation).
1352.227–70 Rights in data, assignment of copyright.
1352.228–70 Insurance coverage.
1352.228–71 Deductibles under required insurance coverage—cost reimbursement.
1352.228–72 Deductibles under required insurance coverage—fixed price.
1352.228–73 Loss of or damage to leased aircraft.
1352.228–74 Fair market value of aircraft.
1352.228–75 Risk and indemnities.
1352.228–76 Approval of group insurance plans.
1352.231–70 Precontract costs.
1352.231–71 Duplication of effort.
1352.233–70 Agency protests.
1352.233–71 GAO and Court of Federal Claims protests.
1352.235–70 Protection of human subjects.
1352.235–71 Protection of human subjects—exemption.
1352.235–72 Protection of human subjects—institutional approval.
1352.235–73 Research involving human subjects—after initial contract award.
1352.237–70 Security processing requirements—high or moderate risk contracts.
1352.237–71 Security processing requirements—low risk contracts.
1352.237–72 Security processing requirements—national security contracts.
1352.237–73 Foreign national visitor and guest access to departmental resources.
1352.237–74 Progress reports.
1352.237–75 Key personnel.
1352.239–70 Software license addendum.
1352.239–71 Electronic and information technology.
1352.239–72 Security requirements for information technology resources.
1352.242–70 Postaward conference.
1352.245–70 Government furnished property.
1352.246–70 Place of acceptance.
1352.270–70 Period of performance.
1352.270–71 Pre-bid/pre-proposal conference and site visit.
1352.271–70 Inspection and manner of doing work.
1352.271–71 Method of payment and invoicing instructions for ship repair.
1352.271–72 Additional item requirements (AIR)—growth work.
1352.271–73 Schedule of work.
1352.271–74 Foreseeable cost factors pertaining to different shipyard locations.
1352.271–75 Delivery and shifting of the vessel.
1352.271–76 Performance.
1352.271–77 Delays.
1352.271–78 Minimization of delay due to Government furnished property.
1352.271–79 Liability and insurance.
1352.271–80 Title.
1352.271–81 Discharge of liens.
1352.271–82 Department of Labor occupational safety and health standards for ship repair.
1352.271–83 Government review, comment, acceptance and approval.
1352.271–84 Access to the vessel.
1352.271–85 Documentation of requests for equitable adjustment.
1352.271–86 Lay days.
1352.271–87 Changes—ship repair.
1352.271–88 Guarantees.
1352.271–89 Temporary services.
1352.271–90 Insurance requirements.

Subpart 1352.3—Provisions and Clauses Matrix

1352.301 Solicitation provisions and contract clauses (Matrix).

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

1352.000 Scope of part.

This part sets forth solicitation provisions and contract clauses, in addition to those prescribed in FAR Part 52, for use in DOC acquisitions.

Subpart 1352.1—Instructions for Using Provisions and Clauses.

1352.102 Incorporating provisions and clauses.

As stated in the FAR, provisions and clauses should be incorporated by reference in solicitations and contracts to the maximum practical extent, rather than being incorporated in full text. Incorporation by reference is the listing only by title, regulatory citation, and date of the provision or clause. The full text of the referenced solicitation provision or contract clause is contained in the Code of Federal Regulations (CFR). FAR provision and clauses are located at 48 CFR Chapter 1 and CAM provisions and clauses are located at 48 CFR Chapter 13.

Subpart 1352.2—Text of Provisions and Clauses

1352.200 Scope of subpart.

This subpart sets forth the text of all CAR provisions and clauses and provides a cross-reference to the location in the CAR that prescribes their use.

1352.201–70 Contracting officer's authority.

As prescribed in 48 CFR 1301.602–170, insert the following clause:

Contracting Officer's Authority

The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract, and, notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract terms and conditions, including price.

(End of clause)

1352.201–71 Ratification release.

As prescribed in 48 CFR 1301.602–3, insert the following clause:

Ratification Release (DATE)

(a) The Government agrees to pay the contractor $_____ for the following items/services:

_____

(b) In consideration for the sum stated above, which is to be paid to the Contractor, or its assignees, the Contractor, upon payment of the said sum by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

(1) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows: (or state ''None'').

(2) Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in said contract.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability) including reasonable expenses incidental thereto, incurred by the Contractor under any provisions of the said contract relating to patents.

(c) The Contractor agrees, in connection with patent maters and with claims which are not released as set forth above, that it will comply with provisions of the said contract, including without limitation, those provisions relating to nofitication to the Contracting Officer and relating to the defense or prosecution of litigation.

Contractor's Signature: _____

Date: _____

(End of clause)

1352.201–72 Contracting Officer's Representative (COR).

As prescribed in 48 CFR 1301.670–70, insert the following clause:

Contracting Officer's Representative (COR) (DATE)

(a) _____ is hereby designated as the Contracting Officer's Representative (COR). The COR may be changed at any time by the Government without prior notice to the contractor by a unilateral modification to the contract. The COR is located at:

_____

_____

_____

Phone Number: _____

E-mail: _____

(b) The responsibilities and limitations of the COR are as follows:

(1) The COR is responsible for the technical aspects of the contract and serves as technical liaison with the contractor. The COR is also responsible for the final inspection and acceptance of all deliverables and such other responsibilities as may be specified in the contract.

(2) The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the contract price, terms or conditions. Any contractor request for changes shall be referred to the Contracting Officer directly or through the COR. No such changes shall be made without the express written prior authorization of the Contracting Officer. The Contracting Officer may designate assistant or alternate COR(s) to act for the COR by naming such assistant/alternate(s) in writing and transmitting a copy of such designation to the contractor.

(End of clause)

1352.208–70 Restrictions on printing and duplicating.

As prescribed in 48 CFR 1308.802–70, insert the following clause:

Restrictions on Printing and Duplicating (DATE)

(a) The contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 production units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10¾ by 14¼ inches. A ''production unit'' is one sheet, size 8½ × 11 inches (215 × 280 mm), one side only, and one color ink. Production unit requirements are outlined in the Government Printing and Binding Regulations.

(b) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the contractor to respond to the terms of the contract).

(c) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (a) of this clause are unallowable without prior written approval of the Contracting Officer. If the contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any

printing or substantial duplicating or copying, it shall immediately provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with FAR 8.802.

(d) The contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (a) of this clause, a provision substantially the same as this clause, including this paragraph (d).

(End of clause)

1352.209–70 Potential organizational conflict of interest.

As prescribed in 48 CFR 1309.507–1(a), insert the following provision, modified appropriately:

Potential Organizational Conflict of Interest (DATE)

(a) There is a potential organizational conflict of interest (*see* FAR Subpart 9.5, Organizational and Consultant Conflicts of Interest) due to [*state the nature of the potential conflict*]. Accordingly:

(1) Restrictions are needed to ensure that (*state the nature of the proposed restraint and the applicable time period*).

(2) As a part of the proposal, the offeror shall provide the Contracting Officer with complete information regarding previous or ongoing work that is in any way associated with the contemplated acquisition.

(b) If award is made to the offeror, the resulting contract may include an organizational conflict of interest limitation applicable to subsequent Government work, at either a prime contract level, at any subcontract tier, or both. During evaluation of proposals, the Government may, after discussions with the offeror and consideration of ways to avoid the conflict of interest, insert a provision in the resulting contract that shall disqualify the offeror from further consideration for award of specified future contracts.

(c) The organizational conflict of interest clause included in this solicitation may be modified or deleted during negotiations.

Alternate I (DATE). At the discretion of the Contracting Officer, substitute the following paragraph (b) for paragraphs (b) and (c) in the basic provision:

(b) The organizational conflict of interest clause in this solicitation may not be modified or deleted.

(End of clause)

1352.209–71 Limitation of future contracting.

As prescribed in 48 CFR 1309.507–2(a), insert the following clause:

Limitation of Future Contracting (DATE)

(a) The following restrictions and definitions apply to prevent conflicting roles, which may bias the contractor's judgment or objectivity, or to preclude the contractor from obtaining an unfair competitive advantage in concurrent or future acquisitions.

(1) Descriptions or definitions:

(i) ''Contractor'' means the business entity receiving the award of this contract, its parents, affiliates, divisions and subsidiaries, and successors in interest.

(ii) ''Development'' means all efforts towards solution of broadly defined problems. This may encompass research, evaluating technical feasibility, proof of design and test, or engineering of programs not yet approved for acquisition or operation.

(iii) ''Proprietary Information'' means all information designated as proprietary in accordance with law and regulation, and held in confidence or disclosed under restriction to prevent uncontrolled distribution. Examples include limited or restricted data, trade secrets, sensitive financial information, and computer software; and may appear in cost and pricing data or involve classified information.

(iv) ''System'' means the system that is the subject of this contract.

(v) ''System Life'' means all phases of the system's development, production, or support.

(vi) ''Systems Engineering'' means preparing specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design.

(vii) ''Technical Direction'' means developing work statements, determining parameters, directing other contractors' operations, or resolving technical controversies.

(2) *Restrictions:* The contractor shall perform systems engineering and/or technical direction, but will not have overall contractual responsibility for the system's development, integration, assembly and checkout, or production. The parties recognize that the contractor shall occupy a highly influential and responsible position in determining the system's basic concepts and supervising their execution by other contractors. The contractor's judgment and recommendations must be objective, impartial, and independent. To avoid the prospect of the contractor's judgment or recommendations being influenced by its own products or capabilities, it is agreed that the contractor is precluded for the life of the system from award of a DOC contract to supply the system or any of its major components, and from acting as a subcontractor or consultant to a DOC supplier for the system or any of its major components.

Alternate I (DATE). As prescribed in CFR 1309.507–2(a)(2), either substitute paragraph (a)(2) of the basic clause with one or both of the following paragraphs, or use one or both in addition to the basic paragraph (a)(2).

(a)(2)(i) The contractor shall prepare and submit complete specifications for nondevelopmental items to be used in a competitive acquisition. The contractor shall not furnish these items to DOC, either as a prime contractor or subcontractor, for the duration of the initial production contract plus [*insert a specific period of time or an expiration date*].

(ii) The contractor shall either prepare or assist in preparing a work statement for use in competitively acquiring the [*identify the system or services*], or provide material leading directly, predictably, and without delay to such a work statement. The contractor may not supply [*identify the services, the system, or the major components of the system*] for a period [*state the duration of the constraint, however, the duration of the initial production contract shall be the minimum*], as either the prime or subcontractor unless it becomes the sole source, has participated in the design or development work, or more than one contractor has participated in preparing the work statement.

Alternate II (DATE). As prescribed in 48 CFR 1309.507–2(a)(3), either substitute paragraph (a)(2) of the basic clause with the following paragraph, or add the following in addition to the basic restriction. Redesignate the paragraphs as needed if more than one restriction applies.

(a)(2) The contractor shall participate in the technical evaluation of other contractors' proposals or products. To ensure objectivity, the contractor is precluded from award of any supply or service contract or subcontract for the system or its major components. This restriction shall be effective for (*insert a definite period of time*).

Alternate III (DATE). As prescribed in 48 CFR 1309.507–2(a)(4), add the following paragraph (b) to the basic clause:

(b) The contractor may gain access to proprietary information of other companies during contract performance. The contractor agrees to enter into company-to-company agreements to

protect another company's information from unauthorized use or disclosure for as long as it is considered proprietary by the other company, and to refrain from using the information for any purpose other than that for which it was furnished. For information purposes, the contractor shall furnish copies of these agreements to the Contracting Officer. These agreements are not intended to protect information which is available to the Government or to the contractor from other sources and information furnished voluntarily without restriction.

Alternate IV (DATE). As prescribed in 48 CFR 1309.507–2(a)(5), add the following paragraph (b) to the basic clause substantially as written. If Alternate III is also used, designate this paragraph (c).

(b) The contractor agrees to accept and to complete all issued task orders, and to not contract with Government prime contractors or first-tier subcontractors in such a way as to create an organizational conflict of interest

Alternate V (DATE). As prescribed in 48 CRF 1309.507–2(a)(6), add the following paragraph (b) to the basic clause. If more than one Alternate is used, redesignate this paragraph accordingly.

(b) The contractor agrees to accept and to complete issued delivery orders, provided that no new organizational conflicts of interest are created by the acceptance of such orders. The Contracting Officer shall identify any and all organizational conflicts of interest in each order. The contractor shall not contract with Government prime contractors or first-tier subcontractors in such a way as to create an organizational conflict of interest.

Alternative VI (DATE). As prescribed in 48 CFR 1309.507–2(a)(7), add the following paragraph (b) to the basic clause. If either Alternate III or IV or both are used, redesignate this paragraph accordingly.

(b) The above restrictions shall be included in all subcontracts, teaming arrangements, and other agreements calling for performance of work which is subject to the organizational conflict of interest restrictions identified in this clause, unless excused in writing by the Contracting Officer.

(End of clause)

1352.209–72 Restrictions against disclosure.

As prescribed in 48 CFR 1309.507–2(b), insert the following clause:

Restrictions Against Disclosure (DATE)

(a) The contractor agrees, in the performance of this contract, to keep the information furnished by the Government or acquired/developed by the contractor in performance of the contract and designated by the Contracting Officer or Contracting Officer's Representative, in the strictest confidence. The contractor also agrees not to publish or otherwise divulge such information, in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the contractor's possession, to those employees needing such information to perform the work described herein, *i.e.,* on a ''need to know'' basis. The contractor agrees to immediately notify the Contracting Officer in writing in the event that the contractor determines or has reason to suspect a breach of this requirement has occurred.

(b) The contractor agrees that it will not disclose any information described in subsection (a) to any person unless prior written approval is obtained from the Contracting Officer. The contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(End of clause)

1352.209–73 Compliance with the laws.

As prescribed in 48 CFR 1309.507–2(c), insert the following clause:

Compliance With the Laws (DATE)

The contractor shall comply with all applicable laws, rules and regulations which deal with or relate to performance in accord with the terms of the contract.

(End of clause)

1352.209–74 Organizational conflict of interest.

As prescribed in 48 CFR 1309.507–2(d), insert the following clause:

Organizational Conflict of Interest (DATE)

(a) *Purpose.* The purpose of this clause is to ensure that the contractor and its subcontractors:

(1) Are not biased because of their financial, contractual, organizational, or other interests which relate to the work under this contract, and

(2) Do not obtain any unfair competitive advantage over other parties by virtue of their performance of this contract.

(b) *Scope.* The restrictions described herein shall apply to performance or participation by the contractor, its parents, affiliates, divisions and subsidiaries, and successors in interest (hereinafter collectively referred to as ''contractor'') in the activities covered by this clause as a prime contractor, subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(c) *Warrant and Disclosure.* The warrant and disclosure requirements of this paragraph apply with full force to both the contractor and all subcontractors. The contractor warrants that, to the best of the contractor's knowledge and belief, there are no relevant facts or circumstances which would give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, and that the contractor has disclosed all relevant information regarding any actual or potential conflict. The contractor agrees it shall make an immediate and full disclosure, in writing, to the Contracting Officer of any potential or actual organizational conflict of interest or the existence of any facts that may cause a reasonably prudent person to question the contractor's impartiality because of the appearance or existence of bias or an unfair competitive advantage. Such disclosure shall include a description of the actions the contractor has taken or proposes to take in order to avoid, neutralize, or mitigate any resulting conflict of interest.

(d) *Remedies.* The Contracting Officer may terminate this contract for convenience, in whole or in part, if the Contracting Officer deems such termination necessary to avoid, neutralize or mitigate an actual or apparent organizational conflict of interest. If the contractor fails to disclose facts pertaining to the existence of a potential or actual organizational conflict of interest or misrepresents relevant information to the Contracting Officer, the Government may terminate the contract for default, suspend or debar the contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(e) *Subcontracts.* The contractor shall include a clause substantially similar to this clause, including paragraphs (f) and (g), in any subcontract or consultant agreement at any tier expected to exceed the simplified acquisition threshold. The terms ''contract,'' ''contractor,'' and ''Contracting Officer'' shall be appropriately modified to preserve the Government's rights.

(f) *Prime Contractor Responsibilities.* The contractor shall obtain from its subcontractors or consultants the disclosure required in FAR Part 9.507–1, and shall determine in writing whether the interests disclosed present an actual, or significant potential for, an organizational conflict of interest. The contractor shall identify and avoid, neutralize, or mitigate any subcontractor organizational conflict prior to award of the contract to the satisfaction of the Contracting Officer. If the subcontractor's organizational conflict cannot be avoided, neutralized, or mitigated, the contractor must obtain the written approval of the Contracting Officer prior to entering into the subcontract. If the contractor becomes aware of a subcontractor's potential or actual organizational conflict of interest after contract award, the contractor agrees that the Contractor may be required to eliminate the subcontractor from its team, at the contractor's own risk.

(g) *Waiver.* The parties recognize that this clause has potential effects which will survive the performance of this contract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, the contractor may at any time seek a waiver from the Head of the Contracting Activity by submitting such waiver request to the Contracting Officer, including a full written description of the requested waiver and the reasons in support thereof.

(End of clause)

1352.209–75 Title 13 and non-disclosure requirements.

As prescribed in 48 CFR 1309.507–2(e), insert the following clause:

Title 13 and Non-Disclosure Requirements (DATE)

The Census Bureau's data are protected by Title 13 of the United States Code. The contractor may not use Title 13 data for any purpose other than the intended purpose for which it is supplied or obtained. All contractor personnel who will have access to Title 13 data must take an oath and complete the Census Bureau Form BC–1759 (Special Sworn Status) that requires nondisclosure of Title 13 data. An authorized Census employee or a Notary Public must administer the oath of nondisclosure.

(End of clause)

1352.213–70 Evaluation utilizing simplified acquisition procedures.

As prescribed in 48 CFR 1313.106–2–70, insert the following provision:

Evaluation Utilizing Simplified Acquisition Procedures (DATE)

The Government will issue an order resulting from this request for quotation to the responsible offeror whose quotation results in the best value to the Government, considering both price and non-price factors. The following factors will be used to evaluate quotations:

[This section is to be tailored to conform to individual procurements. Text is provided as an example only. Stating relative importance of the evaluation factors is not required.]

(1) *Personnel Qualifications.* The experience, education, and qualifications of personnel proposed to work on the contract will be evaluated to determine their ability to perform their proposed duties.

(2) *Technical Approach and Capability.* The offeror's approach to performing contract requirements and its capability to successfully perform the contract will be evaluated.

(3) *Past Performance.* The offeror's past performance on related contracts will be evaluated to determine, as appropriate, successful performance of contract requirements, quality and timeliness of delivery of goods and services, cost management, communications between contracting parties, proactive management and customer satisfaction.

(4) *Price.*

(End of clause)

1352.213–71 Instructions for submitting quotations under the simplified acquisition threshold—non-commercial.

As prescribed in 48 CFR 1313.302–1–70, insert the following provision:

Instructions for Submitting Quotations Under the Simplified Acquisition Threshold—Non-Commercial (DATE)

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition is _____.

(b) *Submission of quotations.* Submit quotations to the office specified in this solicitation at or before the exact time specified in this solicitation. At a minimum, quotations must show—

(1) The solicitation number;

(2) The name, address, and telephone number of the offeror;

(3) Acknowledgment of solicitation amendments;

(4) A technical description showing that the offeror can supply the requirements in the specifications or statement of work in sufficient detail to allow the Government to evaluate the quotation in accordance with the evaluation factors stated in the solicitation;

(5) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and reference information (including contract numbers, points of contact with telephone numbers and other relevant information); and

(6) Price and any supporting details for the price, as requested in the solicitation.

(c) Offerors are responsible for submitting quotations, and any modifications thereto, so as to reach the Government office designated in the solicitation by the time specified. The offeror's initial quotation should contain the offeror's best terms from a price and technical standpoint. The Government may reject any or all quotations if such action is in the public interest; accept other than the lowest quotation; and waive informalities and minor irregularities in quotations received.

(End of clause)

1352.215–70 Proposal preparation.

As prescribed in 48 CFR 1315.204–570(a)(1), insert the following provision, tailored as applicable:

Proposal Preparation (DATE)

(a) *General Instructions.* Proposals are expected to conform to solicitation provisions and be prepared in accordance with this section. To aid in evaluation, the proposal shall be clearly and concisely written, neatly presented, indexed (cross-indexed as appropriate), and logically assembled. All pages of each part shall be appropriately numbered and identified with the name of the offeror, the date of the offer, and the solicitation number. Each volume shall be clearly marked by volume number and title.

(b) *Overall Arrangement of Proposal.*

(1) VOLUME I—BUSINESS PROPOSAL

(i) Volume I, Business Proposal, consists of the actual offer to enter into a contract to perform the desired work. It also includes required representations, certifications, and acknowledgments, if applicable; justifications for noncompetitive proposed subcontracts; identification of technical data to be withheld; and any other required administrative information.

(ii) Format and Content. Volume I, Business Proposal, shall include the following documents (in the order listed):

(A) Proposal Form:

(1) *Use of the Form*—The Proposal Form (Standard Form 33 or 1449), is to be executed fully and used as the cover sheet (or first page) of Volume I. Include three (3) original signed copies of the form in the original Volume I.

(2) *Acceptance Period*—The acceptance period entered on the Proposal Form by the offeror shall not be less than that prescribed in the solicitation, which shall apply if no other period is offered.

(3) *Signature Authority*—The person signing the Proposal Form must have the authority to commit the offeror to all of the provisions of the proposal, fully recognizing that the Government has the right, by terms of the Solicitation, to make an award without discussion if it so elects.

(B) Other documentation identified in Section (A) above. The offeror shall submit one original of Volume I, marked as such.

(2) VOLUME II—TECHNICAL PROPOSAL

(i) *General.* (A) Volume II, technical proposal, consists of the offeror's proposal delineating its capabilities and how it intends to perform contract requirements. The Technical proposal will be evaluated in accord with the criteria contained in Section M.

(B) In order that the technical proposal may be evaluated strictly on the merit of the material submitted, no contractual price information is to be included in Volume II. However, the type and quantity of labor and materials is to be included in the Technical Proposal, without any associated cost information.

(C) The technical proposal must be typed, double-spaced, with one inch margins, using elite font, 12 pitch type (or equivalent) and printed, unreduced in size, on 8½″ by 11″ paper, not exceeding __ pages, single-sided, exclusive of resumes and related corporate experience documentation. Any pages in excess of ____ will be disregarded, and will not be included in the proposal evaluation. Failure of the offeror to comply with the page limitations, resulting in the excess pages not being evaluated, shall not constitute grounds for a protest.

(ii) Format and Content. Volume II, Technical Proposal, shall include the following contents:

(A) Table of Contents

(B) List of Tables and Figures

(C) Summary of Technical Proposal

(D) Technical Proposal

(E) Exceptions and Deviations

These major headings may be subdivided or supplemented by the offeror as appropriate.

(1) *Summary.* This section shall provide a summary that addresses each of the technical evaluation factors set out in Section M.

(2) *Technical Proposal.* The offeror shall clearly address each of the technical evaluation criteria in Section M, and, at a minimum, cover each subfactor.

(3) *Exceptions and Deviations.* This section shall identify and explain any exceptions or deviations taken to any part of the solicitation or conditional assumptions made with respect to the technical requirements of the solicitation. Offerors should note that taking exceptions to the Government's requirements may indicate an unwillingness or inability to perform the contract, and the proposal may be evaluated as such.

(iii) Specific areas to be addressed:

[This section is to be tailored to conform to the technical evaluation factors. Text is provided as an example. Provide instructions concerning what information is required in order to evaluate proposals in accord with the evaluation factors. Do not request information that is not covered in an evaluation factor.]

Evaluation Factor 1—Technical Approach. Provide information on how the project is to be organized, staffed, and managed that demonstrates the offeror's understanding and effective management of important events or tasks. If applicable, the offeror shall (i) describe the facilities and equipment which will be used in the performance of the contract, and (ii) how the management and coordination of consultant and subcontractor efforts will be accomplished. Fully discuss how the contract requirements will be met and the means used to accomplish them. Merely repeating the contract requirements and stating that they will be accomplished, without discussing how the offeror will accomplish them, is not acceptable.

Evaluation Factor 2—Experience. In a general fashion, describe the offeror's experience and qualifications to perform the contract requirements. Explain how the experience provides confidence that the offeror can perform all contract requirements.

Evaluation Factor 3—Key Personnel. Provide the names, titles, and a description of the duties of those individuals proposed as key personnel to be assigned to the contract. For each key person, submit a resume that provides information concerning their education, background, recent work experience, and accomplishments. Specify the approximate percentage of time each individual will be available for this project, and, if necessary, explain why the key person possesses the qualifications to perform the proposed position.

Evaluation Factor 4—Past Performance. Complete the Past Performance Questionnaire (Attachment X) for all contracts containing requirements similar in scope to those in the Statement of Work performed in whole or part over the last __ years. References can include both Government and commercial contracts and subcontracts.

The offeror shall submit one original of Volume II, marked as such, and ____ copies.

(3) VOLUME III—PRICE/COST PROPOSAL

(i) Price/Cost proposals must generally adhere to the pricing structure established in Section B, Schedule of Prices. The offeror shall submit one original of Volume III, marked as such, and ____ copies.

[INSERT FOR COST TYPE CONTRACTS:]

(ii) The offeror must also submit the following detailed information to support its proposed costs, as applicable:

(A) *Direct Labor:* Breakdown of direct labor cost by named person or labor category including number of labor-hours and current actual average hourly rates based on a work year of 2,080 hours. Indicate whether current rates or escalated rates are used. If escalation is included, state the degree (percent) and methodology. Direct labor or levels of effort are to be identified as labor-hours and not as a percentage of an individual's time. Indicate fringe benefit rate, if separate from indirect cost rate.

(B) *Other Direct Costs:* Specify the amount proposed for duplication/reproduction, meetings and conferences, postage, communication and any other applicable items. Travel, subsistence and local transportation shall be supported with a breakdown, which shall include: number of trips anticipated, number of person days, cost-per-trip-per person, destination(s) proposed, number of person(s) scheduled for travel, mode of transportation, and mileage allowances, if privately-owned vehicles will be used.

(C) *Materials:* Cost breakdown of materials or equipment must be supported with the methodology used and vendor quotations supplied as applicable.

(D) *Consultants:* If consultants are proposed, state the total estimated price of the services to be required and the consultant's quoted daily or hourly rate. Include Consulting Agreements entered

into between consultant(s) and the offeror, or invoices submitted by consultant(s) for similar services previously provided to the offeror.

(E) *Subcontracts:* If proposed, cost information for each subcontractor shall be furnished in the same format and level of detail as prescribed for the prime offeror. Additionally, in relation to such subcontracts, the offeror shall submit the following information:

(1) A description of the items to be furnished by the subcontractor;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the extent of competition;

(3) The proposed subcontract price and cost detail and performance/delivery schedule; and

(4) Identification of the type of subcontract to be used.

(F) *Indirect Rates:* Offerors lacking Government-approved indirect cost rates must provide detailed background data indicating the cost elements included in the applicable pool and a statement that such treatment is in accordance with the company's established accounting practice. Offerors with established rate agreements with cognizant Federal agencies shall submit one copy of such agreements.

(G) *Profit:* Specify the profit proposed and the rationale justifying the amount of profit.

[INSERT FOR FIXED–PRICE TYPE CONTRACTS:]

(iii) Each offeror's price proposal must be based on the offeror's own technical proposal, the Government's specifications, and other contractual requirements. If the prices to be used are based on a published price list or catalog, the offeror shall so state, and provide a copy of the document with its price proposal. If the prices are to be based on established market prices, not otherwise published, or are prices applicable only to the proposed contract, the offeror shall so state.

(iv) The Government expects that this contract will be awarded based upon adequate price competition. However, in order to determine that offered prices are fair and reasonable, the Government reserves the right to request that the offeror provide cost breakdowns to support proposed prices. Information to support unit prices should include, but not be limited to, the following:

(A) Salary/wage information with associated payroll expenses, for personnel to be used in performance of the contract;

(B) Cost for equipment, supplies, and consumable materials;

(C) A breakout of related support costs, such as equipment maintenance, rental, transportation, *etc.;*

(D) Overhead costs;

(E) General Administrative expenses; and

(F) Profit

(End of clause)

1352.215–71 Instructions for oral presentations.

As prescribed in 48 CFR 1315.204–570(a)(2), insert the following provision:

Instructions for Oral Presentations (DATE)

The Government intends to conduct oral presentations with the offerors in the competitive range as part of the evaluation process.

Oral presentations will be conducted at the following location:

[INSERT LOCATION]

The Contracting Officer will determine the order of oral presentations and the schedule. The Contracting Officer will contact each offeror to schedule the date and time for oral presentations and provide detailed instructions. Once a presentation date and time are confirmed, rescheduling is at the discretion of the Contracting Officer.

(End of clause)

1352.215–72 Inquiries.

As prescribed in 48 CFR 1315.204–570(a)(3), insert the following provision:

Inquiries (DATE)

Offerors must submit all questions concerning this solicitation in writing to _____. Questions should be received no later than ____ calendar days after the issuance date of this solicitation. Any responses to questions will be made in writing, without identification of the questioner, and will be included in an amendment to the solicitation. Even if provided in other form, only the question responses included in the amendment to the solicitation will govern performance of the contract.

(End of clause)

1352.215–73 Evaluation quantities–indefinite quantity contract.

As prescribed in 48 CFR 1315.204–570(b)(1), insert the following provision:

Evaluation Quantities–Indefinite Quantity Contract (DATE)

To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation (and add to this amount other direct costs, if applicable).

(End of clause)

1352.215–74 Best value evaluation.

As prescribed in 48 CFR 1315.204–570(b)(2), insert the following provision:

Best Value Evaluation (DATE)

(a) Award will be made to the offeror: whose offer conforms to the solicitation requirements; who is determined responsible in accordance with FAR Subpart 9.1 by possessing the financial and other capabilities to fulfill the requirements of the contract; and whose proposal is judged, by an integrated assessment of price/cost and non-price evaluation factors, to provide the best value to the Government in accordance with CAR 1352.215–75, *Evaluation Criteria.*

(b) The Government intends to award [specify ''a single contract'' or ''multiple contracts''] in response to the solicitation. The Government reserves the right not to award a contract depending on the quality of the proposals submitted and the availability of funds.

(c) Evaluation of Proposals

(1) *Initial Evaluation of Proposals.* All offers received will be evaluated in accordance with the stated evaluation factors. The Government reserves the right to make an award without discussions based solely upon initial proposals. Therefore, offerors should ensure that their initial proposal constitutes their best offer in terms of both price and the technical solution being proposed.

If award is not made upon initial proposals, then the Contracting Officer will establish a competitive range comprised of the most highly rated proposals. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly-rated proposals. Only those offerors in the competitive range will be offered an opportunity to participate further in the procurement.

(2) *Discussions/Final Proposal Revisions.* The Contracting Officer will engage in discussions with all offerors in the competitive range in accordance with FAR 15.306. At the conclusion of discussions, a final common cut-off date for submission of final proposal revisions will be established. Those offerors remaining in the competitive range will be notified to submit Final Proposal Revisions.

(3) *Final Evaluation of Offers.* A final proposal evaluation will be performed after receipt of Final Proposal Revisions.

(End of clause)

1352.215–75 Evaluation criteria.

As prescribed in 48 CFR 1315.204–570(b)(2) and (3), insert the following provision:

Evaluation Criteria (DATE)

[This section is to be tailored to conform to individual procurements. Text is provided as an example only.]

In determining which proposal provides the best value to the Government, non-price (technical) evaluation factors are [significantly more important/somewhat more important/approximately equal in importance/somewhat less important/ significantly less important] than evaluated price.

[Insert relative importance among the technical evaluation factors.]

Based upon the results of the integrated assessment of the technical and cost/price proposals, the Government may make an award to other than the lowest-priced offeror or the offeror with the highest technical score if the source selection official determines that to do so would result in the best value to the Government.

(a) Technical Evaluation Factors

Factor 1—Technical Approach. The proposal will be evaluated on how the offeror intends to organize, staff and manage the contract and the means that will be used to accomplish the contract requirements. The degree to which the proposal demonstrates an understanding of the requirements will be evaluated, as well as the offeror's planned management of consultants and subcontractors, if applicable.

Factor 2—Experience. The offeror's background, experience, and qualifications will be assessed to determine the likelihood that that offeror can successfully perform the contract requirements and the degree of the risk of non-performance.

Factor 3—Key Personnel. The education, experience, and accomplishments of key personnel will be evaluated to determine the degree to which they possess the qualifications to perform their proposed duties under the contract.

Factor 4—Past Performance. The offeror's past performance on related contracts will be evaluated to determine, as appropriate, successful performance of contract requirements, quality and timeliness of delivery of goods and services, effective management of subcontractors, cost management, level of communication between the contracting parties, proactive management and customer satisfaction.

The Government reserves the right to assess the past performance of proposed subcontractors.

The Government will use its discretion to determine the sources of past performance information used in the evaluation, and the information may be obtained from references provided by the offeror, the agency's knowledge of contractor performance, other government agencies or commercial entities, or past performance databases.

If an offeror does not have a history of relevant contract experience, or if past performance information is not available, the offeror will receive a neutral past performance rating; however, an offeror without a history of relevant experience may receive a lowered rating for the experience evaluation factor.

(b) Cost/Price Evaluation

(1) The proposed prices/costs will be evaluated but not scored. The cost evaluation will determine whether the proposed costs are realistic, complete, and reasonable in relation to the solicitation requirements. Proposed costs must be entirely compatible with the technical proposal.

(2) The Government may use the results of cost/price realism analysis to adjust the offeror's proposal to a most probable cost to the Government. The analysis may include information from a government auditing agency, Government technical personnel, and other sources.

(End of clause)

1352.215–76 Cost or pricing data.

As prescribed in 48 CFR 1315.204–570(b)(4), insert the following provision:

Cost or Pricing Data

Additional Instructions for Preparation of Cost/Price Proposals

(a) *General.* In addition to the information required by CAR 1352.215–70, the cost/price proposal must contain an explanation of the offeror's and proposed subcontractors' fully burdened rates, including direct salary rates, overhead rates, and profit; and information regarding other direct costs.

(b) *Specific Requirements.* (1) Direct Salary Rates: The offeror shall list the categories of professional or technical personnel required to perform the Statement of Work. A brief definition of the education and experience requirements which qualify an employee for inclusion in a listed category should be provided. Further, if some proposed labor categories are classified by multiple grades within a given discipline (*e.g.,* Architect I and II, or Senior and Junior Engineer), a brief explanation as to how they are differentiated shall be provided.

(2) The offeror, and major subcontractors, should provide individual rates for key personnel. Designation of an individual as a key person is subject to agreement of the parties. Where no key personnel are listed, category average rates are appropriate. Rates should be provided by year for the life of the contract. If rates are escalated, the degree (percent) and methodology must be shown. Escalation increases should reflect recent experience or established personnel policy. Types of salary increases given—merit, cost of living, *etc.*—should be discussed.

(3) Overhead Costs. Generally, the offeror's accounting system and estimating practices will determine the method used to allocate overhead costs. The offeror's established practices, if in accordance with generally accepted accounting principles, will be accepted. Proposed overhead rates should represent the offeror's best estimate of the rates to be experienced during the contract period as projected by company budgets or by recent experience adjusted for factors which will influence trends. A narrative statement outlining the offeror's policies and practices for accumulating overhead costs and the method used to compute the proposed rate or rates is required. In the case of multi-branch firms, joint ventures or affiliates, it is expected that overhead costs applicable to the specific location(s) where work is to be performed will be proposed. Company-wide, joint venture, or affiliate rate averages may not be appropriate. The rates should be tailored to the work location(s).

(4) Profit. (i) A fair and reasonable provision for profit cannot be made by simply applying a certain predetermined percentage to the total estimated cost. Rather, profit should be established as a percentage/dollar amount after considering such factors as:

(A) Degree of risk;

(B) Nature of the work to be performed;

(C) Joint venture responsibilities;

(D) Extent of offeror's investment;

(E) Subcontracting of work; and

(F) Other criteria discussed in FAR 15.404–4.

(ii) Separate percentage rates for profit are also required for major subcontractors.

(5) Markup. The offeror may request a markup on subcontract labor. If it does

so, it should state the percentage and provide a justification for that figure.

(6) Other Direct Costs. The offeror shall briefly describe the following:

(i) Travel/Subsistence costs;

(ii) Subcontractor costs; and

(iii) How subcontracting costs were analyzed.

(c) *Audit Reports.* If the offeror or any subcontractor has been audited by a Government agency within the last two years, or has approved indirect cost rates, provide a copy of the audit report, or, if not available, the name, address, and telephone number of the audit office. Similarly, information on any Government-approved indirect cost rates should be provided.

(End of clause)

1352.216–70 Estimated and allowable costs.

As prescribed in 48 CFR 1316.307(a), insert the following clause:

Estimated and Allowable Costs (DATE)

(a) Estimated Costs. The estimated cost of this contract is $_____ [insert total cost of contract], which consists of $_____ [insert amount of cost that is reimbursable] for reimbursable costs and $_____ [insert amount of fixed fee] for fixed/incentive fee. These costs shall be subject to the provisions of FAR clause 52.232–20, ''Limitation of Cost,'' FAR clause 52.216–7, ''Allowable Cost and Payments,'' and FAR clause 52.216–8, ''Fixed Fee.''

(b) Subject to Availability of Funds [Insert paragraph (b) when the contract is issued subject to the availability of funds].

''The amount of funding for this contract is $_____ [insert amount being funded], which consists of $_____ [insert amount of reimbursable costs funded] for reimbursable costs and $_____ [insert amount of fixed fee funded] for Fixed/Incentive Fee. These costs shall be subject to the provisions of FAR 52.232–22, 'Limitations of Funds.' ''

(c) Allowable Costs.

(1) Final annual indirect cost rate(s) and the appropriate base(s) shall be established in accordance with FAR Subpart 42.7, in effect for the period covered by the indirect cost rate proposal.

(2) Until final annual indirect cost rates are established for any period, the Government shall reimburse the contractor at billing rates established by the Contracting Officer (or cognizant Federal agency official) or auditor in accordance with FAR 42.704, subject to adjustment when the final rates are established. The established billing rates are currently as follows:

_____ [Insert billing rate]

(End of clause)

1352.216–71 Level of effort (cost-plus-fixed-fee, term contract).

As prescribed in 48 CFR 1316.307(b), insert the following clause:

Level of Effort (Cost-Plus-Fixed-Fee, Term Contract) (DATE)

(a) In performance of the effort directed in this contract, the contractor shall provide the total of Direct Productive Labor Hours (DPLH) as specified in Part I, Section B during the term specified in Section ____. DPLH is defined as actual work hours exclusive of vacation, holidays, sick leave, and other absences.

(b) Only the DPLH categories indicated below shall be charged directly to the contract. It is estimated that the DPLH will be expended approximately as follows:

Labor Category	Base Period	Option Period I	Option Period II	Option Period III
xxxxxxxxxx	xxxx	xxxx	xxxx	xxxx
xxxxxxxxxx	xxxx	xxxx	xxxx	xxxx
Total Direct Labor	xxxx	xxxx	xxxx	xxxx

(c) The hours specified above are provided as estimates only. If the actual amount of hours incurred falls within 90% to 110% of this estimate, the fee shall not be adjusted.

(d) In the event that the contractor shall be required to provide less than 90% of the estimated DPLH, the fixed fee of the contract shall be equitably adjusted by unilateral modification to the contract. The fixed fee adjustment shall be based solely upon the difference between the DPLH actually provided and 90% of the estimated DPLH, calculated as follows:

Adjusted Fixed Fee = (Actual DPLH/(.9 × Estimated DPLH)) × Specified Fixed Fee

(e) In the event that the contractor shall be required to provide more than 110% of the estimated DPLH, the fixed fee of the Contract shall be equitably adjusted by unilateral modification to the Contract. The fixed fee adjustment shall be based solely upon the difference between the DPLH actually provided and 110% of the estimated DPLH, calculated as follows:

Adjusted Fixed Fee = (Actual DPLH/(1.1 × Estimated DPLH)) × Specified Fixed Fee

(f) These terms and conditions do not supersede the requirements of either FAR clause 52.232–20 ''Limitation of Cost'' or FAR clause 52.232–22 ''Limitation of Funds.''

(End of clause)

1352.216–72 Determination of award fee.

As prescribed in 48 CFR 1316.405–2, insert the following clause:

Determination of Award Fee (DATE)

Based upon the quality of its performance and the results of the Government's performance evaluation, the contractor may earn an award fee.

(a) The total amount of award fee available under this contract is assigned according to the following:

[insert appropriate information]

(b) A Performance Evaluation Plan shall be unilaterally established by the Government as part of the contract and used for the determination of award fees. This plan shall include the criteria that will be used to evaluate the contractor's performance and to determine the percentage of award fee (if any) available for each performance period.

(c) The criteria contained within the Performance Evaluation Plan may relate to:

(1) Quality of performance of the contract requirements;

(2) Effective management of the contract; and

(3) Cost controls.

(d) The Performance Evaluation Plan may be revised unilaterally by the Government at any time during the period of performance, however unless mutually-agreed to a revision shall not affect the current evaluation period. Notification of such changes shall be provided to the contractor [insert number] calendar days prior to the start of the evaluation period to which the change will apply.

(e) At the conclusion of each evaluation period, and in accordance

with the performance evaluation plan, a determination of the amount of the award fee earned shall be made in writing to the contractor by the Government Fee Determination Official (FDO). The FDO's unilateral determination of the amount of award fee earned in any evaluation period or a determination that no fee was earned shall be conclusive.

(f) The contractor may submit a self-evaluation of its performance in an evaluation period. The FDO shall consider the self-evaluation, as the FDO deems appropriate.

(g) The contractor shall submit a voucher for payment of any earned award fee.

(End of clause)

1352.216–73 Distribution of award fee.

As prescribed in 48 CFR 1316.406, insert the following clause:

Distribution of Award Fee (DATE)

(a) The total amount of award fee available under this contract is assigned according to the following:

[insert appropriate information]

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee.

(c) In the event of contract termination for convenience, either in whole or in part, the amount of award fee available shall represent a prorated distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon submission by the contractor to the Contracting Officer's authorized representative of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without executing a contract modification.

(End of clause)

1352.216–74 Task orders.

As prescribed in 48 CFR 1316.501–2–70, insert the following clause:

Task Orders (DATE)

(a) In task order contracts, all work shall be initiated only by issuance of fully executed task orders issued by the Contracting Officer. The work to be performed under these orders must be within the scope of the contract. The Government is only liable for labor hours and costs expended under the terms and conditions of this contract to the extent that a fully executed task order has been issued and covers the required work and costs. Charges for any work not authorized shall be disallowed.

(b) For each task order under the contract, the Contracting Office shall send a request for proposal to the contractor(s). The request will contain a detailed description of the tasks to be achieved, a schedule for completion of the task order, and deliverables to be provided by the contractor.

(c) The contractor shall submit a proposal defining the technical approach to be taken to complete the task order, work schedule and proposed cost/price.

(d) After any necessary negotiations, the contractor shall submit a final proposal.

(e) Task orders will be considered fully executed upon signature of the Contracting Officer. The contractor shall begin work on the task order in accordance with the effective date of the order.

(f) The contractor shall notify the Contracting Officer of any instructions or guidance given that may impact the cost, schedule or deliverables of the task order. A formal modification to the task order must be issued by the Contracting Officer before any changes can be made.

(g) Task orders may be placed during the period of performance of the contract. Labor rates applicable to hours expended in performance of an order will be the contract rates that are in effect at the time the task order is issued.

(h) If multiple awards are made by the Government, the CO shall provide each awardee a fair opportunity to be considered for each task order over the micro-purchase threshold unless one of the exceptions at FAR 16.505(b) applies.

(End of Clause)

1352.216–75 Minimum and maximum contract amounts.

As prescribed in 48 CFR 1316.506(a), insert the following clause:

Minimum and Maximum Contract Amounts (DATE)

During the term of the contract, the Government shall place orders totaling a minimum of _____. The amount of all orders shall not exceed _____.

(End of clause)

1352.216–76 Placement of orders.

As prescribed in 48 CFR 1316.506(b), insert the following clause:

Placement of Orders (DATE)

(a) The contractor shall provide goods and/or services under this contract only as directed in orders issued by authorized individuals. In accordance with FAR 16.505, each order will include:

(1) Date of order;

(2) Contract number and order number;

(3) Item number and description, quantity, and unit price or estimated cost or fee;

(4) Delivery or performance date;

(5) Place of delivery or performance (including consignee);

(6) Packaging, packing, and shipping instructions, if any;

(7) Accounting and appropriation data;

(8) Method of payment and payment office, if not specified in the contract;

(9) Any other pertinent information.

(b) In accordance with FAR 52.216–18, *Ordering,* the following individuals (or activities) are authorized to place orders against this contract:

_____

_____

(c) If multiple awards have been made, the contact information for the DOC task and delivery order ombudsman is _____.

(End of clause)

1352.216–77 Ceiling price.

As prescribed in 48 CFR 1316.601–70 and 1316.602–70, insert the following clause:

Ceiling Price (DATE)

The ceiling price of this contract is $____. The contractor shall not make expenditures nor incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the contractor's own risk.

(End of clause)

1352.219–70 Section 8(a) direct award (Deviation).

As prescribed in 48 CFR 1319.811–3(a), insert the following clause:

Section 8(a) Direct Award (Deviation) (DATE)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to a Partnership Agreement between the Small Business Administration (SBA) and the Department of Commerce (DOC). Accordingly, the SBA, even if not identified in Section A of this contract, is the prime contractor and retains responsibility for 8(a) certification, 8(a) eligibility

determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

_____

_____

_____

[To be completed by the Contracting Officer at time of award]

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any novation agreement. The contracting activity may assign contract administration functions to a contract administration office.

(c) The 8(a) contractor agrees:

(1) To notify the Contracting Officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement prior to the actual relinquishing of ownership or control; and

(2) To adhere to the requirements of FAR 52.219–14, Limitations on Subcontracting.

(End of Clause)

1352.219–71 Notification to delay performance (Deviation).

As prescribed in 48 CFR 1319.811–3(b), insert the following clause:

Notification To Delay Performance (Deviation) (DATE)

The contractor shall not begin performance under this purchase order until 2 working days have passed from the date of its receipt. Unless the contractor receives notification from the Small Business Administration that it is ineligible for this 8(a) award, or otherwise receives instructions from the Contracting Officer, performance under this purchase order may begin on the third working day following receipt of the purchase order. If a determination of ineligibility is issued within the 2-day period, the purchase order shall be considered cancelled.

(End of clause)

1352.219–72 Notification of competition limited to eligible 8(a) concerns, Alternate III (Deviation).

As prescribed in 48 CFR 1319.811–3(c), insert the following clause:

Notification of Competition Limited to Eligible 8(a) Concerns, Alternate III (Deviation) (DATE)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offers—

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation shall be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) _____ [*insert name of contractor*] will notify the _____ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

1352.227–70 Rights in data, assignment of copyright.

As prescribed in 48 CFR 1327.404–4(a), insert the following clause:

Rights in Data, Assignment of Copyright (DATE)

In accordance with 48 CFR 52.227–17, Rights in Data—Special Works, the contractor agrees to assign copyright to data, including reports and other copyrightable materials, first produced in performance of this contract to the United States Government, as represented by the Secretary of Commerce.

(End of clause)

1352.228–70 Insurance coverage.

As prescribed in 48 CFR 1328.310–70(a), insert the following clause:

Insurance Coverage (DATE)

(a) *Workers Compensation and Employer's Liability.* The contractor is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least $100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) *General liability.* (1) The contractor shall have bodily injury liability insurance coverage written on the comprehensive form of policy of at least $500,000 per occurrence.

(2) When special circumstances apply in accordance with FAR 28.307–2(b), Property Damage Liability Insurance shall be required in the amount of $____ [insert zero unless special circumstances apply, if applicable, insert dollar amount.].

(c) *Automobile liability.* The contractor shall have automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage.

(d) *Aircraft public and passenger liability.* When aircraft are used in connection with performing the contract, the contractor shall have aircraft public and passenger liability insurance. Coverage shall be at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000

multiplied by the number of seats or passengers, whichever is greater.

(e) *Vessel liability.* When contract performance involves use of vessels, the Contractor shall provide, vessel collision liability and protection and indemnity liability insurance as determined by the Government.

(End of clause)

1352.228–71 Deductibles under required insurance coverage—cost reimbursement.

As prescribed in 48 CFR 1328.310–70(c), insert the following clause:

Deductibles Under Required Insurance Coverage—Cost Reimbursement (DATE)

(a) The contractor is required to present evidence of the amount of any deductibles in its insurance coverage.

(b) For any insurance required pursuant to *1352.228–70, Insurance Coverage,* the contractor's deductible is not allowable as a direct or indirect cost under this contract. The Government is not liable, and cannot be invoiced, for any losses up to the minimum amounts of coverage required in paragraphs (a) through (d) of clause 1352.228–70. If the contractor obtains an insurance policy with deductibles, the contractor, and not the Government, is responsible for any deductible amount up to the minimum amounts of coverage stated.

(c) If the contractor fails to follow all procedures stated in this subsection and in FAR 52.228–7(g), any amounts above the amount of the obtained insurance coverage which are not covered by insurance will not be reimbursable under the contract.

(End of clause)

1352.228–72 Deductibles under required insurance coverage—fixed price.

As prescribed in 48 CFR 1328.310–70(d), insert the following clause:

Deductibles under Required Insurance Coverage-Fixed Price (DATE)

When the Government is injured, wholly or partially as a result of the contractor's actions and such actions are covered by the insurance required by *1352.228–70, Insurance Coverage,* the Government is entitled to recover from the contractor the full amount of any such injury attributable to the contractor regardless of a deductible. The Contracting Officer may offset the amount of recovery against any payment due to the contractor.

(End of clause)

1352.228–73 Loss of or damage to leased aircraft.

As prescribed in 48 CFR 1328.310–70(e) and 1328.310–70(f), insert the following clause:

Loss of or Damage To Leased Aircraft (DATE)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228–74, *Fair Market Value of Aircraft,* less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or

(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the contractor against third parties for such loss or damage and the contractor shall promptly assign such rights in writing to the Government.

(End of clause)

1352.228–74 Fair market value of aircraft.

As prescribed in 48 CFR 1328.310–70(e) and 48 CFR 1328.310–70(g) insert the following in all applicable contracts for leased aircraft:

Fair Market Value of Aircraft (DATE)

For purposes of the clause entitled ''Loss of or Damage to Leased Aircraft,'' it is agreed that the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) $ ____; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage is the maximum amount for which the Government may be responsible under this contract.

(End of clause)

1352.228–75 Risk and indemnities.

As prescribed in 48 CFR 1328.310–70(e) and 48 CFR 1328.310–70(h), insert the following in all applicable contracts for leased aircraft:

Risk and Indemnities (DATE)

The contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

1352.228–76 Approval of group insurance plans.

As prescribed in 48 CFR 1328.310–70(i), insert the following clause:

Approval of Group Insurance Plans (DATE)

Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan for approval to the Contracting Officer. Any change in benefits provided under an approved plan that can reasonably be expected to increase significantly the cost to the Government shall require similar approval.

(End of clause)

1352.231–70 Precontract costs.

As prescribed in 48 CFR 1331.205–32, insert the following clause:

Precontract Costs (DATE)

The contractor is entitled to reimbursement for allowable, allocable, and reasonable costs incurred during the period of __ to the award date of this contract in an amount not to exceed $ ____.

(End of clause)

1352.231–71 Duplication of effort.

As prescribed in 48 CFR 1331.205–70, insert the following clause:

Duplication of Effort (DATE)

The contractor hereby certifies that costs for work to be performed under this contract and any subcontract hereunder are not duplicative of any costs charged against any other Government contract, subcontract, or other Government source. The contractor agrees to advise the Contracting Officer, in writing, of any other Government contract or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the contractor, whose responsibility it will be to account for it accordingly.

(End of clause)

1352.233–70 Agency protests.

As prescribed in 48 CFR 1333.103(a), insert the following provision:

Agency Protests (DATE)

(a) An agency protest may be filed with either: (1) The contracting officer, or (2) at a level above the contracting officer, with the appropriate agency Protest Decision Authority. *See* 64 FR 16,651 (April 6, 1999)

(b) Agency protests filed with the Contracting Officer shall be sent to the following address: [Insert Contracting Officer name and Address]

(c) Agency protests filed with the agency Protest Decision Authority shall be sent to the following address: Insert appropriate Protest Decision Authority name and Address]

(d) A complete copy of all agency protests, including all attachments, shall be served upon the Contract Law Division of the Office of the General Counsel within one day of filing a protest with either the Contracting Officer or the Protest Decision Authority.

(e) Service upon the Contract Law Division shall be made as follows: U.S. Department of Commerce, Office of the General Counsel, Chief, Contract Law Division, Room 5893, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. FAX: (202) 482–5858.

(End of clause)

1352.233–71 GAO and Court of Federal Claims protests.

As prescribed in 48 CFR 1333.104–70(a), insert the following provision:

GAO and Court of Federal Claims Protests (DATE)

(a) A protest may be filed with either the Government Accountability Office (GAO) or the Court of Federal Claims unless an agency protest has been filed.

(b) A complete copy of all GAO or Court of Federal Claims protests, including all attachments, shall be served upon (i) the Contracting Officer, and (ii) the Contract Law Division of the Office of the General Counsel, within one day of filing a protest with either GAO or the Court of Federal Claims.

(c) Service upon the Contract Law Division shall be made as follows: U.S. Department of Commerce, Office of the General Counsel, Chief, Contract Law Division, Room 5893, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. FAX: (202) 482–5858.

(End of clause)

1352.235–70 Protection of human subjects.

As prescribed in 48 CFR 1335.006(a), insert the following provision:

Protection of Human Subjects (DATE)

(a) Research involving human subjects is not permitted under this award unless expressly authorized in writing by the Contracting Officer. Such authorization will specify the details of the approved research involving human subjects and will be incorporated by reference into this contract.

(b) The Federal Policy for the Protection of Human Subjects (the ''Common Rule''), adopted by the Department of Commerce at 15 CFR Part 27, requires contractors to maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a ''human subject'' as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term ''research'' means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. The Common Rule also sets forth categories of research that may be considered exempt from 15 CFR Part 27. These categories may be found at 15 CFR 27.101(b).

(c) In the event the human subjects research involves pregnant women, prisoners, or children, the contractor is also required to follow the guidelines set forth at 45 CFR Part 46 Subpart B, C and D, as appropriate, for the protection of members of a protected class.

(d) Should research involving human subjects be included in the proposal, prior to issuance of an award, the contractor shall submit the following documentation to the Contracting Officer:

(1) Documentation to verify that contractor has established a relationship with an appropriate Institutional Review Board (''cognizant IRB''). An appropriate IRB is one that is located within the United States and within the community in which the human subjects research will be conducted;

(2) Documentation to verify that the cognizant IRB possesses a valid registration with the United States Department of Health and Human Services' Office for Human Research Protections (''OHRP'');

(3) Documentation to verify that contractor has a valid Federal-wide Assurance (FWA) issued by OHRP.

(e) Prior to starting any research involving human subjects, the contractor shall submit appropriate documentation to the Contracting Officer for institutional review and approval. This documentation may include:

(1) Copies of the human subjects research protocol, all questionnaires, surveys, advertisements, and informed consent forms approved by the cognizant IRB;

(2) Documentation of approval for the human subjects research protocol, questionnaires, surveys, advertisements, and informed consent forms by the cognizant IRB;

(3) Documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually; and/or

(4) Documentation to support an exemption for the project from the Common Rule [NOTE: this option is not available for activities that fall under 45 CFR Part 46 Subpart C].

(f) In addition, if the contractor modifies a human subjects research protocol, questionnaire, survey, advertisement, or informed consent form approved by the cognizant IRB, the contractor shall submit a copy of all modified material along with documentation of approval for said modification by the cognizant IRB to the Contracting Officer for institutional review and approval. The contractor shall not implement any IRB approved-modification without written approval by the Contracting Officer.

(g) No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the Contracting Officer approves the required appropriate documentation in writing.

[End of provision]

1352.235–71 Protection of human subjects—exemption.

As prescribed in 48 CFR 1335.006(b), insert the following clause:

Protection of Human Subjects (DATE)

(a) Contractor has satisfied the requirements set forth in solicitation # _____, related to the Protection of Human Subjects in research. The Government has determined that the research involving human subjects to be conducted under this contract is exempt from the requirements of the Common Rule for the Protection of Human Subjects. The exemption memorandum executed by the Government and the attachments are hereby incorporated by reference into this contract. If contractor uses an informed consent form for the exempt research, contractor must use the informed consent form contained in the attachments in its conduct of research involving human subjects under this contract.

(b) If the conditions upon which the exemption is based should change in any way, contractor shall immediately notify the Contracting Officer in writing of the specified change. The Government will review the change and make a determination as to whether the change requires a change to the exemption approval. Contractor shall not proceed until notified in writing of the Contracting Officer's approval. Contractor shall obtain prior written approval from the Contracting Officer for any change to the existing human subjects protocol or informed consent form before proceeding.

(c) No other research involving human subjects is permitted under this award unless expressly authorized in writing by the Contracting Officer. Such writing will specify the details of the approved research involving human subjects and will be incorporated by reference into this contract.

(d) The Federal Policy for the Protection of Human Subjects (the ''Common Rule''), adopted by the Department of Commerce at 15 CFR Part 27, requires contractors to maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a ''human subject'' as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term ''research'' means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

(e) The Common Rule also sets forth categories of research that may be considered exempt from this policy. These categories may be found at 15 CFR 27.101(b).

(f) In the event the human subjects research involves pregnant women, prisoners, or children, contractor is also required to follow the guidelines set forth at 45 CFR Part 46 Subpart B, C and D, as appropriate, for the protection of members of a protected class.

(g) Should additional research involving human subjects be required under the contract, prior to beginning such research, contractor shall submit the following documentation to the Contracting Officer:

(1) Documentation to verify that contractor has established a relationship with an appropriate Institutional Review Board (''cognizant IRB''). An appropriate IRB is one that is located within the United States and within the community in which the human subjects research will be conducted;

(2) Documentation to verify that the cognizant IRB is registered with the United States Department of Health and Human Services' Office for Human Research Protections (''OHRP'') and is designated as contractor's cognizant IRB;

(3) Documentation to verify that contractor has a valid Federal-wide Assurance (FWA) issued by OHRP; or

(4) Documentation necessary to support a determination that the research is exempt from the requirements of the Common Rule for the Protection of Human Subjects.

(h) Prior to starting any additional research involving human subjects, the contractor shall submit appropriate documentation to the Contracting Officer for institutional review and approval or exemption determination. This documentation may include:

(1) Copies of the human subjects research protocol, all questionnaires, surveys, advertisements, and informed consent forms approved by the cognizant IRB;

(2) Documentation of approval for the human subjects research protocol, questionnaires, surveys, advertisements, and informed consent forms by the cognizant IRB;

(3) Documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually; and/or

(4) Documentation to support an exemption for the project from the Common Rule [NOTE: this option is not available for activities that fall under 45 CFR Part 46 Subpart C].

(i) In addition, if the contractor modifies a human subjects research protocol, questionnaire, survey, advertisement, or informed consent form approved by the cognizant IRB, the contractor shall submit a copy of all modified material along with documentation of approval for said modification by the cognizant IRB to the Contracting Officer for institutional review and approval. The contractor may not implement any IRB approved modification without written approval by the Contracting Officer. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the Contracting Officer approves the required appropriate documentation in writing.

(End of clause)

1352.235–72 Protection of human subjects—institutional approval.

As prescribed in 48 CFR 1335.006(c), insert the following clause:

Protection of Human Subjects—Institutional Approval (DATE)

(a) This contract/order includes non-exempt human subjects research that must be conducted pursuant to the requirements of the Federal Policy for the Protection of Human Subjects (the ''Common Rule''), adopted by the Department of Commerce at 15 CFR Part 27. Contractor has submitted documentation establishing review and approval of the human subjects research protocol, including all informed consent forms, advertisements, and other recruitment materials, by a qualified Institutional Review Board (IRB) that has a current Federal-wide Assurance (FWA) issued by the Department of Health and Human Services (DHHS).

(b) By accepting this contract/order, the contractor certifies the accuracy of the documentation provided to its cognizant IRB and to the Government in support of the human subjects research specified therein. Based upon the contractor's documentation, and following the Government institutional review thereof, the following specific involvement of human subjects in research is hereby approved by the Contracting Officer:

Name of IRB: _____ (IRB #____)

Title of IRB Protocol: _____ _____

Recruiting Letter Approval Date (if appropriate): _____ _____

Consent Form Approval Date: _____

Assurance of Compliance Number: _____ _____

(c) Unless incorporated by written contract modification approved by the Contracting Officer, no other involvement of human subjects in research under this contract may be undertaken or conducted, or costs incurred and/or charged to the project, except as specified in the study plan reviewed and approved by the cognizant IRB and Government. Therefore, if the contractor modifies a human subjects research protocol, advertisement, or informed consent form approved by the cognizant IRB, contractor shall submit a copy of all modified material, along with documentation of approval for said modification by the cognizant IRB, to the Contracting Officer for agency institutional review and approval. Contractor may not implement any IRB-approved modification without written approval by the Contracting Officer. Documentation of continuing IRB approval is required each year by the renewal date assigned by the cognizant IRB. Documentation of continuing IRB approval must be submitted to the Government for review and approval as soon as it occurs. Continuing approval of the human subjects research must be obtained from the cognizant IRB and provided to the Government until the research is completed or terminated. The contractor may proceed with previously approved human subjects research, if any, under this contract while the Government is conducting continuing review and approval of the human subjects research protocol. In the event that the Government determines, during the course of its review, that the human subjects research in this contract is not in compliance with the regulations set forth at 15 CFR Part 27, or this contract, the Contracting Officer may take the appropriate enforcement action, including disallowing costs, suspending or terminating the human subjects protocol or the contract, by notifying the contractor in writing.

(d) It is incumbent upon contractor to ensure that continuing IRB review approval occurs in accordance with 15 CFR Part 27. In the event that continuing review approval does not occur as set forth by 15 CFR Part 27, contractor is to notify the Contracting Officer immediately.

(e) Contractor must report all adverse events to the cognizant IRB and to the Contracting Officer. In the event that adverse events are reported to the cognizant IRB and the Contracting Officer, the Government may suspend this contract pending a full review of the adverse event by the cognizant IRB.

(f) If the conditions upon which IRB approval is based should change in any way, contractor shall immediately notify the Contracting Officer, in writing, of the specified change.

(g) Failure to comply with this contract clause will be considered material noncompliance with the contract, and the Contracting Officer may take appropriate enforcement action, including disallowing costs, suspension or termination of the contract.

(End of clause)

1352.235–73 Research involving human subjects—after initial contract award.

As prescribed in 48 CFR 1335.006(d), insert the following clause:

Research Involving Human Subjects—After Initial Contract Award (DATE)

(a) No research involving human subjects is currently included in this contract/task order, and no research involving human subjects is permitted under this contract/task order unless expressly authorized, in writing, by the Contracting Officer.

(b) The Federal Policy for the Protection of Human Subjects (the ''Common Rule''), adopted by the Department of Commerce at 15 CFR Part 27, requires that contractors maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a ''human subject'' as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term ''research'' means a systematic investigation, including research, development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

(c) The Common Rule also sets forth categories of research that may be considered exempt from this policy. These categories are specified at 15 CFR 27.101(b).

(d) In the event that human subjects research involves pregnant women, prisoners, or children, the contractor is also required to follow the guidelines set forth at 45 CFR Part 46 Subparts B, C and D, as appropriate, for the protection of members of a protected class.

(e) Should research involving human subjects become necessary for carrying out this contract/task order, prior to undertaking or conducting such human subjects research, contractor shall submit the following documentation to the Contracting Officer:

(1) Documentation to verify that contractor has established a relationship with an appropriate Institutional Review Board (''cognizant IRB''). An appropriate IRB is one that is located within the United States and within the community in which the human subjects research will be conducted;

(2) Documentation to verify that the cognizant IRB is registered with the United States Department of Health and Human Services' Office for Human Research Protections (''OHRP'');

(3) Documentation to verify that contractor has a valid Federal-wide Assurance (FWA) issued by the OHRP.

(f) Prior to starting any research involving human subjects, contractor shall submit appropriate documentation to the Contracting Officer for Government institutional review and approval. This documentation may include:

(1) Copies of the human subjects research protocol, advertisements, recruitment material, and informed consent forms approved by the cognizant IRB;

(2) Documentation of approval for the human subjects research protocol, advertisements, recruitment material, and informed consent forms by the cognizant IRB;

(3) Documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually; and/or

(4) Documentation to support an exemption for the project from the Common Rule [NOTE: this option is not available for activities that fall under 45 CFR Part 46 Subpart C].

(g) In addition, if contractor modifies a human subjects research protocol, advertisement, recruitment material, or informed consent form approved by the cognizant IRB, contractor shall submit a copy of all modified material, along with documentation of approval for said modification by the cognizant IRB, to the Contracting Officer for Agency institutional review and approval. Contractor may not implement any IRB-approved modification without written approval by the Contracting Officer.

(h) No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the Contracting Officer approves the required appropriate documentation in writing.

(End of clause)

1352.237–70 Security processing requirements—high or moderate risk contracts.

As prescribed in 48 CFR 1337.110–70 (b), insert the following clause:

Security Processing Requirements—High or Moderate Risk Contracts (DATE)

(a) *Investigative Requirements for High and Moderate Risk Contracts.* All contractor (and subcontractor) personnel proposed to be employed under a High or Moderate Risk contract shall undergo security processing by the Department's Office of Security before being eligible to work on the premises of any Department of Commerce owned, leased, or controlled facility in the United States or overseas, or to obtain access to a Department of Commerce IT system. All Department of Commerce security processing pertinent to this contract will be conducted at no cost to the contractor. The level of contract risk will determine the type and scope of such processing, as noted below.

(1) Investigative requirements for Non-IT Service Contracts are:

(i) High Risk—Background Investigation (BI).

(ii) Moderate Risk—Moderate Background Investigation (MBI).

(2) Investigative requirements for IT Service Contracts are:

(i) High Risk IT—Background Investigation (BI).

(ii) Moderate Risk IT—Background Investigation (BI).

(b) In addition to the investigations noted above, non-U.S. citizens must have a pre-appointment check that includes an Immigration and Customs Enforcement agency check.

(c) *Additional Requirements for Foreign Nationals (Non-U.S. Citizens).* To be employed under this contract within the United States, non-U.S. citizens must have:

(1) Official legal status in the United States;

(2) Continuously resided in the United States for the last two years; and

(3) Obtained advance approval from the servicing Security Officer of the contracting operating unit in consultation with the DOC Office of Security (OSY) headquarters. (OSY routinely consults with appropriate agencies regarding the use of non-U.S. citizens on contracts and can provide up-to-date information concerning this matter.)

(d) *Security Processing Requirement.* Processing requirements for High and Moderate Risk Contracts are as follows:

(1) The contractor must complete and submit the following forms to the Contracting Officer's Representative (COR):

(i) Standard Form 85P (SF–85P), Questionnaire for Public Trust Positions;

(ii) FD–258, Fingerprint Chart with OPM's designation in the ORI Block; and

(iii) Credit Release Authorization.

(2) The Sponsor will ensure that these forms have been properly completed, initiate the CD–254, Contract Security Classification Specification, and forward the documents to the cognizant Security Officer.

(3) Upon completion of security processing, the Office of Security, through the servicing Security Officer and the Sponsor, will notify the contractor in writing of an individual's eligibility to be provided access to a Department of Commerce facility or Department of Commerce IT system.

(4) Security processing shall consist of limited personal background inquiries pertaining to verification of name, physical description, marital status, present and former residences, education, employment history, criminal record, personal references, medical fitness, fingerprint classification, and other pertinent information. For non-U.S. citizens, the Sponsor must request an Immigration and Customs Enforcement agency check. It is the option of the Office of Security to repeat the security processing on any contract employee at its discretion.

(e) *Notification of Disqualifying Information.* If the Office of Security receives disqualifying information on a contract employee, the COR will be notified. The Sponsor, in coordination with the Contracting Officer, will immediately remove the contract employee from duties requiring access to Departmental facilities or IT systems. Contract employees may be barred from working on the premises of a facility for any of the following:

(1) Conviction of a felony crime of violence or of a misdemeanor involving moral turpitude;

(2) Falsification of information entered on security screening forms or on other documents submitted to the Department;

(3) Improper conduct once performing on the contract, including criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government, regardless of whether the conduct was directly related to the contract;

(4) Any behavior judged to pose a potential threat to Departmental information systems, personnel, property, or other assets.

(f) Failure to comply with security processing requirements may result in termination of the contract or removal of contract employees from Department of Commerce facilities or denial of access to IT systems.

(g) *Access to National Security Information.* Compliance with these requirements shall not be construed as providing a contract employee clearance to have access to national security information.

(h) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of clause)

1352.237–71 Security processing requirements—low risk contracts.

As prescribed in 48 CFR 1337.110–70 (c), insert the following clause:

Security Processing Requirements—Low Risk Contracts (DATE)

(a) *Investigative Requirements for Low Risk Contracts.* All contractor (and subcontractor) personnel proposed to be employed under a Low Risk contract shall undergo security processing by the Department's Office of Security before being eligible to work on the premises of any Department of Commerce owned, leased, or controlled facility in the United States or overseas, or to obtain access to a Department of Commerce IT system. All Department of Commerce security processing pertinent to this contract will be conducted at no cost to the contractor.

(b) Investigative requirements for Non-IT Service Contracts are:

(1) Contracts more than 180 days—National Agency Check and Inquiries (NACI).

(2) Contracts less than 180 days—Special Agency Check (SAC).

(c) Investigative requirements for IT Service Contracts are:

(1) Contracts more than 180 days—National Agency Check and Inquiries (NACI).

(2) Contracts less than 180 days—National Agency Check and Inquiries (NACI).

(d) In addition to the investigations noted above, non-U.S. citizens must have a background check that includes an Immigration and Customs Enforcement agency check.

(e) *Additional Requirements for Foreign Nationals (Non-U.S. Citizens).* Non-U.S. citizens (lawful permanent residents) to be employed under this contract within the United States must have:

(1) Official legal status in the United States;

(2) Continuously resided in the United States for the last two years; and

(3) Obtained advance approval from the servicing Security Officer in consultation with the Office of Security headquarters.

(f) *DOC Security Processing Requirements for Low Risk Non-IT Service Contracts.* Processing requirements for Low Risk non-IT Service Contracts are as follows:

(1) Processing of a NACI is required for all contract employees employed in Low Risk non-IT service contracts for more than 180 days. The Contracting Officer's Representative (COR) will invite the prospective contractor into e-QIP to complete the SF–85. The contract employee must also complete fingerprinting.

(2) Contract employees employed in Low Risk non-IT service contracts for less than 180 days require processing of Form OFI–86C Special Agreement Check (SAC), to be processed. The Sponsor will forward a completed Form OFI–86C, FD–258, Fingerprint Chart, and Credit Release Authorization to the servicing Security Officer, who will send the investigative packet to the Office of Personnel Management for processing.

(3) Any contract employee with a favorable SAC who remains on the contract over 180 days will be required to have a NACI conducted to continue working on the job site.

(4) For Low Risk non-IT service contracts, the scope of the SAC will include checks of the Security/Suitability Investigations Index (SII), other agency files (INVA), Defense Clearance Investigations Index (DCII), FBI Fingerprint (FBIF), and the FBI Information Management Division (FBIN).

(5) In addition, for those individuals who are not U.S. citizens (lawful permanent residents), the Sponsor may request a Customs Enforcement SAC on Form OFI–86C, by checking Block #7, Item I. In Block 13, the Sponsor should enter the employee's Alien Registration Receipt Card number to aid in verification.

(6) Copies of the appropriate forms can be obtained from the Sponsor or the Office of Security. Upon receipt of the required forms, the Sponsor will forward the forms to the servicing Security Officer. The Security Officer will process the forms and advise the Sponsor and the Contracting Officer whether the contract employee can commence work prior to completion of the suitability determination based on the type of work and risk to the facility (*i.e.,* adequate controls and restrictions are in place). The Sponsor will notify the contractor of favorable or unfavorable findings of the suitability determinations. The Contracting Officer will notify the contractor of an approved contract start date.

(g) *Security Processing Requirements for Low Risk IT Service Contracts.* Processing of a NACI is required for all contract employees employed under Low Risk IT service contracts.

(1) Contract employees employed in all Low Risk IT service contracts will require a National Agency Check and Inquiries (NACI) to be processed. The Contracting Officer's Representative (COR) will invite the prospective contractor into e-QIP to complete the SF–85. Fingerprints and a Credit Release Authorization must be completed within three working days from start of work, and provided to the Servicing Security Officer, who will forward the investigative package to OPM.

(2) For Low Risk IT service contracts, individuals who are not U.S. citizens (lawful permanent residents) must undergo a NACI that includes an agency check conducted by the Immigration and Customs Enforcement Service. The Sponsor must request the ICE check as a part of the NAC.

(h) *Notification of Disqualifying Information.* If the Office of Security receives disqualifying information on a contract employee, the Sponsor and Contracting Officer will be notified. The Sponsor shall coordinate with the Contracting Officer for the immediate removal of the employee from duty requiring access to Departmental facilities or IT systems. Contract employees may be barred from working on the premises of a facility for any of the following reasons:

(1) Conviction of a felony crime of violence or of a misdemeanor involving moral turpitude.

(2) Falsification of information entered on security screening forms or of other documents submitted to the Department.

(3) Improper conduct once performing on the contract, including criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government regardless of whether the conduct was directly related to the contract.

(4) Any behavior judged to pose a potential threat to Departmental information systems, personnel, property, or other assets.

(i) Failure to comply with security processing requirements may result in termination of the contract or removal of contract employees from Department of Commerce facilities or denial of access to IT systems.

(j) Access to National Security Information. Compliance with these requirements shall not be construed as providing a contract employee clearance to have access to national security information.

(k) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of clause)

1352.237–72 Security processing requirements–national security contracts.

As prescribed in 48 CFR 1337.110–70(d), use the following clause:

Security Processing Requirements—National Security Contracts (DATE)

(a) *Security Investigative Requirements for National Security Contracts.* National Security Contracts require contractor employees to gain access to national security information in the performance of their work. Regardless of the contractor employees' location, appropriate security access and fulfillment of cleared facility requirements, as determined by the National Industrial Security Program (NISP) Operation Manual must be met. All contractors are subject to the appropriate investigations indicated below and may be granted appropriate security access by the Office of Security based on favorable results. No national security material or documents shall be removed from a Department of Commerce facility. The circumstances of the work performance must allow the Department of Commerce to retain control over national security information and keep the number of contract personnel with access to the information to a minimum.

(b) All employees working on Special or Critical Sensitive contracts require an updated personnel security background investigation every five (5) years. Employees on Non-Critical Sensitive contracts will require an updated personnel security background investigation every ten (10) years.

(c) *Security Procedures.* Position sensitivity/risk assessments must be conducted on all functions that are performed under the contract. Risk assessments for contractor employees are determined in the same manner as assessment of those functions performed by government employees. The Contracting Officer and Contracting Officer's Representative should determine the level of sensitivity or risk with the assistance of the servicing Security Officer.

(1) Contractor employees working on National Security Contracts must have a completed investigation and be granted an appropriate security level clearance by the Office of Security before start of work.

(2) The Contracting Officer's Representative must send the contract

employee's existing security clearance information, if applicable, or appropriate investigative request package, to the servicing Security Officer, who will review and forward it to the Office of Security.

(3) The Office of Security must confirm that contract employees have the appropriate security clearance before starting any work under a National Security Contract.

(d) *Security Forms Required.* For Critical-Sensitive positions with Top Secret access, Critical-Sensitive positions with Secret access, and Non-Critical Sensitive positions with Secret or Confidential access, the following forms are required:

(1) Form SF–86, Questionnaire for National Security Positions, marked ''CON'' in Block 1, Position Title, to distinguish it as a contractor case;

(2) Form FD–258, Fingerprint Chart, with OPM's designation in the ORI Block; and

(3) Credit Release Authorization Form.

(e) Contracting Officer's Representative Responsibilities are:

(1) Coordinate submission of a proper investigative request package with the servicing Security Officer, the Contracting Officer, and the contractor.

(2) Review the request package for completeness, ensuring that the subject of each package is identified as a contract employee, the name of the contractor is identified, and that each package clearly indicates the contract sensitivity designation.

(3) Send the request package to the servicing Security Officer for investigative processing.

(f) Servicing Security Officer Responsibilities are:

(1) Review the package for completeness.

(2) Ensure that the forms are complete and contain all the pertinent information necessary to request the background investigation.

(3) Forward the request for investigation to the Defense Investigative Service Coordinating Office (DISCO).

(4) Maintain records of contractor personnel in their units subject to the NISP.

(5) Ensure that all contractor personnel have been briefed on the appropriate procedures for handling and safeguarding national security information.

(g) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of clause)

1352.237–73 Foreign national visitor and guest access to departmental resources.

As prescribed in 48 CFR 1337.110–70 (e), insert the following clause:

Foreign National Visitor and Guest Access to Departmental Resources (DATE)

(a) The contractor shall comply with the provisions of Department Administrative Order 207–12, Foreign National Visitor and Guest Access Program; Bureau of Industry and Security Export Administrative Regulations Part 734, and [insert operating unit counsel specific procedures]. The contractor shall provide the Government with notice of foreign nationals requiring access to any Department of Commerce facility or through a Department of Commerce IT system.

(b) The contractor shall identify each foreign national who requires access to any Departmental resources, and shall provide all requested information in writing to the Contracting Officer's Representative.

(c) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of clause)

1352.237–74 Progress reports.

As prescribed in 48 CFR 1337.110–71(a), insert the following clause:

Progress Reports (DATE)

The contractor shall submit, to the Government, a progress report every _____ [insert time period] month(s) after the effective date of the contract, and every _____ [insert time period] thereafter during the period of performance. The contractor shall deliver progress reports that summarize the work completed during the performance period, the work forecast for the following period, and state the names, titles and number of hours expended for each of the contractor's professional personnel assigned to the contract, including officials of the contractor. The report shall also include any additional information—including findings and recommendations—that may assist the Government in evaluating progress under this contract. The first report shall include a detailed work outline of the project and the contractor's planned phasing of work by reporting period.

(End of clause)

1352.237–75 Key personnel.

As prescribed in 48 CFR 1337.110–71(b), insert the following clause:

Key Personnel (DATE)

(a) The contractor shall assign to this contract the following key personnel:

(Name) (Position Title)

(Name) (Position Title)

(b) The contractor shall obtain the consent of the Contracting Officer prior to making key personnel substitutions. Replacements for key personnel must possess qualifications equal to or exceeding the qualifications of the personnel being replaced, unless an exception is approved by the Contracting Officer.

(c) Requests for changes in key personnel shall be submitted to the Contracting Officer at least 15 working days prior to making any permanent substitutions. The request should contain a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. The Contracting Officer will notify the contractor within 10 working days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes.

(End of clause)

1352.239–70 Software license addendum.

As prescribed in 48 CFR 1339.107, insert the following clause:

Software License Addendum (DATE)

(a) This Addendum incorporates certain terms and conditions relating to Federal procurement actions. The terms and conditions of this Addendum take precedence over the terms and conditions contained in any license agreement or other contract documents entered into between the parties.

(b) *Governing Law:* Federal procurement law and regulations, including the Contract Disputes Act, 41 U.S.C. Section 601 *et. seq.*, and the Federal Acquisition Regulation (FAR), govern the agreement between the parties. Litigation arising out of this contract may be filed only in those fora that have jurisdiction over Federal procurement matters.

(c) *Attorney's Fees:* Attorney's fees are payable by the Federal government in any action arising under this contract only pursuant to the Equal Access in Justice Act, 5 U.S.C. Section 504.

(d) *No Indemnification:* The Federal government will not be liable for any claim for indemnification; such payments may violate the Anti-Deficiency Act, 31 U.S.C. Section 1341(a).

(e) *Assignment:* Payments may only be assigned in accordance with the

Assignment of Claims Act, 31 U.S.C. Section 3727, and FAR Subpart 32.8, ''Assignment of Claims.''

(f) *Invoices:* Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. Section 3903) and Office of Management and Budget (OMB) Circular A–125, Prompt Payment.

(g) *Patent and Copyright Infringement:* Patent or copyright infringement suits brought against the United States as a party may only be defended by the U.S. Department of Justice (28 U.S.C. Section 516).

(h) *Renewal of Support after Expiration of this Award:* Service will not automatically renew after expiration of the initial term of this agreement.

(i) Renewal may only occur in accord with (1) the mutual agreement of the parties; or (2) an option renewal clause allowing the Government to unilaterally exercise one or more options to extend the term of the agreement.

(End of clause)

1352.239–71 Electronic and information technology.

As prescribed in 48 CFR 1339.270(a), insert the following provision:

Electronic and Information Technology (DATE)

(a) To be considered eligible for award, offerors must propose electronic and information technology (EIT) that meet the applicable Access Board accessibility standards at 36 CFR 1194 designated below:

____ 1194.21 Software applications and operating systems

____ 1194.22 Web-based intranet and Internet information and applications

____ 1194.23 Telecommunications products

____ 1194.24 Video and multimedia products

____ 1194.25 Self-contained, closed products

____ 1194.26 Desktop and portable computers

____ 1194.31 Functional performance criteria

____ 1194.41 Information, documentation and support

(b) The standards do not require the installation of specific accessibility-related software or the attachment of an assistive technology device, but merely require that the EIT be compatible with such software and devices so that it can be made accessible if so required by the agency in the future.

(c) Alternatively, offerors may propose products and services that provide equivalent facilitation. Such offers will be considered to have met the provisions of the Access Board standards for the feature or components providing equivalent facilitation. If none of the offers that meet all applicable provisions of the standards could be accepted without imposing an undue burden on the agency or component, or if none of the offerors propose products or services that fully meet all of the applicable Access Board's provisions, those offerors whose products or services meet some of the applicable provisions will be considered eligible for award. Awards will not be made to an offeror meeting all or some of the applicable Access Board provisions if award would impose an undue burden upon the agency.

(d) Offerors must submit representation information concerning their products by completing the VPAT template at *http://www.Section508.gov.*

(End of clause)

1352.239–72 Security requirements for information technology resources.

As prescribed in 48 CFR 1339.270(b), insert the following clause:

Security Requirements for Information Technology Resources (DATE)

(a) *Applicability.* This clause is applicable to all contracts that require contractor electronic access to Department of Commerce sensitive non-national security or national security information contained in systems, or administrative control of systems by a contractor that process or store information that directly supports the mission of the Agency.

(b) *Definitions.* For purposes of this clause, the term ''Sensitive'' is defined by the guidance set forth in the Computer Security Act of 1987 (Pub. L. 100–235), including the following definition of the term:

(1) Sensitive information is ''* * * any information, the loss, misuse, or unauthorized access to, or modification of which could adversely affect the national interest or the, conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (The Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.''

(2) For purposes of this clause, the term ''National Security'' is defined by the guidance set forth in:

(i) The DOC IT Security Program Policy and Minimum Implementation Standards, Section 4.3.

(ii) The DOC Security Manual, Chapter 18.

(iii) Executive Order 12958, as amended, Classified National Security Information. Classified or national security information is information that has been specifically authorized to be protected from unauthorized disclosure in the interest of national defense or foreign policy under an Executive Order or Act of Congress.

(3) Information technology resources include, but are not limited to, hardware, application software, system software, and information (data). Information technology services include, but are not limited to, the management, operation (including input, processing, transmission, and output), maintenance, programming, and system administration of computer systems, networks, and telecommunications systems.

(c) The contractor shall be responsible for implementing sufficient Information Technology security, to reasonably prevent the compromise of DOC IT resources for all of the contractor's systems that are interconnected with a DOC network or DOC systems that are operated by the contractor.

(d) All contractor personnel performing under this contract and contractor equipment used to process or store DOC data, or to connect to DOC networks, must comply with the requirements contained in the DOC *Information Technology Management Handbook* (*see* DOC, Office of the Chief Information Officer Web site), or equivalent/more specific agency or operating unit counsel guidance as specified immediately hereafter [insert agency or operating unit counsel specific guidance, if applicable].

(e) Contractor personnel requiring a user account for access to systems operated by the contractor for DOC or interconnected to a DOC network to perform contract services shall be screened at an appropriate level in accordance with Commerce Acquisition Manual 1337.70, *Security Processing Requirements for Service Contracts.*

(f) Within 5 days after contract award, the contractor shall certify in writing to the COR that its employees, in performance of the contract, have completed initial IT security orientation training in DOC IT Security policies, procedures, computer ethics, and best practices, in accordance with *DOC IT Security Program Policy,* chapter 15, section 15.3. The COR will inform the contractor of any other available DOC training resources. Annually thereafter the contractor shall certify in writing to the COR that its employees, in performance of the contract, have completed annual refresher training as

required by section 15.4 of the *DOC IT Security Program Policy.*

(g) Within 5 days of contract award, the contractor shall provide the COR with signed acknowledgement of the provisions as contained in Commerce Acquisition Regulation (CAR), 1352.209–72, *Restrictions Against Disclosures.*

(h) The contractor shall afford DOC, including the Office of Inspector General, access to the contractor's and subcontractor's facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of DOC data or to the function of computer systems operated on behalf of DOC, and to preserve evidence of computer crime.

(i) For all contractor-owned systems for which performance of the contract requires interconnection with a DOC network on which DOC data will be stored or processed, the contractor shall provide, implement, and maintain a System Accreditation Package in accordance with the *DOC IT Security Program Policy.* Specifically, the contractor shall:

(1) Within 14 days after contract award, submit for DOC approval a System Certification Work Plan, including project management information (at a minimum the tasks, resources, and milestones) for the certification effort, in accordance with *DOC IT Security Program Policy* and [Insert agency or operating unit counsel specific guidance, if applicable]. The Certification Work Plan, approved by the COR, in consultation with the DOC IT Security Officer, or Agency/operating unit counsel IT Security Manager/Officer, shall be incorporated as part of the contract and used by the COR to monitor performance of certification activities by the contractor of the system that will process DOC data or connect to DOC networks. Failure to submit and receive approval of the Certification Work Plan may result in termination of the contract.

(2) Upon approval, follow the work plan schedule to complete system certification activities in accordance with DOC *IT Security Program Policy* Section 6.2, and provide the COR with the completed System Security Plan and Certification Documentation Package portions of the System Accreditation Package for approval and system accreditation by an appointed DOC official.

(3) Upon receipt of the Security Assessment Report and Authorizing Official's written accreditation decision from the COR, maintain the approved level of system security as documented in the Security Accreditation Package, and assist the COR in annual assessments of control effectiveness in accordance with DOC *IT Security Program Policy,* Section 6.3.1.1.

(j) The contractor shall incorporate this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

1352.242–70 Postaward conference.

As prescribed in 48 CFR 1342.503–70, insert the following provision:

Postaward Conference (DATE)

A postaward conference with the successful offeror may be required. If required, the Contracting Officer will contact the contractor within 10 days of contract award to arrange the conference.

(End of clause)

1352.245–70 Government furnished property.

As prescribed in 48 CFR 1345.107–70, insert the following clause:

Government Furnished Property (DATE)

The Government will provide the following item(s) of Government property to the contractor . The contractor shall be accountable for, and have stewardship of, the property in the performance of this contract. This property shall be used and maintained by the contractor in accordance with provisions of the ''Government Property'' clause included in this contract.

Item No.	Description	Quantity	Delivery Date	Property/ Tag Number (if applicable)

(End of clause)

1352.246–70 Place of acceptance.

As prescribed in 1346.503, insert the following clause:

Place of Acceptance (DATE)

(a) The Contracting Officer or the duly authorized representative will accept supplies and services to be provided under this contract.

(b) The place of acceptance will be:

_____

_____

_____

(End of clause)

1352.270–70 Period of performance.

As prescribed in 48 CFR 1370.101, insert the following clause:

Period of Performance (DATE)

(a) The base period of performance of this contract is from ____ through ____. If an option is exercised, the period of performance shall be extended through the end of that option period.

(b) The option periods that may be exercised are as follows:

Period	Start Date	End Date
Option I		
Option II		
Option III		
Option IV		

(c) The notice requirements for unilateral exercise of option periods are set out in FAR 52.217–9.

(End of clause)

1352.270–71 Pre-bid/pre-proposal conference and site visit.

As prescribed in 48 CFR 1370.102, insert the following provision:

Pre-Bid/Pre-Proposal Conference and Site Visit (DATE)

(a) The Government is planning a pre-proposal conference, during which potential contractors may obtain a better understanding of the work required.

(b) Offerors are encouraged to submit all questions in writing at least [__] days prior to the conference. Questions will be considered at any time prior to, or during, the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference, an amendment to the solicitation containing an abstract of the questions and the Government's

answers, and a list of attendees, will be made publicly available.

(c) In order to facilitate conference preparations, contact the person identified in [Block __] on Standard Form [__] of this solicitation to make arrangements for security processing for entry of attendees into the Government facility.

(d) In no event shall failure to attend the pre-proposal conference constitute grounds supporting a protest or contract claim.

(e) Offerors are cautioned that, notwithstanding any remarks, clarifications, or responses provided at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by written amendment. It is the responsibility of each offeror, prior to submitting a proposal, to seek clarification of any perceived ambiguity in the solicitation or created by an amendment of the solicitation.

(f) The pre-proposal conference will be held:

Date: _____

Time: _____

Location: _____

[Instructions: If the conference also includes a site or equipment inspection visit, insert the following paragraph]:

(g) During the conference, an opportunity to visit the site of the work, and, if applicable, inspect equipment on which maintenance or repairs are to be performed will be offered to attendees.

(h) Offerors are expected to satisfy themselves regarding all conditions that may affect the work required or the cost of contract performance. In no event shall failure to inspect the site and/or equipment constitute grounds for any protest or contract claim.

(End of clause)

1352.271–70 Inspection and manner of doing work.

As prescribed in 48 CFR 1371.101, insert the following clause:

Inspection and Manner Of Doing Work (DATE)

(a) All work and material shall be subject to the approval of the Contracting Officer or duly authorized representative. Work shall be performed in accordance with the plans and specifications of this contract as modified by any contract modification.

(b) Unless otherwise specifically provided for in the contract, all operational practices of the contractor and all workmanship and material, equipment and articles used in the performance of work shall be in accordance with American Bureau of Shipping ''Rules for Building and Classing Steel Vessels'', U.S. Coast Guard Marine Engineering Regulations and Material Specifications (46 CFR Subchapter F), U.S. Coast Guard Electrical Engineering Regulations (46 CFR Subchapter J), and U.S. Public Health Service ''Handbook on Sanitation of Vessel Construction'', in effect at the time of the contract award; and the best commercial maritime practices, except where military specifications are specified, in which case such standards of material and workmanship shall be followed.

(c) All material and workmanship shall be subject to inspection and test at all times during the contractor's performance of the work to determine their quality and suitability for the purpose intended and compliance with the contract. In case any material or workmanship furnished by the contractor is found to be defective prior to redelivery of the vessel, or not in accordance with the requirements of the contract, the Government shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the contractor at the contractor's cost and expense. This Government right is in addition to its rights under any Guarantee clause in this contract. If the contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the Contracting Officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the contractor the excess cost to the Government. The contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the contract. Records of all inspection work by the contractor shall be kept complete and available to the Government during the performance of the contract and for a period of two (2) years after delivery of the vessel to the Government.

(d) No welding, including tack welding and brazing, shall be permitted in connection with repairs, completions, alterations, or addition to hulls, machinery or components of vessels unless the welder is, at the time, qualified to the standards established by the U.S. Coast Guard, the American Bureau of Shipping, or the Department of the Navy. The welder's qualifications shall be appropriate for the particular service application, filler material type, position of welding, and welding process involved in the work being undertaken. A welder may be required to re-qualify if the Contracting Officer believes there is a reasonable doubt concerning the welder's ability. Welders' qualifications for this purpose shall be governed by the U.S. Coast Guard Marine Engineering Regulations and Material Specifications (46 CFR Subchapter F). When a welding process other than manual shielded arc is proposed or required, the contractor or fabricator shall submit procedure qualification tests for approval prior to production welding. Procedure qualification tests shall be conducted in accordance with the United States Coast Guard Marine Engineering Regulations and Material Specifications (46 CFR Subchapter F).

(e) The contractor shall exercise reasonable care to protect the vessel from fire, and the contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's fuel oil tanks, magazines or storerooms containing flammable material. A reasonable number of hose lines shall be maintained by the contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the contractor's pier or in dry dock or on a marine railway. All tanks or bilge areas under alteration or repair shall be cleaned, washed, and steamed out or otherwise made safe by the contractor if and to the extent necessary as required by good marine practice or by current Occupational Safety and Health Administration regulations. The Contracting Officer's Representative (COR) shall be furnished with a ''gas free'' or ''safe for hot work'' or ''safe for workers'' certificate before any hot work or entry is done. Unless otherwise provided in this contract, the contractor shall at all times maintain a reasonable fire watch about the vessel, including a fire watch on the vessel while work is being performed thereon.

(f) The contractor shall place proper safeguards and/or effect such safety precautions as necessary, including suitable and sufficient lighting, for the prevention of accidents or injury to persons or property during the prosecution of work under this contract and/or from time of receipt of the vessel until acceptance by the Government of the work performed.

(g) Except as otherwise provided in this contract, when the vessel is in the custody of the contractor or in dry dock or on a marine railway and the temperature becomes as low as 35 degrees Fahrenheit, the contractor shall keep all pipelines, fixtures, traps, tanks, and other receptacles on the vessel

drained to avoid damage from freezing, or if this is not practicable, the vessel shall be kept heated to prevent such damage. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means, as approved by the COR.

(h) Whenever practicable, the work shall be performed in a manner which does not interfere with the berthing and messing of personnel attached to the vessel. The contractor shall ensure that assigned personnel have access to the vessel at all times. It is understood that such personnel will not interfere with the work or the contractor's workers.

(i) The Government does not guarantee the correctness of the dimensions, sizes, and shapes shown in any sketches, drawings, plans or specifications prepared or furnished by the Government. Prior to submitting an offer, it is the responsibility of the bidder/offeror to verify the dimensions, sizes, and shapes in materials provided by the Government. Where practical, the Government will make the vessel available for inspection prior to bid opening or the date for receipt of proposals. If the contractor, as a result of inspection or otherwise, discovers any error in the sketches, drawings, plans or specifications, it shall immediately inform the Contracting Officer of the error and proceed in accord with instructions received from the Contracting Officer. The Government is not liable for any claims or charges resulting from additional work performed by the contractor as a result of a patent ambiguity in the sketches, drawings, plans or specifications that was not brought to the attention of the Contracting Officer. The contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts furnished by the contractor under the contract.

(j) The contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by contractor employees or the work, and at the completion of the work shall remove all rubbish from and about the site of the work and shall leave the work and its immediate vicinity ''broom-clean'' unless more exactly specified in this contract.

(k) While in drydock or on a marine railway, the contractor shall be responsible for the closing, before the end of working hours, of all valves and openings upon which work is being done by its workers when such closing is practicable. The contractor shall establish a list and keep the COR cognizant of the closure status of all valves and openings upon which the contractor's workers have been working.

(l) Without additional expense to the Government, the contractor shall employ specialty subcontractors where required by the specifications or when necessary for satisfactory performance of the work.

(m)(1) Unless otherwise stated in the contract, the contractor shall notify the COR at least 72 hours in advance:

(i) Prior to starting inspections or tests; and

(ii) When supplies will be ready for Government inspection.

(2) Such notification shall be provided either verbally or in writing at the discretion of the COR.

(End of clause)

1352.271–71 Method of payment and invoicing instructions for ship repair.

As prescribed in 48 CFR 1371.102, insert the following clause:

Method of Payment and Invoicing Instructions for Ship Repair (DATE)

(a) The Government will make payment under this contract based on a percentage of completion. The contractor may invoice for the percentage completed for each work item as work progresses. The amount invoiced shall be calculated based on prices stated in the Schedule, as follows: A work item may not be invoiced until the percentage complete reaches 25 percent. Future invoices for that work item have no limitation as to the percentage of completion required before invoicing, but in no event may invoices be submitted more frequently than every 2 weeks, or for amounts less than $10,000, unless it is the final payment. The minimum percentage of completion (25%) to be reached prior to billing each work item may be waived by the Contracting Officer for large dollar work items on a case-by-case basis.

(b) Invoices submitted by the contractor which are deemed not proper, in accordance with FAR 52.232–25, will be returned. Invoices shall include:

(1) Name and Address of the contractor;

(2) DUNS Number;

(3) Invoice Date;

(4) Contract Number/Modification Number;

(5) CLIN/Work Item Number, to include: Description, Quantity, Unit of Measure, Unit Price and Extended Price;

(6) Shipping and Payment Terms; and,

(7) Contractor Point of Contact, including: Name, Title, Phone Number, and Mailing Address;

(8) The percentage of completion for each CLIN/work item identified;

(9) Name of the Contracting Officer;

(10) Ship name;

(11) The overall percentage and dollar amount previously billed, currently billed and unbilled.

(c) When invoicing for changed work, the contractor shall identify it as a contract change and shall identify the modification authorizing the change, and the CLIN/Work Item associated with the change.

(d) All items of work invoiced under this contract will be verified and confirmed by the Contracting Officer's Representative as accurate and complete and approved by the designated billing office before payment will be made.

(e) Mail the original invoice to:

[insert]

(f) The contractor's final invoice submitted under the contract must be marked as follows: ''THIS INVOICE CONSTITUTES THE FINAL INVOICE—UPON PAYMENT OF THIS INVOICE NO OTHER MONIES ARE DUE UNDER CONTRACT NUMBER _____.''

(To be assigned at contract award)

(End of clause)

1352.271–72 Additional Item Requirements (AIR)—growth work.

As prescribed in 48 CFR 1371.103, insert the following clause:

Additional Item Requirements (AIR)—Growth Work (DATE)

(a) This clause applies to Additional Item Requirements (AIR), also known as growth and emergent work ordered by the Contracting Officer pursuant to the Changes—Ship Repair clause or mutually agreed upon by the parties. The contractor shall perform AIR at the labor billing rates designated in the Schedule, as described in paragraph (c) of this clause. The AIR handling fee designated in the Schedule shall be the sole fee used for direct material purchases and subcontractor handling. The estimated quantity of labor hours and handling fees represent the Government's best estimate for growth that may be required throughout the contract performance period. All growth work shall be paid at the prices stated in the Schedule.

(b) The contractor shall take into account the potential for ordering all estimated AIR quantities in developing the Production Schedule. The ordering of any portion of the AIR quantities does not in itself warrant an extension to the original contract completion date; however, for planning purposes, the Government anticipates ordering AIR in accordance with the following schedule:

(1) No more than 75% of the hours during the first half of the contract period of performance.

(2) No more than 50% of the hours during the third quarter of the contract period of performance.

(3) No more than 30% of the hours during the fourth quarter of the contract period of performance.

(c) The AIR labor rate shall be a flat, hourly rate to cover the entire effort and shall be burdened to include:

(1) Direct production labor hour functions only. Direct production labor hours are hours of skilled labor at the journeyman level expended in direct production. Direct production is defined as work performed by a qualified craftsman that is directly related to the alteration, modification, or repair of the item or system identified as needing alteration, modification, or repair. The following functions are identified as direct production: Abrasive Cleaning/Water Blasting, Tank Cleaning, Welding, Burning, Brazing, Blacksmithing, Machining (inside and outside), Carpentry, Electrical/Electronic Work, Crane Operation, Shipfitting, Lagging/Insulating, Painting, Boilermaking, Pipe Fitting, Engineering (Production), Sheetmetal Work, Staging/Scaffolding, and Rigging.

(2) Non-production labor hours (whether charged directly or indirectly by contractor's accounting system) shall be for labor in support of production functions. For purposes of this clause, support functions are defined as functions that do not directly contribute to the alteration, modification, or repair of the item or system identified as needing alteration, modification, or repair. Necessary support functions should be priced into the burdened rate for production labor hours. Examples of support functions include: Testing, Quality Assurance (inspection), Engineering (support), Planning (including involvement of craft foreman/journeyman in planning a task), Estimating (including determination of necessary materials and equipment needed to perform a task), Material Handling, Set-up (moving tools and equipment from shop to ship to perform a task), Fire Watch, General Labor (including general support of journeyman tasks), Cleaning (including debris pickup and removal), Surveying, Security, Transportation, Supervision, and Lofting (sail/pattern making).

(d) Additional Item Requirements do not include replacement work performed pursuant to the Inspection and Manner of Doing Work or Guarantees clauses.

(e) It is the Government's intention to award any growth work identified during the repair to the contractor, if a fair and reasonable price can be negotiated for such work, based upon Schedule rates. If a fair and reasonable price cannot be negotiated, the Government may, at its discretion, obtain services outside of the contract. Such services may be performed while the ship is undergoing repair in the contractor's facility pursuant to the Access to Vessels clause.

(f) The contractor shall submit to the Contracting Officer the following information in all AIR proposals:

(1) Number of labor hours estimated; broken down by specific direct production labor category.

(2) Material estimates, individually broken out and priced. When requested by the Contracting Officer, material quotes shall be provided.

(3) Subcontractor estimates, individually broken out and priced along with the actual subcontractor quotes. The requirement to submit subcontractor quotes may be waived if deemed appropriate by the Contracting Officer.

(4) Material/subcontractor handling fee and the basis for the fee.

(g) The contractor shall not be entitled to payment for any hours ordered pursuant to this clause until such time as a written contract modification is executed.

(End of clause)

1352.271–73 Schedule of work.

As prescribed in 48 CFR 1371.104, insert the following clause.

Schedule of Work (DATE)

(a) Notwithstanding other requirements specified in this contract, the contractor shall provide to the Contracting Officer and COR the following documents within five (5) working days of the vessel's arrival at the contractor's facility:

(1) Production Schedule.

(2) Work Package Network.

(3) Total Manpower Loading Curve.

(4) Trade Manning Curves.

(5) Subcontracting List.

(b) The Production Schedule shall list the earliest, latest, and scheduled start and completion date for each work item awarded and shall identify the critical path. The Work Package Network shall show the work items, milestones, key events, and activities and shall clearly identify the critical path. The Total Manpower Loading Curve shall show the required manning for the duration of the contract. The Trade Manning Curves shall show the required manning for each trade for the duration of the contract. The Subcontracting List shall show work items, milestones, key events, and activities to be accomplished by subcontractors.

(c) Additional Item Requirements ordered and agreed upon, whether or not yet formalized via a change order (contract modification), shall be added to the Production Schedule, Trade Manning Curves, and Subcontracting List and submitted to the Contracting Officer and COR at each weekly Progress Meeting. Any anticipated or unanticipated deviation (greater than five (5) calendar days) from the Production Schedule shall be immediately brought to the attention of the Contracting Officer and COR.

(d) Any unauthorized deviation in the Production Schedule which results in a delay in the completion of work on a vessel past the established performance period completion date may entitle the Government to remedies for late performance, including, but not limited to, liquidated damages.

(End of clause)

1352.271–74 Foreseeable cost factors pertaining to different shipyard locations.

As prescribed in 48 CFR 1371.105, insert the following provision:

Foreseeable Cost Factors Pertaining to Different Shipyard Locations (DATE)

(a) The Contracting Officer will evaluate certain foreseeable costs that will vary with the location of the commercial shipyard to be used by bidders/offerors under this solicitation. Costs will be calculated based on the bidder's/offeror's shipyard location and these costs will be added, for the purposes of evaluation only, to the bidder's/offeror's overall price.

(b) These elements of foreseeable costs consist of the following:

(1) *Vessel Transit:* (i) Vessel delivery costs will be based on one round trip from the vessel's homeport of _____ to the contractor's facility at a cruising speed of __ knots. Distances will be based on the NOAA publication, ''Distance Between U.S. Ports''.

(ii) Daily vessel operational cost to navigate the vessel between its homeport and the contractor's offered place of performance is $____ per day. The number of days to transit to the contractor's offered place of performance from the vessel's homeport will be multiplied by the per-day operational cost.

(iii) No operational costs will be applied if the ship can be delivered to the contractor's facility from its homeport within eight (8) hours port-to-port. If the delivery time exceeds eight (8) hours, but is less than 24 hours, it

will be considered one full day. Any fraction of subsequent day(s) will be considered as a full day.

(2) *Shore Leave Costs:* If the contractor's facility is outside of a 50-mile radius of the vessel's homeport—

(i) An assessment of $____ for each 15-day period or portion thereof, beginning with the vessel's departure from the homeport and concluding with the vessel's return to homeport.

(ii) There will be an additional transportation cost for __ vessel crew members for one (1) round trip(s) between the contractor's offered place of performance and the vessel's homeport at the cost of coach-type airfare.

(3) *Travel and Per Diem Costs:* If the contractor's facility is outside of a 50-mile radius of the vessel's homeport—

(i) There will be a transportation cost for one (1) Contracting Officer's Representative (COR) for __ round trip(s) between the contractor's offered place of performance and the COR's official duty station at the cost of coach-type airfare.

(ii) There will be a per diem expense for __ calendar days to support one (1) COR while in the city of the place of contract performance, to be determined in accordance with the Joint Federal Travel Regulations (JFTR). The cost of car rental for the estimated performance period will also be included.

(iii) There will be a transportation cost for one (1) Contracting Officer for __ round trip(s) between the Contracting Officer's official duty station and the contractor's offered place of performance at the cost of coach-type airfare, plus per diem expenses and a rental car.

(End of clause)

1352.271–75 Delivery and shifting of the vessel.

As prescribed in 48 CFR 1371.106, insert the following clause:

Delivery and Shifting of the Vessel (DATE)

(a) The Government shall deliver the vessel to the contractor, at the location specified in the contract.

(b) Whether the specified location of performance is the contractor's own facility or any other authorized facility, it shall be understood to mean the fairway of the facility. The contractor shall provide necessary tugs and pilot services to move the vessel from the fairway to the pier or dock, and, upon completion of all work, from the pier or dock to the fairway of the facility.

(c) While the vessel is in the possession of the contractor, any necessary movement of the vessel incidental to the work specified in the contract shall be furnished by the contractor without additional charge to the Government.

(End of clause)

1352.271–76 Performance.

As prescribed in 48 CFR 1371.107, insert the following clause:

Performance (DATE)

(a) The contractor shall not commence work until a notice to proceed has been issued by the Contracting Officer.

(b) The Government shall deliver the vessel described in the contract at such time and location as may be specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at such time and location as may be specified in the contract.

(c) Without additional charge to the Government, and without specific requirement in the contract, the contractor shall:

(1) Make available, at the facility, to personnel of the vessel while in drydock or on a marine railway, sanitary facilities adequate for the number of personnel using them and acceptable to the Contracting Officer;

(2) Supply and maintain, in such condition as the Contracting Officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel;

(3) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, riggings, or pipe lines; and

(4) Furnish suitable offices, office equipment and telephones at or near the site of the work as the Contracting Officer reasonably requires for personnel designated by the Government.

(d) Except as otherwise provided in the contract, the contractor shall furnish all necessary material, labor, supervision, services, equipment, tools, supplies, power, accessories, facilities, and other things and services necessary for accomplishing the work.

(e) The contractor shall conduct dock and sea trials of the vessel as required by the contract. Unless otherwise expressly provided in the contract, during the conduct of these trials the vessel shall be under the control of the vessel's commander and crew with representatives of the contractor and the Government on board to determine whether the work provided by the contractor has been satisfactorily performed. Dock and sea trials not specified which the contractor requires for its own benefit shall not be undertaken by the contractor without prior notice to and approval of the Contracting Officer; any such dock or sea trial shall be conducted at the risk and expense of the contractor. The contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials to enable the representatives of the Government to determine whether the requirements of the contract plans and specifications have been met. The contractor shall also be responsible for the care, installation and removal of any instruments and apparatus furnished by the Government for such trials.

(End of clause)

1352.271–77 Delays.

As prescribed in 48 CFR 1371.108, insert the following clause:

Delays (DATE)

When, during the performance of this contract, the contractor is required to delay the work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, fueling, embarking or debarking of passengers or loading or discharging of cargo, and the contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment may be made in the contract. Any such request for equitable adjustment shall be asserted in writing as soon as practicable after the delay or disruption, but not later than the day of final payment under the contract.

(End of clause)

1352.271–78 Minimization of delay due to Government furnished property.

As prescribed in 48 CFR 1371.109, insert the following clause:

Minimization of Delay Due to Government Furnished Property (DATE)

(a) In order to ensure timely performance under this contract, it is imperative that delay in the contract's performance period resulting from late, damaged, or unsuitable Government furnished property be held to an absolute minimum. In order to achieve minimization of delay, it is agreed that:

(1) Subject to adjustment as provided in paragraph (b) of this clause, the Government shall deliver each item of Government furnished property to the contractor on or before the date specified in the contract or, if later, in sufficient time for the contractor to meet the contract performance period.

(2) The Government may forego furnishing any item of Government property to the contractor. In that event, the contractor shall prepare the vessel in terms of piping, wiring, structure, foundation, ventilation, and any other pre-installation requirements of the item, so that the work on the vessel may continue without delay and disruption resulting from the absence of the item. If the Government does not furnish an item designated as Government furnished property, the contract price may be adjusted accordingly.

(b) The delivery or performance dates for the supplies or services to be furnished by the contractor under this contract are based upon the expectation that Government furnished property suitable for use (except for such property furnished ''as is'') will be delivered to the contractor at the time stated in the specification or, if not so stated, in sufficient time to enable the contractor to meet such delivery or performance dates. If the Government furnished property is not furnished in the time stated in the contract, or, if a date is not specified, and the late delivery does not give the contractor sufficient time to enable the contractor to meet required contract delivery or performance dates, the contractor shall notify the Government in writing of the late delivery. Notification shall include cost and schedule impacts, including delays and disruptions to schedules. This notification shall be submitted as soon as practical or known.

(c) The provisions in subsection (b) of this clause and in FAR 52.245–1, if applicable, provide the exclusive remedies to the contractor resulting from delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(End of clause)

1352.271–79 Liability and insurance.

As prescribed in 48 CFR 1371.110, insert the following clause:

Liability and Insurance (DATE)

(a) The contractor shall exercise reasonable care and use its best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The contractor shall be responsible for and make good at its own cost and expense any and all loss of or damage of whatsoever nature to the vessel (or part thereof), its equipment, movable stores and cargo, and Government-owned material and equipment for the repair, completion, alteration of or addition to the vessel in the possession of the contractor, whether at the plant or elsewhere, arising or growing out of the performance of the work, except where the contractor can affirmatively show that such loss or damage was due to causes beyond the contractor's control, was proximately caused by the fault or negligence of agents or employees of the Government, or which loss or damage the contractor by exercise of reasonable care was unable to prevent. However, the contractor shall not be responsible for any such loss or damage discovered after redelivery of the vessel unless the loss or damage is discovered within 90 days after redelivery of the vessel and loss or damage is affirmatively shown to be the result of the fault or negligence of the contractor. To induce the contractor to perform the work for the compensation provided, it is specifically agreed that the contractor's aggregate liability on account of loss of or damage to the vessel (or part thereof), its equipment, movable stores and cargo and Government-owned materials and equipment, shall in no event exceed the sum of $1,000,000.00. As to the contractor, the Government assumes the risk of loss or damage to the Government-owned vessel (or part thereof), its equipment, movable stores and cargo and said Government-owned materials and equipment in excess of $1,000,000.00. This assumption of risk includes but is not limited to loss or damage from negligence of whatsoever degree of the contractor's servants, employees, agents or subcontractors, but specifically excludes loss or damage from willful misconduct or lack of good faith on the part of contractor's personnel, who have supervision or direction of all or substantially all of the contractor's business, or all or substantially all of the contractor's operation at any one plant. However, as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the contractor, and the contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action. Nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the contractor, nor shall any person (except the contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a co-defendant in any action against the contractor brought to determine the contractor's liability, or for any other purpose.

(c) The contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, and the vessel against all suits, actions, claims, costs or demands (including without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) to which the Government, its agencies and instrumentalities, or the vessel may be subject or put by reason of damage or injury (including death) to the property or person of anyone other than the Government, its agencies, instrumentalities and personnel, or the vessel, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the contractor, or any subcontractor, its or their servants, agents or employees; provided that the contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $1,000,000.00 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. Any new equipment warranties that extend beyond the 90 days after redelivery of the vessel shall be assigned to the Government upon redelivery of the vessel. With respect to any such suits, actions, claims, costs or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the contractor shall be as determined by other provisions of this contract and by law; provided that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the contractor's indemnity as provided herein.

(d) The contractor shall, at its own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause. In addition, the contractor shall at its own expense procure and thereafter maintain such ship repairer's legal liability insurance as may be necessary to insure the contractor against its liability as ship repairer in the amount of $1,000,000.00, or the value of the vessel as determined by the Contracting Officer, whichever is the lesser, with respect to each vessel on

which work is performed. The contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies, However, at the discretion of the Contracting Officer, such insurance need not be procured whenever the job order requires work on parts of a vessel only and the work is to be performed at a plant other than the site of the vessel. Further, the contractor shall procure and maintain in force Worker's Compensation Insurance (or its equivalent) covering its employees engaged in the work and shall ensure the procurement and maintenance of such insurance by all subcontractors engaged in the work. The contractor shall provide evidence of insurance as required by the Government.

(e) The contractor shall receive no allowance in the contract price for inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage, the risk of which the Government has assumed, written notice of the damage shall be given by the contractor to the Contracting Officer. The notice shall contain full particulars of the loss or damage. If claim is made or suit is brought thereafter against the contractor as the result or because of such event, the contractor shall immediately deliver to the Government every demand, notice, summons or other process received by it or its representatives. The contractor shall cooperate with the Government, and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence; obtaining the attendance of witnesses, and other assistance required in the conduct of suits. The Government shall pay to the contractor the expense, other than the cost of maintaining the contractor's usual organization, incurred in this assistance. Except at its own cost, the contractor shall not voluntarily make any payment, assume any obligation or incur any expense not imperative for the protection of the vessel or vessels at the time of the event.

(End of clause)

1352.271–80 Title.

As prescribed in 48 CFR 1371.111, insert the following clause:

Title (DATE)

(a) Title to all materials and equipment acquired, produced for, or allocated to the performance of this contract and incorporated in or placed on the vessel or any part thereof, shall vest in the Government.

(b) The contractor shall assume, without limitation, the risk of loss for any contractor-furnished materials and equipment until final acceptance by the Government of work performed under the contract.

(End of clause)

1352.271–81 Discharge of liens.

As prescribed in 48 CFR 1371.112, insert the following clause:

Discharge of Liens (DATE)

The contractor shall immediately discharge or cause to be discharged any lien or right *in rem* of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under the contract. If any such lien or right *in rem* is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the contractor.

(End of clause)

1352.271–82 Department of Labor occupational safety and health standards for ship repair.

As prescribed in 48 CFR 1371.113, insert the following clause:

Department of Labor Occupational Safety and Health Standards for Ship Repair (DATE)

The contractor, in performance of all work under the contract, shall comply with the requirements of 29 CFR 1910.15. Nothing contained in this contract shall be construed as relieving the contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of clause)

1352.271–83 Government review, comment, acceptance and approval.

As prescribed in 48 CFR 1371.114, insert the following clause:

Government Review, Comment, Acceptance and Approval (DATE)

(a) Documentation, including drawings and other engineering products and reports, required by the contract to be submitted for review, comment, acceptance or approval will be acted upon by the Government within 30 calendar days after receipt by the Government, unless another period of time is specified.

(b) The Government shall respond to Condition Reports, as defined in the Specifications, within five (5) working days, unless the Government notifies the contractor that a longer period of time will be required. If the contractor requests a response in less than five (5) working days, the Government will attempt to accommodate the request, but does not guarantee a response in less than the time limits stated above.

(c) Review, comment, acceptance or approval by the Government as required under this contract and applicable specifications shall not relieve the contractor of its obligation to comply with the specifications and with all other requirements of the contract, nor shall it impose upon the Government any liability it would not have had in the absence of such review, comment and acceptance or approval.

(End of clause)

1352.271–84 Access to the vessel.

As prescribed in 48 CFR 1371.115, insert the following clause:

Access to the Vessel (DATE)

(a) As authorized by the Contracting Officer, a reasonable number of officers, employees and personnel designated by the Government, or representatives of other contractors and their subcontractors shall have admission to the facility and access to the vessel at all reasonable times to perform and fulfill their respective obligations to the Government on a noninterference basis. The contractor shall make reasonable arrangements to provide access for these personnel to office space, work areas, storage or shop areas, and other facilities and services reasonable and necessary to perform their duties. All such personnel shall comply with contractor rules and regulations governing personnel at its shipyard, including those regarding safety and security.

(b) The contractor further agrees to allow a reasonable number of officers, employees, and designated personnel of offerors on other contemplated work, the same privileges of admission to the contractor's facility and access to the vessel(s) on a noninterference basis, subject to contractor rules and regulations governing personnel in its shipyard, including those regarding safety and security.

(End of clause)

1352.271–85 Documentation of requests for equitable adjustment.

As prescribed in 48 CFR 1371.116, insert the following clause:

Documentation of Requests for Equitable Adjustment (DATE)

(a) For the purpose of this clause, the term ''change'' includes not only a change made pursuant to a written order designated as a ''change order'', but also

any act or omission to act on the part of the Government where a request is made for equitable adjustment.

(b) Whenever the contractor requests or proposes an equitable adjustment to the contract price for a change or an act or omission on the part of the Government, the request shall include a breakdown of the price adjustment in such form and supported by such reasonable detail as the Contracting Officer may request. As a minimum, the contractor shall provide a breakdown of direct labor hours, labor dollars, overhead, material, subcontracts, contingencies and profit for each change and a justification for any extension of the delivery date.

(c) Whenever the contractor requests or proposes an equitable adjustment of $100,000 or greater gross (aggregate increases and/or decreases) for a change made pursuant to a written order designated as a ''change order'', or whenever the contractor requests an equitable adjustment in any amount for any other act or omission to act on the part of the Government, the proposal supporting such request shall contain the following information for each individual item or element of the request:

(1) A description of the unperformed work required by the contract before the change which has been deleted by the change and the work deleted by the change that already has been completed in whole or in part. The description shall include a list of components, equipment, and other identifiable property involved. Also, the status of manufacture, procurement, or installation of such property shall be indicated. A separate description shall be furnished for design and production work. Items of raw material, purchased parts, components, and other identifiable hardware which are made excess by the change, and which are not to be retained by the contractor, are to be listed for later disposition;

(2) A description of the work necessary to undo work already completed which has been deleted by the change;

(3) A description of the work substituted or added by the change that was not required by the terms of the contract before the change. A list of components and equipment (not bulk material or items) involved should be included. A separate description shall be furnished for design work and production work;

(4) A description of any interference or inefficiency encountered in performing the change;

(5) A description of disruption attributable solely to the change, which shall include the following information:

(i) A specific description of each element of disruption which states how the work has been, or will be, disrupted;

(ii) The calendar time period when disruption occurred, or will occur, illustrated via critical path analysis;

(iii) The area(s) aboard ship where disruption occurred, or will occur;

(iv) The trade(s) disrupted, with a breakdown of man-hours for each trade;

(v) The scheduling of trades before, during, and after the period of disruption;

(vi) A description of measures taken to lessen the disruptive effect of the change.

(6) The delay in delivery attributable solely to the change;

(7) A description of other work attributed to the change;

(8) A narrative statement of the direct causal relationship between any alleged Government act or omission and the claimed result, cross-referenced to the detailed information required above; and

(9) A statement setting forth a comparative enumeration of the amounts ''budgeted'' for the cost elements, including the materials cost, labor hours, and indirect costs pertinent to the change estimated by the contractor in preparing its proposal(s) for this contract, and the amounts claimed to have been incurred, or projected to be incurred, corresponding to each such ''budgeted cost'' element.

(10) At the time of agreement upon the price of the equitable adjustment, the contractor shall submit a signed Certificate of Current Cost or Pricing Data.

(d) Pending execution of a bilateral agreement or the direction of the Contracting Officer pursuant to the Changes clause, the contractor shall proceed diligently with contract performance without regard to the effect of any such proposed change.

(End of clause)

1352.271–86 Lay days.

As prescribed in 48 CFR 1371.117, insert the following clause:

Lay Days (DATE)

(a) A lay day is defined as an additional day on dry dock or marine railway caused by a Government-issued change. Reimbursement for lay days shall be paid at the rate stated in the Schedule.

(b) No amount for lay day time shall be paid until all contract line items (including optional items) that require drydocking of the vessel have been completed. Lay days for work ordered pursuant to the Additional Item Requirements Clause shall not be compensable unless all dry dock work included in the contract line items is complete.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the contractor shall not be paid as lay day time. Days in which work is performed that are considered normal ''non-work'' days (weekends or holidays) shall not be paid as lay day time if the ship would have otherwise been in dry dock.

(d) Payment of lay day time shall constitute complete compensation for all costs associated with lay days except for costs directly related to the changed work.

(End of clause)

1352.271–87 Changes—ship repair.

As prescribed in 48 CFR 1371.118, insert the following clause:

Changes—Ship Repair (DATE)

(a) The Contracting Officer may, at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract, in any one or more of the following:

(1) Drawings, designs, or specifications, when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications;

(2) Method of shipment or packing;

(3) Place of performance of the work;

(4) Time of commencement or completion of the work; and

(5) Other requirements within the general scope of the contract.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract accordingly.

(c) The contractor must submit any proposal for adjustment under this clause within 5 days from the date of receipt of the written order. At the Contracting Officer's discretion, the 5 day period may be shortened. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the contractor's proposal includes the cost of property rendered

obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

(End of clause)

1352.271–88 Guarantees.

As prescribed in 48 CFR 1371.119, insert the following clause:

Guarantees (DATE)

(a) In the event any work performed or materials furnished by the contractor under this contract prove defective or deficient within ____ days from the date of redelivery of the vessel, the contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) The Government shall be entitled to rely upon any guarantee secured by the contractor or any sub-contractor covering work done or materials furnished which exceeds the ____-day period until its expiration.

(c) With respect to any individual work item identified and listed as incomplete at the redelivery of the vessel, the guarantee period shall run from the date of completion of such item.

(d) If and when practicable, the Government shall afford the contractor an opportunity to effect such corrections and repairs.

(1) If the Contracting Officer determines it is impracticable or is otherwise not advisable to return the vessel to the contractor, or the contractor fails to proceed promptly with any such repairs as directed by the Contracting Officer, the Contracting Officer may direct that the repairs be performed elsewhere, at the contractor's expense.

(2) Where corrections and repairs are to be made by other than the contractor due to nonreturn of the vessel to the contractor, the contractor's liability may be discharged by an equitable deduction in the price of the contract.

(e) The contractor's liability shall only extend for an additional ____-day guarantee period on those defects or deficiencies which it corrected. However, this clause does not limit the responsibility or relieve the liability of the contractor under the Liability and Insurance clause.

(f) At the Contracting Officer's option, defects and deficiencies may be left in their uncorrected condition. In that event, the contractor and the Contracting Officer shall agree on an equitable deduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(g) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract. If a defect or deficiency that exists at the time of redelivery of the vessel was not discovered by a reasonable inspection and is discovered after the expiration of the time frame stated in this clause, it is not subject to the time limitations stated in this clause.

(End of clause)

1352.271–89 Temporary services.

As prescribed in 48 CFR 1371.120, insert the following clause:

Temporary Services (DATE)

(a) Temporary services are services incidental to the performance of work which are required in the schedule or specifications to be provided by the contractor. Temporary services may include the furnishing of water, electricity, telephone service, toilet facilities, garbage removal, office space, parking places or similar facilities.

(b) If performance time is extended due to Government-caused delay, the contractor may request an equitable adjustment for providing temporary services at the rate stated in the Schedule.

(End of clause)

1352.271–90 Insurance requirements.

As prescribed in 48 CFR 1371.121, insert the following clause:

Insurance Requirements (DATE)

(a) The contractor shall procure and thereafter maintain the following insurance:

(1) Ship contractor's legal liability insurance to insure the risks described in paragraph (b) of clause 1352.271–79. This insurance shall be for $1,000,000.00.

(2) Comprehensive general liability insurance and automobile insurance to insure the risks described in paragraph (c) of clause 1352.271–79. This insurance shall be for $1,000,000.00 on account of any one accident or occurrence with respect to each vessel, boat, and/or barge upon which work is performed. The contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies.

(3) Full coverage in accordance with the State Worker's Compensation law; and

(4) Full coverage in accordance with the United States Longshoremen's and Harbor Worker's Act.

(b) As evidence that it has obtained the insurance specified in paragraph (a) of this clause, the contractor shall furnish the Contracting Officer with a certificate or certificates executed by an agent of the insurer authorized to execute such certificates. Such certificates shall be furnished prior to commencement of the work. Each certificate shall state that (name of insurer) has insured (name of contractor) awarded contract number _____ for repair/alteration of (name of vessel) in accordance with the Liability and Insurance clause and the Insurance Requirements clause contained herein. Each certificate shall set forth that each policy of insurance represented thereby will expire on (date) and that each such policy contains the following clause:

''It is agreed that in the event of cancellation or any material change in the policy adversely affecting the interest of the Government in this insurance, 30 days prior written notice will be given to the Contracting Officer.''

(End of clause)

Subpart 1352.3—Provisions and Clauses Matrix

1352.301 Solicitation provisions and contract clauses (Matrix).

BILLING CODE 3510–03–P

Current to FAC 2005-21

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.201-70 Contracting Officer's Authority	1301.602-170	C	Y	G	R	R											
1352.201-71 Ratification Release	1301.602-3	C	N	H		A											
1352.201-72 Contracting Officer's Representative (COR)	1301.670-70	C	N	G	A	A											
1352.208-70 Restrictions on Printing and Duplicating	1308.802-70	C	Y	H	A	A											
1352.209-70 Potential Organizational Conflict of Interest	1309.507-1(a)	P	N	L	A												
Alternate I	1309.507-1(b)	P	N	L	A												
1352.209-71 Limitation of Future Contracting	1309.507-2(a)(1)	C	Y	H	A	A											
Alternate I	1309.507-2(a)(2)	C	Y	H	A	A											
Alternate II	1309.507-2(a)(3)	C	Y	H	A	A											

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
Alternate III	1309.507-2(a)(4)	C	Y	H	A	A											
Alternate IV	1309.507-2(a)(5)	C	Y	H	A	A											
Alternate V	1309.507-2(a)(6)	C	Y	H	A	A											
Alternate VI	1309.507-2(a)(7)	C	Y	H	A	A											
1352.209-72 Restrictions against Disclosure	1309.507-2(b)	C	Y	H						A							
1352.209-73 Compliance with the Laws	1309.507-2(c)	C	Y	H	R	R											
1352.209-74 Organizational Conflict of Interest	1309.507-2(d)	C	Y	H	R	R											
1352.209-75 Title 13 and Non-Disclosure Requirements	1309.507-2(e)	C	Y	H						A							
1352.213-70 Evaluation Utilizing Simplified Acquisition Procedures	1313.106-2-70	P	N	M								R					
1352.213-71 Instructions for Submitting Quotations Under the Simplified Acquisition Threshold - Non-Commercial	1313.302-1-70	P	N	L								A					

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.215-70 Proposal Preparation	1315.204-570(a)(1)	P	N	L	R												
1352.215-71 Instructions for Oral Presentations	1315.204-570(a)(2)	P	N	L	A												
1352.215-72 Inquiries	1315.204-570(a)(3)	P	N	L	O												
1352.215-73 Evaluation Quantities-Indefinite Quantity Contract	1315.204-570(b)(1)	P	Y	M	A				A								
1352.215-74 Best Value Evaluation	1315.204-570(b)(2)	P	N	M	A												
1352.215-75 Evaluation Criteria	1315.204-570(b)(2) 1315.204-570(b)(3)	P	N	M	A												
1352.215-76 Cost or Pricing Data	1315.204-570(b)(4)	P	Y	L	A												
1352.216-70 Estimated and Allowable Costs	1316.307 (a)	C	N	B										R			
1352.216-71 Level of Effort (Cost-Plus-Fixed-Fee, Term Contract)	1316.307 (b)	C	N	B										A			
1352.216-72 Determination of Award Fee	1316.405.2	C	N	B										A			

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.216-73 Distribution of Award Fee	1316.406	C	N	B										A			
1352.216-74 Task Orders	1316.501-2-70	C	Y	H				A									
1352.216-75 Minimum and Maximum Contract Amounts	1316.506(a)	C	N	B					R								
1352.216-76 Placement of Orders	1316.506(b)	C	N	G				R									
1352.216-77 Ceiling Price	1316.601-70 1316.602-70	C	N	B			R										
1352.219-70 Section 8(a) Direct Award	1319.811-3(a)	C	N	H	A	A											
1352.219-71 Notification to Delay Performance	1319.811-3(b)	C	Y	H	A	A											
1352.219-72 Notification of Competition Limited to Eligible 8(a) Concerns - Alternate III	1319.811-3(c)	C	N	H	A	A											
1352.227-70 Rights in Data, Assignment of Copyright	1327.404-4(a)	C	Y	H	A	A											
1352.228-70 Insurance Coverage	1328.310-70(a)	C	N	H	A	A											

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.228-71 Deductibles Under Required Insurance Coverage - Cost Reimbursement	1328.310-70(c)	C	Y	H										A			
1352.228-72 Deductibles Under Required Insurance Coverage - Fixed Price	1328.310-70(d)	C	Y	H									A				
1352.228-73 Loss of or Damage to Leased Aircraft	1328.310-70(e) 1328.310-70(f)	C	Y	H											A		
1352.228-74 Fair Market Value of Aircraft	1328.310-70(e) 1328.310-70(g)	C	N	H											A		
1352.228-75 Risk and Indemnities	1328.310-70(e) 1328.310-70(h)	C	Y	H											A		
1352.228-76 Approval of Group Insurance Plans	1328.310-70(i)	C	Y	H										R			
1352.231-70 Precontract Costs	1331.205-32	C	N	H										A			
1352.231-71 Duplication of Effort	1331.205-70	C	Y	H			A							A			
1352.233-70 Agency Protests	1333.103(a)	P	N	L	A												

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.233-71 GAO and Court of Federal Claims Protests	1333.104-70(a)	P	Y	L	A												
1352.235-70 Protection of Human Subjects	1335.006(a)	P	Y	L	A												
1352.235-71 Protection of Human Subjects - Exemption	1335.006(b)	C	N	H		A											
1352.235-72 Protection of Human Subjects - Institutional Approval	1335.006(c)	C	N	H		A											
1352.235-73 Research Involving Human Subjects - After Initial Contract Award	1335.006(d)	C	Y	H		A											
1352.237-70 Security Processing Requirements - High or Moderate Risk Contracts	1337.110-70(b)	C	Y	H						A							
1352.237-71 Security Processing Requirements - Low Risk Contracts	1337.110-70(c)	C	Y	H						A							
1352.237-72 Security Processing Requirements - National Security Contracts	1337.110-70(d)	C	Y	H						A							

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.237-73 Foreign National Visitor and Guest Access to Departmental Resources	1337.110-70(e)	C	Y	H						A							
1352.237-74 Progress Reports	1337.110-71(a)	C	N	G	A	A											
1352.237-75 Key Personnel	1337.110-71(b)	C	Y	H						A							
1352.239-70 Software License Addendum	1339.107	C	Y	H													A
1352.239-71 Electronic and Information Technology	1339.270(a)	P	Y	L	A												A
1352.239-72 Security Requirements for Information Technology Resources	1339.270(b)	C	Y	H						A							R
1352.242-70 Postaward Conference	1342.503-70	P	Y	L	A	A											
1352.245-70 Government Furnished Property	1345.107-70	C	N	G	A	A											
1352.246-70 Place of Acceptance	1346.503	C	Y	E	R	R											

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.270-70 Period of Performance	1370.101	C	N	F	A	A											
1352.270-71 Pre-Bid / Pre-Proposal Conference and Site Visit	1370.102	P	N	L	A												
1352.271-70 Inspection and Manner of Doing Work	1371.101	C	Y	H												R	
1352.271-71 Method of Payment and Invoicing Instructions for Ship Repair	1371.102	C	N	H												R	
1352.271-72 Additional Item Requirements (AIR) - Growth Work	1371.103	C	Y	H												R	
1352.271-73 Schedule of Work	1371.104	C	Y	H												R	
1352.271 -74 Foreseeable Cost Factors Pertaining to Different Shipyard Locations	1371.105	P	N	H												R	
1352.271-75 Delivery and Shifting of the Vessel	1371.106	C	Y	H												A	
1352.271-76 Performance	1371.107	C	Y	H												R	

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.271-77 Delays	1371.108	C	Y	H												R	
1352.271-78 Minimization of Delay Due to Government Furnished Property	1371.109	C	Y	H												R	
1352.271-79 Liability and Insurance	1371.110	C	Y	H												R	
1352.271-80 Title	1371.111	C	Y	H												R	
1352.271-81 Discharge of Liens	1371.112	C	Y	H												R	
1352.271-82 Department of Labor Occupational Safety and Health Standards for Ship Repair	1371.113	P	Y	H												A	
1352.271-83 Government Review, Comment, Acceptance and Approval	1371.114	C	Y	H												R	
1352.271-84 Access to the Vessel	1371.115	C	Y	H												R	
1352.271-85 Documentation of Requests for Equitable Adjustment	1371.116	C	Y	H												R	

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.271-86 Lay Days	1371.117	C	Y	H												R	
1352.271-87 Changes - Ship Repair	1371.118	C	Y	H												R	
1352.271-88 Guarantees	1371.119	C	N	H												R	
1352.271-89 Temporary Services	1371.120	C	Y	H												R	
1352.271-90 Insurance Requirements	1371.121	C	N	H												R	

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PART 1353—FORMS

Subpart 1353.1—General

Sec.
1353.100 Scope of subpart.
1353.107 Obtaining forms.

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.
1353.206 Competition requirements.

Subpart 1353.3—Illustration of Forms

353.300 Scope of subpart.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1353.1—General

1353.100 Scope of subpart.

This subpart prescribes DOC forms that are supplemental to those provided in FAR Part 53.

1353.107 Obtaining forms.

The DOC forms may be obtained from any DOC contracting office.

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.

This subpart prescribes or references DOC forms for use in acquisitions. Consistent with FAR 53.200, this subpart is arranged by subject matter, in the same order as and keyed to the parts of the CAR in which the form usage requirements are addressed.

1353.206 Competition requirements.

As prescribed in 48 CFR 1306.303–70, use Form CD–492, *Justification for Other Than Full and Open Competition,* to support the requirements under FAR Subpart 6.3 *(see Appendix A: Forms*).

1353.219 Small business programs.

Use Form CD–570, *Small Business Set-Aside Review,* to fulfill and document the requirements under FAR 19.5 (*see Appendix A: Forms*).

Subpart 1353.3—Illustration of Forms

1353.300 Scope of subpart.

DOC Forms will not be illustrated in this CAR. Persons wishing to obtain copies of DOC forms prescribed in the CAR may do so in accordance with 1353.107.

Subchapter I—Department Supplemental Regulations

PART 1370—UNIVERSAL SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1370.1—Provisions and Clauses

Sec.
1370.101 Period of performance.
1370.102 Pre-bid/pre-proposal conference and site visit.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1370.1—Provisions and Clauses

1370.101 Period of performance.

Insert the clause 1352.270–70, *Period of Performance,* in all solicitations and contracts where a period of performance will be specified.

1370.102 Pre-bid/pre-proposal conference and site visit.

Insert provision 1352.270–71, *Pre-Bid/Pre-Proposal Conference and Site Visit,* in solicitations where a pre-proposal conference will be held. The provision is optional for construction and may be modified as necessary. The contracting officer shall include or delete the paragraph regarding site visits.

PART 1371—ACQUISITIONS INVOLVING SHIP CONSTRUCTION AND SHIP REPAIR

Subpart 1371.1—Provisions and Clauses

Sec.
1371.101 Inspection and manner of doing work.
1371.102 Method of payment and invoicing instructions for ship repair.
1371.103 Additional item requirements (AIR)—growth work.
1371.104 Schedule of work.
1371.105 Foreseeable cost factors pertaining to different shipyard locations.
1371.106 Delivery and shifting of the vessel.
1371.107 Performance.
1371.108 Delays.
1371.109 Minimization of delay due to government furnished property.
1371.110 Liability and insurance.
1371.111 Title.
1371.112 Discharge of liens.
1371.113 Department of Labor occupational safety and health standards for ship repairing.
1371.114 Government review, comment, acceptance, and approval.
1371.115 Access to the vessel.
1371.116 Documentation of requests for equitable adjustment.
1371.117 Lay days.
1371.118 Changes—ship repair.
1371.119 Guarantees.
1371.120 Temporary services.

Authority: 41 U.S.C. 414; 48 CFR 1.301—1.304.

Subpart 1371.1—Provisions and Clauses

1371.101 Inspection and manner of doing work.

Insert clause 1352.271–70, *Inspection and Manner of Doing Work,* in all solicitations and contracts for ship construction and ship repair.

1371.102 Method of payment and invoicing instructions for ship repair.

Insert clause 1352.271–71, *Method of Payment and Invoicing Instructions for Ship Repair,* in all solicitations and contracts for ship repair.

1371.103 Additional item requirements (AIR)—growth work.

Insert clause 1352.271–72, *Additional Item Requirements (AIR)—Growth Work,* in all solicitations and contracts for ship repair.

1371.104 Schedule of work.

Insert clause 1352.271–73, *Schedule of Work,* in all solicitations and contracts for ship repair.

1371.105 Foreseeable cost factors pertaining to different shipyard locations.

Insert provision 1352.271–74, *Foreseeable Cost Factors Pertaining to Different Shipyard Locations,* in all solicitations for ship repair.

1371.106 Delivery and shifting of the vessel.

Insert clause 1352.271–75, *Delivery and Shifting of the Vessel,* in all solicitations and contracts for ship repair to be performed at the contractor's facility.

1371.107 Performance.

Insert clause 1352.271–76, *Performance,* in all solicitations and contracts for ship construction and ship repair.

1371.108 Delays.

Insert clause 1352.271–77, *Delays,* in all solicitations and contracts for ship repair.

1371.109 Minimization of delay due to Government furnished property.

Insert clause 1352.271–78, *Minimization of Delay Due to Government Furnished Property,* in all solicitations and contracts for ship construction and ship repair.

1371.110 Liability and insurance.

Insert clause 1352.271–79, *Liability and Insurance,* in all solicitations and contracts for ship repair.

1371.111 Title.

Insert clause 1352.271–80, *Title,* in all solicitations and contracts for ship repair.

1371.112 Discharge of liens.

Insert clause 1352.271–81, *Discharge of Liens,* in all solicitations and contracts for ship construction and ship repair.

1371.113 Department of Labor occupational safety and health standards for ship repair.

Insert clause 1352.271–82, *Department of Labor Occupational Safety and Health Standards for Ship Repair,* in all solicitations and contracts for ship repair.

1371.114 Government review, comment, acceptance, and approval.

Insert clause 1352.271–83, *Government Review, Comment, Acceptance and Approval,* in all solicitations and contracts for ship construction and ship repair.

1371.115 Access to the vessel.

Insert clause 1352.271–84, *Access to the Vessel,* in all solicitations and contracts for ship construction and ship repair.

1371.116 Documentation of requests for equitable adjustment.

Insert clause 1352.271–85, *Documentation of Requests for Equitable Adjustment,* in all solicitations and contracts for ship construction and ship repair.

1371.117 Lay days.

Insert clause 1352.271–86, *Lay Days,* in all solicitations and contracts for ship repair.

1371.118 Changes—Ship repair.

Insert clause 1352.271–87, *Changes—Ship Repair,* in all solicitations and contracts for ship repair.

1371.119 Guarantees.

Insert clause 1352.271–88, *Guarantees,* in all solicitations and contracts for ship construction and ship repair.

1371.120 Temporary services.

Insert clause 1352.271–89, *Temporary Services,* in all solicitations and contracts for ship repair.

1371.121 Insurance requirements.

Insert clause 1352.271–90, *Insurance Requirements,* in all solicitations and contracts for ship construction and ship repair.

[FR Doc. E9–22206 Filed 10–9–09; 8:45 am]

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Federal Register

Tuesday,
October 13, 2009

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Arroyo Toad (Anaxyrus californicus); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0069; 92210–1117–0000–B4]

RIN 1018–AV89

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Arroyo Toad (Anaxyrus californicus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise designated critical habitat for the arroyo toad (*Anaxyrus californicus*), pursuant to the Endangered Species Act of 1973, as amended (Act). The previous final rule designated 11,695 acres (ac) (4,733 hectares (ha)) of critical habitat and was published in the **Federal Register** (FR) on April 13, 2005. We now propose to designate approximately 109,110 ac (44,155 ha) of lands located in Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, and San Diego Counties, California, which, if finalized as proposed, would result in an increase of approximately 97,415 ac (39,422 ha) of critical habitat.

DATES: We will consider comments we receive on or before December 14, 2009. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by November 27, 2009.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R8–ES–2009–0069.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2009–0069, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: For general information on the proposed designation and information about the proposed revised designation in Santa Barbara and Ventura Counties, northern Los Angeles County, and the desert portion of San Bernardino County, contact Diane Noda, Field Supervisor, or Michael McCrary, Listing and Recovery Coordinator, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone (805) 644–1766; facsimile (805) 644–3958.

For information about the proposed revised designation in the remaining portions of Los Angeles and San Bernardino Counties, as well as Riverside, Orange, and San Diego Counties, contact Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone (760) 431–9440; facsimile (760) 431–9624.

If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend any final action resulting from this proposed revised rule to be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other government agencies, Tribes, the scientific community, industry, or other interested parties concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why we should or should not revise the designation of habitat as ''critical habitat'' under section 4 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent;

2. Specific information on:

- The amount and distribution of arroyo toad habitat included in this proposed revised rule,
- What areas within the geographical area occupied by the species at the time of listing contain features essential to the conservation of the species and why, and
- What areas outside the geographical area occupied by the species at the time of listing are essential for the conservation of the species and why;

3. Land-use designations and current or planned activities in the subject areas and their possible effects on proposed revised critical habitat;

4. Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts;

5. Comments or information that may assist us in identifying or clarifying the primary constituent elements and the resulting physical and biological features essential to the conservation of the arroyo toad;

6. How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the landscapes identified as essential;

7. Information regarding Trabuco Creek in Orange County and any special management considerations or protection that any essential physical or biological features in this area may require;

8. Information regarding the San Diego River in San Diego County from just below El Capitan Reservoir downstream to the confluence with San Vicente Creek, and any special management considerations or protection that any essential physical or biological features in this area may require;

9. Whether the potential exclusion under section 4(b)(2) of the Act of non-Federal lands covered by the Western Riverside County Multiple Species Habitat Conservation Plan from final revised critical habitat is or is not appropriate and why;

10. Whether the potential exclusion under section 4(b)(2) of the Act of non-Federal lands covered by the San Diego Multiple Species Conservation Program–City and County of San Diego's Subarea Plans from final revised critical habitat is or is not appropriate and why;

11. Whether the potential exclusion under section 4(b)(2) of the Act of non-Federal lands covered by the Coachella Valley Multiple Species Habitat Conservation Plan from final revised critical habitat is or is not appropriate and why;

12. Whether the potential exclusion under section 4(b)(2) of the Act of non-Federal lands covered by the Orange County Central–Coastal Subregional Habitat Conservation Plan/Natural Community Conservation Plan from final revised critical habitat is or is not appropriate and why;

13. Whether the potential exclusion under section 4(b)(2) of the Act of non-Federal lands covered by the Southern Orange County Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan from final revised critical habitat is or is not appropriate and why;

14. Whether the conservation needs of the arroyo toad can be achieved or not by limiting the designation of final revised critical habitat to non-Tribal lands and why;

15. Whether the potential exclusion under section 4(b)(2) of the Act of Tribal lands of the Rincon Band of Luiseño Mission Indians from final revised critical habitat is or is not appropriate and why;

16. Whether the potential exclusion under section 4(b)(2) of the Act of Tribal lands of the Pala Band of Luiseño Mission Indians from final revised critical habitat is or is not appropriate and why;

17. Whether the potential exclusion under section 4(b)(2) of the Act of Tribal lands of the Sycuan Band of the Kumeyaay Nation from final revised critical habitat is or is not appropriate and why;

18. Whether the potential exclusion under section 4(b)(2) of the Act of Tribal lands of the Capitan Grande Band of Diegueno Mission Indians from final revised critical habitat is or is not appropriate and why;

19. Whether the potential exclusion under section 4(b)(2) of the Act of Tribal lands of the Mesa Grande Band of Diegueno Mission Indians from final revised critical habitat is or is not appropriate and why;

20. Whether our exemption under section 4(a)(3)(B) of the Act of the lands on Department of Defense land at Marine Corps Base, Camp Pendleton, in San Diego County; Fallbrook Naval Weapons Station in San Diego County; and Fort Hunter Liggett Military Reservation in San Luis Obispo County is or is not appropriate, and why;

21. Information on any quantifiable economic costs or benefits of the proposed revised designation of critical habitat;

22. Whether the benefit of exclusion of any other particular area not specifically identified above outweighs the benefit of inclusion under section 4(b)(2) of the Act;

23. Information on the currently predicted effects of climate change on the arroyo toad and its habitat;

24. Any foreseeable impacts on energy supplies, distribution, and use resulting from the proposed revised designation and, in particular, any impacts on electricity production, and the benefits of including or excluding any particular areas that exhibit these impacts; and

25. Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Our final determination concerning revised critical habitat for the arroyo toad will take into consideration all written comments received during the comment period, including comments requested from peer reviewers, comments received during a public hearing should one be requested, and any additional information we receive during the 60-day comment period. Our final determination will also consider all written comments and any additional information we receive during the comment period for the draft economic analysis. All comments will be included in the public record for this rulemaking. On the basis of peer reviewer and public comments, we may, during the development of our final determination, find that areas within those proposed do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas are or are not appropriate for exclusion under section 4(b)(2) of the Act.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.* Please include sufficient information with your comment to allow us to verify any scientific or commercial data you submit.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed revised rule by mail from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or by visiting the Federal eRulemaking Portal at *http://www.regulations.gov.*

Background

It is our intent to discuss only those topics directly relevant to the revised designation of critical habitat in this proposed rule. Additional information on the arroyo toad may also be found in the final listing rule published in the **Federal Register** on December 16, 1994 (59 FR 64859), the ''Recovery Plan for the Arroyo Southwestern Toad'' (recovery plan; Service 1999), and the designation of critical habitat for the arroyo toad published in the **Federal Register** on April 13, 2005 (70 FR 19562). These documents are available on the Ventura Fish and Wildlife Office and Carlsbad Fish and Wildlife Office Web sites at *http://www.fws.gov/ventura* and *http://www.fws.gov/carlsbad.* However, please note that this proposed rule incorporates new information on the distribution of arroyo toads that became available since the 2005 final critical habitat designation for this species.

Taxonomy and Nomenclature

On December 16, 1994, we published a final rule listing the arroyo southwestern toad (*Bufo microscaphus californicus*) as endangered (59 FR 64859). This animal, originally described as *Bufo cognatus californicus* (Camp 1915, p. 331), has consistently been treated as a distinct taxon. However, its rank as a subspecies or species and taxonomic affiliations with other species has changed several times since it was described. Myers (1930, p. 75) elevated it to species rank as *Bufo californicus* citing morphological, vocalization, and ecological data to distinguish it from *B. cognatus.* Subsequent to Myers' paper, other authors again relegated the animal to subspecies rank aligned with various other species of *Bufo.* The name in use at the time of listing, *Bufo microscaphus californicus,* was published by Stebbins (1951, p. 275).

Since the toad was listed, an analysis of allozyme data (Gergus 1998, p. 322) supports recognition of *Bufo californicus* as separate from *B. microscaphus.* In addition, a phylogenetic analysis of comparative anatomical and molecular genetic data for amphibians (Frost *et al.* 2006, p. 363) segregated the Nearctic taxa of *Bufo* as the genus *Anaxyrus* and published the combination *Anaxyrus californicus,* the arroyo toad. This treatment is accepted by the Committee on Standard English and Scientific Names of the American Society of Ichthyologists and Herpetologists, The Herpetologists' League, and the Society for the Study of Amphibians and Reptiles (Frost *et al.* 2008, p. 3).

In light of these changes and their acceptance by the above scientific authorities, we are proposing to amend the List of Threatened and Endangered Wildlife at 50 CFR 17.11 to identify the

listed entity as ''arroyo toad (*Anaxyrus californicus*).'' This change does not alter the description or distribution of the animals.

Species Description

The arroyo toad is a small, dark-spotted toad of the family Bufonidae. Its coloration ranges from light olive green or gray to light brown with a distinctive light-colored, V-shaped stripe across the head and the eyelids. The belly is white or buff and often lacks dark blotches or spots (Stebbins 2003, p. 212). The species is endemic to the coastal plain and mountains of central and southern California, and northwestern Baja California, Mexico, from near sea level to about 8,000 feet (ft) (2,440 meters (m)) in elevation. For a detailed description of the species, see the recovery plan and references cited within the plan (Service 1999, pp. 1–119), and information in previous **Federal Register** notices, proposed rules, and final rules (59 FR 64859, December 16, 1994; 66 FR 9414, February 7, 2001; 69 FR 23254, April 28, 2004; 70 FR 19562, April 13, 2005). In addition to the recovery plan, important sources for information on the biology of the arroyo toad include: Sweet (1992, pp. 1–198; 1993, pp. 1–73); Campbell *et al.* (1996, pp. 1–46); Griffin *et al.* (1998, pp. 1–66); Griffin and Case (2001, pp. 633–644); Holland and Sisk (2001); and Ramirez (2002a, pp. 1–62; 2002b; 2002c; 2003, pp. 1–101).

Life History

Breeding typically occurs from February to July on streams with persistent water (Griffin *et al.* 1999, p. 1). Males may breed with several females in a season; however, female arroyo toads release their entire clutch of eggs as a single breeding effort and probably do not produce a second clutch during the mating season. Eggs are deposited and tadpoles develop in shallow pools with minimal current and little or no emergent vegetation. The substrate in these pools is generally sand or fine gravel overlain with silt. The eggs hatch in 4 to 5 days and the tadpoles are immobile for an additional 5 to 6 days. Tadpoles then begin to disperse from the pool margin into the surrounding shallow water, where they spend an average of 10 weeks. Peak metamorphosis occurs during June and July in the northern part of the arroyo toad's range, and from late April through June farther south, although it could occur later, particularly at higher elevations (Holland 2000, *in litt.* p. 8). After metamorphosis, the juvenile arroyo toads remain on the bordering gravel bars until the pool dries out (usually from 8 to 12 weeks depending on the site and rainfall). Most individuals become sexually mature by the following spring (Sweet 1992, p. 52).

Arroyo toad tadpoles feed on loose organic material such as interstitial algae, bacteria, and diatoms. They do not forage on macroscopic vegetation (Sweet 1992, p. 82; Jennings and Hayes 1994, p. 56). Juvenile arroyo toads feed on ants almost exclusively (Service 1999, p. 36). By the time they reach 0.7 to 0.9 inch (in) (1.78 centimeters (cm)) in length, they consume beetles along with ants (Sweet 1992, p. 99; Service 1999, p. 36). Adult arroyo toads probably consume a wide variety of insects and arthropods including (but not limited to) ants, beetles, spiders, larvae, and caterpillars.

Geographic Range

The historical and current range of the arroyo toad extends from the Salinas River Basin southward through the Santa Ynez, Santa Clara, and Los Angeles River basins (Sweet 1992, p. 18), to Orange, Riverside, and San Diego Counties (Jennings and Hayes 1994, p. 54) and southward to the Arroyo San Simeon system, Baja California, Mexico (Service 1999, p. 12; Ramirez 2007, p. 5). Populations also occur on the desert slopes of both the San Gabriel Mountains (in Little Rock Creek in Los Angeles County) and the San Bernardino Mountains (in the Mojave River and in its tributaries, Little Horsethief and Deep Creeks, in San Bernardino County) (Sweet 1992, p. 18; Jennings and Hayes 1994, p. 54).

At the time of listing (59 FR 64859; December 16, 1994), arroyo toads were believed to be extirpated from the Salinas River Basin. In 1996, arroyo toads were found during surveys on the Fort Hunter Liggett Military Reservation approximately 40 miles (mi) (64 kilometers (km)) downstream of the historical Santa Margarita arroyo toad locality (U.S. Army Reserve 2004, pp. 5–10). In 1997, arroyo toads were detected along a 17-mi (27-km) stretch of the San Antonio River. The Army surveyed approximately 6 mi (9.6 km) of the San Antonio River on the Military Reservation in 2002 and estimated there were as many as 7,000 arroyo toad larvae (tadpoles) in the area (U.S. Army Reserve Command 2004, p. 12). We believe this population was present but undetected on Fort Hunter Liggett at the time of listing for the following reasons: (1) Annual surveys (U.S. Army Reserve 2004, p. 38) indicate there is suitable breeding and upland habitats for this large, robust population; and (2) given that the nearest extant population of arroyo toads is 150 mi (240 km) southeast of Fort Hunter Liggett in Santa Barbara County, it is unlikely that arroyo toads could have dispersed and newly colonized the Fort Hunter Liggett area by 1996, just 2 years subsequent to the species being listed in 1994. Therefore, we consider the population on Fort Hunter Liggett to have existed in 1994 and to represent the northernmost limit of the species' range at listing and currently. The geographical area occupied by the species at the time it was listed is the same as the species' current range in the coastal streams extending from Monterey County southward to San Diego County, and extending eastward into the riparian (along the shore of a river, stream, or lake) environments of San Bernardino and Riverside Counties.

Arroyo toads have been extirpated from approximately 75 percent of the habitat they originally occupied (Sweet 1992, p. 189; Jennings and Hayes 1994, p. 57; Campbell *et al.* 1996, p. 2). At present, arroyo toads are limited to isolated populations primarily in the headwaters of coastal streams. The species is likely restricted naturally as a result of specific habitat requirements for breeding and development (Service 1999, p. 39). These natural restrictions, coupled with the small sizes of many arroyo toad populations, make them particularly vulnerable to the negative effects of human-induced changes to their habitat (Jennings and Hayes 1994, p. 57).

Habitat

Stream order, elevation, and floodplain width appear to be important factors in determining habitat suitability (Sweet 1992, pp. 24–26; Griffin *et al.* 1999, pp. 1–3). Stream order ranks the size and potential power of streams. The smallest channels in a watershed with no tributaries are referred to as first-order streams. When two first-order streams unite, they form a second-order stream; when two second-order streams unite, they form a third-order stream, and so on. Fifth- and sixth-order streams are usually larger rivers, while first- and second-order streams are often small, steep, or intermittent. In the northern portion of the range, arroyo toads are found on third- to sixth-order streams (Sweet 1992, p. 24), while in the central and southern portion of the range, arroyo toads are found in first- to sixth-order streams (Service 1999, p. 32).

Optimal breeding habitat consists of low-gradient sections of slow-moving streams with shallow pools, nearby sandbars, and adjacent stream terraces. Arroyo toads breed and deposit egg masses in the shallow, sandy pools of these streams, which are usually

bordered by sand-gravel flood-terraces. Breeding sites favored by adult arroyo toads have clear water in shallow (less than 12 in (30 cm) deep) pools (Sweet 1992, p. 28). Optimal breeding sites also have flow rates less than 1.97 in (5 cm) per second and bottoms composed of sand or well-sorted, fine gravel, although a significant component of large gravel or cobble may also be present (Sweet 1992, p. 37).

Stream terrace habitat consisting of alluvial bars and terraces that may have established cottonwoods (*Populus* spp.), oaks (*Quercus* spp.), or willows (*Salix* spp.) and almost no grass and herbaceous cover at ground level are extremely important for arroyo toads prior to, during, and after the breeding season (Griffin *et al.* 1999, p. 45; Sweet 1992, pp. 28–49). Areas that are used by juveniles consist primarily of sand or fine gravel bars with varying amounts of large gravel or cobble and adjacent stable sandy terraces and oak flats. Juvenile arroyo toads favor areas that are damp and have some vegetation cover (less than 10 percent), which offer refugia and thermal characteristics that are needed for juvenile survival and rapid growth (Campbell *et al.* 1996, p. 12). Bare sand and gravel bars may support large numbers of juvenile toads, but survivorship can be reduced due to high levels of predation (Sweet 1992, p. 113).

Adult arroyo toads are often found on sandy alluvial terraces adjacent to the stream that may be sparsely-to-heavily vegetated with brush and trees, such as mulefat (*Baccharis* spp.), California sycamore (*Platanus racemosa*), cottonwoods, coast live oak (*Quercus agrifolia*), and willow (Campbell *et al.* 1996, pp. 12–13). The understory of stream terraces may consist of scattered short grasses, herbs, and leaf litter, with patches of bare or disturbed soil, or have no vegetation at all. When foraging, juvenile and adult arroyo toads are often found around the drip lines of oak trees (Sweet 1992, pp. 45–46; Campbell *et al.* 1996, p. 10). When active at night, arroyo toads can often be observed near ant trails feeding on passing ants and other prey.

Upland habitats used by arroyo toads during both the breeding and non-breeding seasons include alluvial scrub, coastal sage scrub, chaparral (shrubby plants adapted to dry summers and moist winters), grassland, and oak woodland. Within terrace and upland habitats, arroyo toads aestivate (a state of dormancy similar to hibernation) in burrows during the non-breeding season, which usually starts in the late summer and extends from August to January (Ramirez 2003, p. 46). In habitat utilization studies conducted by Ramirez (2007, pp. 11–14) from 1999 to 2006 in the West Fork Mojave River and Grass Valley Creek areas, arroyo toads were generally found burrowed within sandy or loamy substrates with no associated canopy cover, or within mulefat scrub or arroyo willow (*Salix lasiolepis*) patches. The majority of individuals tracked in these studies burrowed immediately adjacent to the active channel or on sandy terraces within riparian habitat located within flood-prone areas; however, toads were also found to use upland habitats up to 1,063 ft (324 m) from the active channel (Ramirez 2007, p. 13). In his 2005 study, Ramirez (2007, p. 93) observed several arroyo toad individuals burrowed in stable terrace habitats dominated by Great Basin sage scrub and Utah junipers (*Juniperus osteosperma*). At Little Rock Creek on the desert slopes of the San Gabriel Mountains, arroyo toads burrowed in areas closest to the creek that retained higher soil saturation and were cooler (Ramirez 2002a, p. 50). Griffin *et al.* (1999, p. 45) noted that sands are the preferred burrowing substrate for both male and female arroyo toads, confirming the importance of natural hydrologic regimes that maintain sand and fine sediment deposition across the floodplain.

Dispersal

Arroyo toad movement patterns also vary between watersheds or river reaches in response to different hydrological regimes (Griffin *et al.* 1999, p. 11). In broad floodplain river systems, arroyo toads searching for suitable egg-laying sites may have to move across parallel stream channels. Cristianitos Creek, Talega Creek, and the lower San Mateo River are examples of this type of river system because of their wide, sandy floodplains where the river flows into several channels during floods. Despite river depths of 24 in (60 cm) and swift currents, Griffin *et al.* (1999, p. 21) observed numerous toads crossing Talega Creek and the lower San Mateo River, confirming these river systems are not a barrier to arroyo toad dispersal. In their study of arroyo toad movement patterns, Griffin *et al.* (1999, pp. 18–21) tracked 10 female and 3 male arroyo toads in the lower San Mateo River and observed female arroyo toads regularly using riparian and upland habitats far from the river's edge and returning to these areas after traveling far upstream for egg-laying. In one case, a female arroyo toad traveled 919 ft (280 m) across the San Mateo Campground into upland native habitat; in another instance, a female was found 558 ft (170 m) from the San Mateo River under cover of mulefat scrub (Griffin *et al.* 1999, p. 20). They also recorded arroyo toads moving in both up- and downstream directions, such as the female arroyo toad that traveled upstream more than 492 ft (150 m) in a single night to a breeding pool. The study found that both male and female arroyo toads moved more into upland habitats after completing individual breeding activity (Griffin *et al.* 1999, p. 46).

In contrast, arroyo toads searching for breeding pools in watersheds with relatively narrower, steeper-sided drainages (such as the Piru and Sespe Creek Watersheds in Ventura County) tend to move in both up- and downstream directions along these channels with their structure of alternating riffles and pools (Griffin *et al.* 1999, p. 11). In his Mono Creek study, Sweet (1993, pp. 24–65), concluded that female arroyo toads became relatively sedentary as they matured whereas males tended to travel up- and downstream fairly often during the breeding season (Sweet 1993, p. 65). This study also suggested that most juvenile arroyo toads disperse away from their natal pools about a year after metamorphosis (Sweet 1993, p. 65). In fact, numerous juvenile and adult arroyo toads were observed moving up- and downstream as much as 0.5 mi (0.8 km) and over 0.6 mi (1 km) in some cases (Sweet 1993, p. 1). Arroyo toads in these watersheds also travel laterally away from the stream channel into terrace and upland native habitats. On lower Piru Creek, Sweet (1992, pp. 42–45) observed two adult males under oaks that were 200 ft (61 m) away.

Reasons for Decline and Threats

A variety of factors contribute to the decline of arroyo toads but nearly half of historical extirpations prior to listing are attributed to dam building and operation (Sweet 1992, pp. 4–5; Ramirez 2003, p. 7). Suitable habitat is often flooded out by reservoir water, and downstream breeding and non-breeding habitat may be severely altered by reduced flows at some times and sudden excessive flows at others. Sudden excessive releases of water may destroy sand bars used during the breeding season, and reconfigure or destroy suitable breeding pools, thus disrupting clutch and larval development (Ramirez 2003, p. 7). Additionally, dams can interrupt the scouring and deposition processes needed to maintain arroyo toad pool and terrace habitats. Areas below dams can become unsuitable as fine sands are lost and not replaced (Service 1999, pp. 42–43).

In addition to flood control projects, other threats include agriculture; sand and gravel mining; urban development; off-highway vehicle use; urbanization; recreational activities such as camping, fishing, hiking, picnicking; and natural factors, including drought and fire (59 FR 64859; Service 1999, p. 39; Ramirez 2003, p. 7). Conversion of stream terrace habitat for farming, road construction, and residential and commercial uses has eliminated substantial arroyo toad habitat in some areas. Suction dredge mining of sand and gravel causes substantial alteration of habitat by degrading water quality, altering stream morphology, increasing siltation downstream, and creating deep pools that hold water year-round for introduced predators of arroyo toad eggs and larvae (Campbell *et al.* 1996, p. 16). Natural disturbances, such as drought and fire, also threaten the arroyo toad (Campbell *et al.* 1996, p. 17). Prolonged drought can result in the loss of suitable breeding pools, foraging habitat, and prey availability (Sweet 1992, p. 190). Fire can affect arroyo toads by causing direct mortality and destruction of stream or terrace vegetation.

The introduction of nonnative species that compete for resources or that prey on arroyo toads also poses a serious threat to arroyo toad existence. The introduction of aquatic species not native to southern California watercourses has been facilitated by construction of the California Aqueduct and other sources of inter-basin water transport (Service 1999, p. 48). Currently, the California Aqueduct is linked directly to the Santa Ynez River, Santa Clara River, San Jacinto River, and Mojave River Basins. Predatory species, many of which have used the aqueduct to colonize these river basins, include green sunfish (*Lepomis cyanellus*), largemouth bass (*Micropterous salmoides*), black bullhead (*Ictalurus nebulosus*), prickly sculpin (*Cottus asper*), stocked rainbow trout (*Oncorhynchus mykiss*), oriental gobies (*Tridentiger* spp.), red shiners (*Notropis lutrensis*), bullfrogs (*Rana catesbeiana*), African clawed frogs (*Xenopus laevis*), and crayfish (*Procambarus clarkii)* (Sweet 1992, pp. 118–122; Service 1999, p. 48). All of these species prey on arroyo toad tadpoles.

Of the above introduced-predators, bullfrogs are probably the most serious threat to arroyo toads (Stephenson and Calcarone 1999, p. 82). Bullfrogs are well adapted to deep water conditions in ponded areas above dams, and dam releases can introduce them to downstream habitats (CDFG 2005, p. 178). A broad diet and an extended breeding season give bullfrogs a competitive advantage over native amphibians. Whereas arroyo toad breeding habitat requirements are highly specialized, in that they require shallow, slow-moving streams and riparian habitats that are disturbed on a regular basis, bullfrogs can tolerate elevated water temperatures and make use of standing pools resulting from urban runoff to complete their 2-year life cycle (CDFG 2005, p. 178).

Introduced plants have also had a negative effect on arroyo toads and their habitat. Nonnative plant species, particularly tamarisk (*Tamarix* spp.) and giant reed (*Arundo donax*) alter the natural hydrology of stream drainages by eliminating sandbars, breeding pools, and upland habitats. Tamarisk is an aggressive, woody invasive plant species that can tolerate a variety of environmental conditions and has become established over as much as a million acres of floodplains, riparian areas, wetlands, and lake margins in the western United States (Carpenter 2004, pp. 1–30). Tamarisk can replace or displace native woody species such as cottonwood and willow which occupy similar habitats, especially when timing and amount of peak water discharge, salinity, temperature, and substrate texture have been altered by human activities (Carpenter 2004, pp. 1–30). Tamarisk also consumes large quantities of water, possibly more than woody native plant species occupying the same habitat (Carpenter 2004, p. 3). Highly resistant to removal by flooding, tamarisk has the potential to form dense corridors along most large streams. Where this has been allowed to occur, tamarisk has replaced native vegetation, invaded sand bars, and led to channelization by constricting flood flows. *Arundo donax* is a tall, grass-like plant that grows up to 20 ft (6.1 m) in height with jointed stems that resemble corn stalks. *Arundo donax* also invades stream banks and lakeshores, where it can completely displace native vegetation, reduce wildlife habitat, increase fire risks, and alter flow regimes which can cause flooding (Ventura County 2006, pp. 21–23).

In summary, predation from introduced aquatic species and the loss of habitat, coupled with habitat modifications due to the establishment of nonnative plants and the manipulation of water levels in many central and southern California streams and rivers, have caused arroyo toads to disappear from a large portion of their previously occupied habitat in California.

Previous Federal Action

For more information on previous Federal actions concerning the arroyo toad, refer to our final designation of critical habitat published in the **Federal Register** on April 13, 2005 (70 FR 19562). On July 20, 2007 (Service 2007, pp. 1–2), we announced that we would review the April 13, 2005, final rule after questions were raised about the integrity of scientific information used and whether the decision made was consistent with the appropriate legal standards. Based on our review of the previous final critical habitat designation, we determined it was necessary to revise critical habitat and this rule proposes those revisions. On December 19, 2007, the Center for Biological Diversity filed a complaint in the U.S. District Court for the Southern District of California challenging our designation of critical habitat for the arroyo toad (*Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* Case No. 07–2380–JM–AJB). On June 5, 2008, the court entered a consent decree requiring a proposed revised critical habitat rule to be submitted to the **Federal Register** by October 1, 2009, and a final revised critical habitat designation to be submitted to the **Federal Register** by October 1, 2010.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features;

(a) Essential to the conservation of the species; and

(b) That may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping and transplantation, and in the extraordinary case where population

pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing activities that are likely to result in the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner seeks or requests Federal agency funding or authorization of an activity that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

To be considered for inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical or biological features that are essential to the conservation of the species. Areas supporting the essential physical or biological features are identified, to the extent known using the best scientific data available, as the habitat areas that provide essential life cycle needs of the species; that is, areas on which are found the primary constituent elements laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. Habitat within the geographical area occupied by the species at the time of listing that contains features essential to the conservation of the species meets the definition of critical habitat only if these features may require special management considerations or protection. Under the Act and the regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that the best available scientific data demonstrate that the designation of those areas is essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas to propose as revised critical habitat, our primary source of information is generally the information developed during the listing process for the species and any previous designations of critical habitat. Additional information sources may include the recovery plan and 5-year reviews for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. In particular, we recognize that climate change may cause changes in the arrangement of occupied habitat patches. Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change 2007, p. 11; Cayan *et al.* 2009, p. xi). However, predictions of climatic conditions for smaller sub-regions such as California remain uncertain. It is unknown at this time if climate change in California will result in a warmer trend with localized drying, higher precipitation events, or other effects. Thus, the information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the arroyo toad that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the proposed revised critical habitat for this species; however, we specifically request information from the public on the currently predicted effects of climate change on the arroyo toad and its habitat. Additionally, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated critical habitat area is unimportant or may not be required for recovery of the species.

Areas that support populations of the arroyo toad, but are outside the critical habitat designation, may continue to be subject to conservation actions we and other Federal agencies implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), section 7 consultations, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining which areas within the geographic area occupied by the species at the time of listing contain the features essential to the conservation of the arroyo toad, and which areas outside the geographical area occupied at the time of listing are essential for the conservation of the species. We reviewed information used to prepare the 2004 proposed critical habitat rule (69 FR 23254); the approach to provide conservation for the arroyo toad provided in its recovery plan (Service 1999, pp. 1–119); the 5-year review for the arroyo toad (Service 2009, pp. 1–51); the California Department of Fish and Game's (CDFG) California Natural Diversity Database (CNDDB) records; published peer-reviewed articles;

unpublished papers and reports; academic theses; survey results; Geographic Information System (GIS) data (such as species occurrences, soil data, land use, topography, and ownership maps); and correspondence to the Service from recognized experts. We solicited new information collected since publication of the recovery plan and 2005 final critical habitat designation, including information from State, Federal, and Tribal governments, and from academia and private organizations that have collected scientific data on the arroyo toad. We also based our determination of areas meeting the definition of critical habitat for the arroyo toad in part on the approach in the recovery plan that focuses on protection and management of breeding and non-breeding habitat on a watershed basis for the conservation of the species (Service 1999, pp. 1–119).

Physical and Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied at the time of listing to propose as revised critical habitat, we consider the physical and biological features that are essential to the conservation of the species that may require special management considerations or protection. Those features are the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for conservation of the species. The PCEs include, but are not limited to:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific PCEs required for conservation of the arroyo toad from its biological needs. The areas proposed for designation as revised critical habitat provide aquatic habitat for breeding activities and upland habitat for shelter, foraging, predator avoidance, and dispersal across the arroyo toad's current range. The PCEs and the resulting physical and biological features essential to the conservation of the species are determined based on studies of arroyo toad ecology as described in the ''Background'' section of this proposed rule and in the final listing rule published in the **Federal Register** on December 16, 1994 (59 FR 64859).

Space for Individual and Population Growth, and for Normal Behavior

The arroyo toad is found along medium-to-large streams in coastal and desert drainages in central and southern California, and Baja California, Mexico. It occupies aquatic, riparian, and upland habitats in a number of the remaining suitable drainages within its range. Suitable habitat for the arroyo toad is created and maintained by the fluctuating hydrological, geological, and ecological processes that naturally occur in riparian ecosystems and adjacent uplands (Campbell *et al.* 1996, pp. 13–15; Service 1999, p. 39). Periodic flooding that modifies stream channels, redistributes channel sediments, and alters pool location and form, coupled with upper terrace stabilization by vegetation, is required to keep a stream segment suitable for all life stages of the arroyo toad (Campbell *et al.* 1996, p. 13; Service 1999, p. 39). This natural flooding regime helps maintain areas of open, sparsely vegetated, sandy stream channels and terraces.

The substrate in habitats preferred by arroyo toads consists primarily of sand, fine gravel, or pliable soil, with varying amounts of large gravel, cobble, and boulders. Areas that are damp and have less than 10 percent vegetation cover provide the best conditions for juvenile survival and rapid growth (Campbell *et al.* 1996, p. 12; Service 1999, pp. 32–34). Arroyo toads breed in the quiet margins of open streams and avoid sites with deep or swift water, tree canopy cover, or steeply incised banks. Larvae occupy shallow areas of open streambeds on substrates ranging from silt to cobble, with preferences for sand or gravel. Newly metamorphosed arroyo toads and juveniles remain on sparsely vegetated sand and gravel bars bordering the natal pool for 3 to 5 weeks (Sweet 1992, p. 52).

Arroyo toads must be able to move between the stream and upland foraging sites, as well as up and down the stream corridor. Juveniles and adult arroyo toads require and spend much of their lives in riparian and upland habitats adjacent to breeding locations (Campbell *et al.* 1996, p. 12). Riparian habitats used for foraging and burrowing include sand bars, alluvial terraces, and streamside benches that lack vegetation, or are sparsely to moderately vegetated. Upland habitats used by arroyo toads during both the breeding and non-breeding seasons include alluvial scrub, coastal sage scrub, chaparral, grassland, and oak woodland.

Food, Water, and Physiological Requirements

Arroyo toad tadpoles eat microscopic algae, bacteria, and protozoans consumed from the spaces among pebbles, gravel, and sand, or abraded from stones (Sweet 1992, p. 82). Juveniles and adults eat insects, although ants are preferred. When foraging, arroyo toads are often found around the drip lines of oak trees. These areas often lack vegetation, yet have levels of prey that will support arroyo toads. When active at night, toads often are observed near ant trails feeding on ants, beetles, and other prey.

Cover or Shelter

During the day and other periods of inactivity, arroyo toads seek shelter by burrowing into sand. Thus, areas of sandy or friable (readily crumbled) soils are necessary, but these soils can be interspersed with gravel or cobble deposits. Additionally, arroyo toads may seek temporary shelter under rocks or debris and have been found in mammal burrows on occasion. Upland sites with compact soils can also be used for foraging and dispersal (Holland 2000, *in litt.*).

Sites for Breeding, Reproduction, and Rearing of Offspring

The arroyo toad has specialized breeding habitat requirements. They favor shallow pools (less than 12 in (30 cm) deep) and open sand and gravel channels along low-gradient (typically less than 6 percent) reaches of medium to large streams (Service 1999, pp. 31–32). These streams can have either intermittent or perennial streamflow and typically experience periodic flooding that scours vegetation and replenishes fine sediments. In at least some portions of its range, the species also breeds in smaller streams and canyons where low-gradient breeding sites are more sporadically distributed. Breeding pools must persist long enough for the completion of larval development, which is generally March through June, depending on location and weather. Because the suitability of breeding pools may vary from year to year due to the dynamics of southern California riparian systems and flood regimes, adult arroyo toads may move up or down stream in search of suitable breeding pools, or not breed that year (Campbell *et al.* 1996, p. 14).

Arroyo toads breed in rivers with intermittent, seasonal flow, with a breeding period that may range from late February through July. Breeding at

a given site may extend over several months (Griffin and Case 2001, p. 634). Breeding arroyo toads lay their eggs in water over substrates of sand, gravel, or cobble in open sites such as overflow pools, old flood channels, and shallow pools along streams. Such habitats rarely have closed canopies over the lower banks of the stream channel due to periodic flood events. Heavily shaded pools are generally unsuitable for larval and juvenile arroyo toads because of lower water and soil temperatures and poor algal mat development. Pools less than 12 in (30 cm) deep with clear water, flow rates less than 0.2 ft per second (5 cm per second), and bottoms composed of sand or well-sorted fine gravel are favored by adults for breeding and egg deposition (Sweet 1992, pp. 29–37). Although egg strings are laid in very slow-moving water, larvae (tadpoles) can be found in water velocities of up to 1.0 to 1.3 ft per second (30 to 40 cm per second) (Sweet 1992, p. 29). Breeding may occur on several dates at a single site, and eggs may be deposited over a period of 7 to 8 weeks (Campbell *et al.* 1996, p. 6). Breeding pools must persist a minimum of 2 months for the completion of larval development because changes in stream level or altering of the stream bed or breeding pool may cause high mortality to eggs and small larvae, sweeping them downstream, stranding and exposing them to desiccation, or burying and asphyxiating them with silt (Campbell *et al.* 1996, p. 6). Larvae usually hatch in 4 to 6 days at water temperatures of 54 to 59 degrees Fahrenheit (12 to 16 degrees Celsius). Tadpoles disperse from the pool margin into the surrounding shallow water, where they spend an average of 10 weeks. After metamorphosis, the juvenile arroyo toads remain on the bordering gravel bars until the pool dries out (usually from 8 to 12 weeks depending on the site and rainfall).

Primary Constituent Elements (PCEs) for the Arroyo Toad

Pursuant to the Act and its implementing regulations, when considering the designation of critical habitat, we must focus on the known principal primary constituent elements within the geographical area occupied by the arroyo toad at the time of listing that are essential to the conservation of the species. The essential physical and biological features are those PCEs laid out in an appropriate quantity and spatial arrangement determined to be essential to the conservation of the species. All areas proposed in this rule as revised critical habitat for the arroyo toad are currently occupied, are within the geographical area occupied by the species at the time of listing, and contain sufficient PCEs to support at least one life-history function.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that the PCEs specific to the arroyo toad are:

(1) Rivers or streams with hydrologic regimes that supply water to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads. Breeding pools must persist a minimum of 2 months for the completion of larval development. However, due to the dynamic nature of southern California riparian systems and flood regimes, the location of suitable breeding pools may vary from year to year. Specifically, the conditions necessary to allow for successful reproduction of arroyo toads are:

- Breeding pools with areas less than 12 in (30 cm) deep;
- Areas of flowing water with current velocities less than 1.3 ft per second (40 cm per second); and
- Surface water that lasts for a minimum of 2 months during the breeding season (a sufficient wet period in the spring months to allow arroyo toad larvae to hatch, mature, and metamorphose).

(2) Riparian and adjacent upland habitats, particularly low-gradient (typically less than 6 percent) stream segments and alluvial streamside terraces with sandy or fine gravel substrates that support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; and adjacent valley bottomlands that include areas of loose soil where toads can burrow underground, to provide foraging and living areas for juvenile and adult arroyo toads.

(3) A natural flooding regime, or one sufficiently corresponding to natural, characterized by intermittent or near perennial flow that contributes to the persistence of shallow pools into at least mid-summer, and that maintains areas of open, sparsely vegetated, sandy stream channels and terraces by periodically scouring riparian vegetation; and also that modifies stream channels and terraces and redistributes sand and sediment, such that breeding pools and terrace habitats with scattered vegetation are maintained.

(4) Stream channels and adjacent upland habitats that allow for movement to breeding pools, foraging areas, overwintering sites, upstream and downstream dispersal, and connectivity to areas that contain suitable habitat.

In summary, the need for space for individual and population growth and normal behavior is met by PCE (1); the need for food, water and physiological requirements is met by PCE (1); cover and shelter requirements are met by PCE (2); areas for breeding reproduction, and rearing of offspring are met by PCEs (1), (2), and (3); and habitats representative of the historical, geographical, and ecological distributions of a species are met by PCE (4).

With this proposed revised designation of critical habitat, we intend to conserve the physical and biological features that are essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life-history functions of the species. Because not all life-history functions require all the PCEs, not all areas designated as critical habitat will contain all the PCEs. Each of the areas proposed for designation in this rule has been determined to contain sufficient PCEs to provide for one or more of the life-history functions of the arroyo toad.

Special Management Considerations or Protection

In accordance with the definition of critical habitat in section 3(5)(A) of the Act, when designating critical habitat within the geographical area occupied by the species at the time of listing, we assess whether the physical and biological features essential to the conservation of the arroyo toad may require special management considerations or protection. All areas being proposed as critical habitat may require some level of management to address current and future threats to the arroyo toad, to maintain or enhance the physical and biological features essential to its conservation, and to ensure the recovery and survival of the species.

A detailed discussion of threats impacting the physical and biological features essential to the conservation of the arroyo toad which may require special management considerations or protection, can be found in the final listing rule (59 FR 64859; December 16, 1994), the 2001 critical habitat designation (66 FR 9414; February 7, 2001), the 2005 critical habitat designation (70 FR 19561; April 13, 2005), and the recovery plan (Service 1999, pp. 1–119). In summary, these threats include habitat destruction and alteration due to short- and long-term changes in river hydrology, including

construction of dams and water diversions; alteration of riparian wetland habitats by agriculture and urbanization; construction of roads; site-specific damage by off-highway vehicle use and other recreational activities; overgrazing; and mining activities. Arroyo toads and their habitats are also threatened by introduced nonnative predators (such as bullfrogs and predatory fish), drought, periodic fires, unseasonal water releases from dams, livestock grazing, and light and noise pollution from adjacent developments and campgrounds. Activities that may require special management considerations or protection of the features essential to the conservation of the arroyo toad include, but are not limited to: dam construction and operation, river diversion, conversion of riparian wetland habitat by agriculture and urbanization, road construction, off-highway vehicle use, campground development, grazing, and mining. In each proposed critical habitat unit, special management may be needed to ensure that aquatic and terrestrial habitat are able to provide abundant breeding and non-breeding habitat, prey habitat, shelter, and connectivity within the landscape.

In summary, we find that each of the areas we are proposing as revised critical habitat contains features essential to the conservation of the arroyo toad, and that these features may require special management considerations or protection. Special management considerations or protection may be required to eliminate, or reduce to negligible level, the threats affecting each unit and to preserve and maintain the essential features that the proposed critical habitat units provide to the arroyo toad. A more comprehensive discussion of threats facing individual sites is in the individual unit descriptions.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the arroyo toad. Activities with a Federal nexus that may affect those unprotected areas outside of critical habitat, such as development, agricultural activities, and road construction, are still subject to review under section 7 of the Act if they may affect the arroyo toad. The take prohibitions of section 9 of the Act also continue to apply both inside and outside of designated critical habitat. Take is broadly defined in the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a listed species, or to attempt to engage in any such conduct.

Criteria Used To Identify Critical Habitat

Using the best scientific and commercial data available as required by section 4(b)(1)(A) of the Act, we identified those areas to propose for revised designation as critical habitat that, within the geographical area occupied by the species at the time of listing (see ''Geographic Range'' section), possess those physical and biological features essential to the conservation of the arroyo toad and which may require special management considerations or protection. We also considered the area outside the geographical area occupied by the species at the time of listing for any areas that are essential for the conservation of the arroyo toad. The material we used included the 1994 final listing rule (59 FR 64859), the 2004 proposed critical habitat rule (69 FR 23254), 2008 CNDDB records, the arroyo toad recovery plan, data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits, research published in peer-reviewed articles and presented in academic theses and agency reports, the 5-year review for the arroyo toad (Service 2009, pp. 1–51), and regional GIS coverages. We analyzed this information to develop criteria for identifying areas that contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the arroyo toad that may require special management considerations or protection, or that are essential for the conservation of the arroyo toad.

To begin our analysis, we first examined the CNDDB current and historical records to get an indication of the habitat where arroyo toads are present or absent. The CNDDB is a continually refined and updated inventory of location information gathered during species surveys and observations. We then examined the arroyo toad recovery plan (Service 1999, pp. 1–119), which has a recovery strategy focused on providing sufficient breeding and upland habitat to maintain self-sustaining populations of arroyo toads (defined as populations that require little or no direct human assistance such as captive breeding or rearing, or translocation between sites) throughout the historical range of the species, and on minimizing or eliminating impacts and threats to arroyo toad populations (Service 1999, p. 67). The recovery plan states that in-stream and riparian habitats that support breeding, as well as upland habitats that provide foraging and overwintering habitat, need to be managed to maintain and enhance populations throughout the range of the arroyo toad (Service 1999, p. 68). The recovery plan divides the range of the arroyo toad into three large recovery units—northern, southern, and desert—and we considered the recovery of each of these as well as the species as a whole in our analysis. Using the recovery plan as our guide, we analyzed areas within the geographical area occupied by the arroyo toad at the time of listing to determine which areas contained the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species (the physical and biological features).

In determining the specific areas containing the essential physical and biological features, based on the recovery plan, 5-year review, previous critical habitat proposals for the arroyo toad, scientific literature, and results of studies that have been conducted since the species was listed, we made sure that we are proposing critical habitat that will provide for the conservation of the species. Criteria we evaluated to assist our process include units: (1) That are dispersed throughout the current geographical, elevational, and ecological distribution of the species; (2) that would maintain the appropriate population structure across the species' range; (3) that retain or provide the connectivity between breeding sites that allows for the continued existence of essential metapopulations (a population of subpopulations in somewhat geographically isolated patches, interconnected through patterns of gene flow, extinction, and recolonization (Soule 1987, p. 7), despite fluctuations in the status of subpopulations); and (4) that contain upland habitat around each breeding location to allow for survival and recruitment to maintain a breeding population over the long term.

We also evaluated the area outside the geographical area occupied by the species at the time of listing to identify any areas that are essential for the conservation of the arroyo toad. We looked at areas that may have been historically occupied by arroyo toads based on CNDDB records but were no longer occupied at the time of listing. We also considered areas that may have the physical and biological features essential for the conservation of the species but have never been occupied. However, based on the best available scientific information, including the recovery plan which does not identify any such areas as being important to the recovery of the species, we determined that there are no areas outside the

geographical area occupied by the species at the time of listing that are essential for the conservation of the arroyo toad.

To identify and map areas that we determined meet the definition of critical habitat, we used data on known arroyo toad locations and data on movement distances by arroyo toads. The main source for arroyo toad locations was the CNDDB (2008); we also obtained locations that have not yet been entered into the CNDDB directly from the biologists that collected them.

Areas meeting the definition of critical habitat for the arroyo toad include occupied areas on stream reaches containing suitable breeding and upland habitat. To determine the extent of suitable arroyo toad habitat as discussed in the ''Habitat'' section above, we used spatial data on stream gradients with grades less than 6 percent, aerial photography, surveys of habitat suitability, and site visits. Additionally, we included higher gradient areas between breeding habitat because these areas are used by toads during the non-breeding period and allow toads to disperse between breeding areas. To delineate upland habitat areas, we used a GIS-based modeling procedure to identify alluvial terraces, valley bottomlands, and upland habitats adjacent to stream reaches occupied by the arroyo toad. Lacking spatially explicit data on geomorphology, we used elevation above the stream channel as an indicator of the extent of alluvial and upland foraging habitat. We determined that areas up to 82 ft (25 m) in elevation above the stream channel were most likely to contain the riparian and upland habitat elements essential to arroyo toads. Most arroyo toad activity and movement occurred within these areas; therefore, steeper slopes away from the stream were eliminated. However, we truncated the upland habitat delineation in flat areas at 4,921 ft (1,500 m) from the stream channel (a distance based on known movement of arroyo toads, see below) if the 82-ft (25-m) elevation limit had not yet been reached at that point. The 82-ft (25-m) elevation limit was reached at distances less than 4,921 ft (1,500 m) from the mapped stream channel along the majority of the stream reaches, so the distance limit was often not a factor. These model parameters are based on the best scientific data available and are the same as those used in the 2004 proposed critical habitat designation (69 FR 23254).

To evaluate our critical habitat model, we assessed its effectiveness at capturing documented toad locations from studies that focused specifically on surveying toads in upland habitats and studies involving radio telemetry. Holland and Sisk (2000, pp. 1–28) established extensive pitfall trap arrays at discrete distances from two stream courses and operated these arrays at various periods throughout the year. They had 466 captures of arroyo toads, 35 (7.5 percent) of which were identified as being in upland areas. The low percentage of toads captured in upland areas may be because the vast majority of captures (98.7 percent) were during the months from January to September, when breeding and metamorphosis occurs and when toads would likely be in close proximity to the stream. Nevertheless, toads were captured at distances that ranged from 49 to 3,855 ft (15 to 1,175 m) from the upland-riparian ecotone (boundary) (Holland and Sisk 2000, pp. 1–28). For the two areas sampled in that study (Cristianitos Creek and the upper Santa Margarita River, San Diego County), we found that our critical habitat boundaries encompassed all of the pitfall trapping stations where arroyo toads were detected.

We also assessed studies that involved the tracking of arroyo toads with radio telemetry equipment. For example, in a number of studies by Ramirez (2002a, p. 10; 2002b, p. 50; 2002c, p. 23; 2003, pp. 72–81), arroyo toads were tracked from the end of breeding activity until the commencement of aestivation, generally May through September. Cumulatively, these four studies involved tracking 77 adult arroyo toads in three separate critical habitat units in Orange, San Bernardino, and Los Angeles Counties. All but one of the numerous burrow sites chosen by these arroyo toads fell within our proposed revised critical habitat boundaries.

Upon completion of our analyses with our GIS modeling, we identified six tribes that own lands within areas identified as meeting the definition of critical habitat: Rincon Band of Luiseño Mission Indians; Pala Band of Luiseño Mission Indians; Sycuan Band of the Kumeyaay Nation; the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, which jointly manage the Capitan Grande Band of Diegueno Mission Indians Reservation (Capitan Grande Reservation); and Mesa Grande Band of Diegueno Mission Indians. These areas are included in this proposed revised critical habitat, although we are requesting public comment on whether the conservation needs of the arroyo toad can be achieved or not by limiting the designation of final revised critical habitat to non-Tribal lands, and are otherwise considering these Tribal lands for exclusion from the final critical habitat under section 4(b)(2) of the Act based on partnerships and habitat management plans and practices. We will evaluate any submitted plans in consideration of Secretarial Order 3206, ''American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2) in relation to the conservation benefits to the arroyo toad, the features essential to the conservation of the species, and the appropriateness of excluding Tribal lands under section 4(b)(2) of the Act. Please see the ''Tribal Lands—Exclusions Under Section 4(b)(2) of the Act'' section for additional discussion.

To provide legal boundaries for the critical habitat areas, critical habitat boundaries for all drainages were mapped as contiguous blocks of 98-ft by 98-ft (30-m by 30-m) cells that conform to a Universal Transverse Mercator (UTM) grid. Due to the conversion of GIS data from two different geographic projections (UTM zone 10 and zone 11) and conversion of the data to acres and hectares, some rounding adjustments may be reflected in the total acreage of the units designated as critical habitat that are shown in the acreage tables and unit descriptions.

After determining the criteria used to identify critical habitat, we made every effort to avoid developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PCEs for the arroyo toad. We also avoided fragmented areas such as those surrounded by development. Agricultural lands may have been included if they were within areas identified as necessary for dispersal or connectivity between known occurrences. However, we avoided known areas of intensive agriculture that lacked the PCEs for the arroyo toad. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed revised critical habitat are excluded by text in this rule and are not proposed for critical habitat designation. Therefore, if the critical habitat is

finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification, unless the specific action may affect adjacent critical habitat.

We propose to designate 22 critical habitat units within the geographic area occupied by the species at the time of listing based on the criteria presented above. A brief discussion of each area proposed for designation as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Summary of Changes From Previously Designated Critical Habitat

In this proposal to revise critical habitat for the arroyo toad, we determined that it would be appropriate to begin our analysis of critical habitat using the previous proposed critical habitat designation (69 FR 23254; April 28, 2004) as a base from which to make changes. We are not using the previous final critical habitat designation (70 FR 19562, April 13, 2005) after questions were raised about the integrity of the scientific information used and whether the decision made was consistent with appropriate legal standards. This new analysis based on the best scientific information currently available has resulted in an overall decrease in the amount and distribution of habitat identified as meeting the definition of critical habitat, as compared to the previous 2004 proposed designation (69 FR 23254). In this revised rule, we are proposing to designate 109,110 ac (44,155 ha) of land in Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties, California, as critical habitat, which is a decrease of approximately 29,603 ac (11,978 ha) as proposed in 2004 (69 FR 23254). However, it should be noted that this does not reflect a decrease in every proposed unit compared to the previous proposal. In fact, the area included in some proposed revised critical habitat units is larger than it was in the 2004 proposed critical habitat designation (69 FR 23254) because in some cases new information has identified additional arroyo toad areas that meet the definition of critical habitat and these areas are now included.

The main differences between the 2004 proposed critical habitat rule (69 FR 23254) and this 2009 proposed revised critical habitat rule for the arroyo toad include the following:

(1) Our analysis of new and updated information received since the 2004 proposed critical habitat designation (69 FR 23254) resulted in the identification of areas meeting the definition of critical habitat that differs from the areas identified in 2004.

(2) We modified the mapping methodology from our previous proposed critical habitat designation (69 FR 23254). For the 2004 proposed designation, unit boundaries were snapped to points on a grid conforming to the Universal Transverse Mercator (UTM) projection. The reason for using a grid, which consisted of 100-meter by 100-meter cells, was to decrease the number of coordinate pairs and thereby simplify the description of unit boundaries. However, for this revised proposed designation, we use a more detailed description of unit boundaries. Although the change in area resulting from this modification is relatively minor (about 5 percent), this change affects all units.

(3) We did not exclude any areas in this proposed rule pursuant to section 4(b)(2) of the Act. In accordance with 50 CFR 424.19, in making our final determination regarding the revised designation, we will consider the impacts of designating lands (such as tribal and HCP lands) as critical habitat and may exclude such lands in the final rule pursuant to section 4(b)(2) of the Act.

The following paragraphs provide explanations of how the proposed revised critical habitat units differ from those in the 2004 proposed critical habitat designation (69 FR 23254), except for those units where the only change was from the modification in mapping methodology described above (units 2, 3, 4, 5, 6, 14, and 21). The unit names used in the subsection headings refer to the unit names as proposed in 2004.

Unit 1: San Antonio River

In the current proposal, we are now exempting areas within the Department of Defense's Fort Hunter Liggett Military Reservation from designation as revised critical habitat under section 4(a)(3)(B) of the Act. This unit is within the geographical area occupied at the time of listing (see ''Geographical Range'' section) and contains the physical or biological features essential to the conservation of the species which may require special management considerations or protection. In the previous 2004 proposed designation (69 FR 23254), Fort Hunter Liggett had not yet completed its Integrated Natural Resources Management Plan (INRMP) and, therefore, was not exempted under section 4(a)(3)(B) of the Act. However, Fort Hunter Liggett was excluded under section 4(b)(2) of the Act for reasons of national security and because existing management plans provided a benefit to the arroyo toad. Fort Hunter Liggett's first INRMP was approved in 2005, and an updated version was approved in 2007, which includes management actions that benefit the arroyo toad. Unit 1 as proposed in 2004 (69 FR 23254) encompassed approximately 6,546 ac (2,649 ha). For this proposed revised critical habitat designation, the modified mapping methodology we used resulted in a 1.4 percent decrease in acres in Unit 1, for a total of 6,453 ac (2,612 ha). With our current exemption of all areas within Fort Hunter Liggett (see ''Application of Section 4(a)(3) of the Act'' section), the entire unit has been exempted from designation as revised critical habitat.

Unit 7: Upper Los Angeles River Basin

We have removed Subunit 7a (approximately 2,262 ac (915 ha)) within Unit 7 from our proposed revision of critical habitat. Subunit 7a is within the geographical area occupied at the time of listing; however, this subunit was erroneously included in the previous proposed rule (69 FR 23254). Although we were not aware of this issue when we published the previous proposed rule, high-flow water releases from the Big Tujunga Dam upstream of this subunit have likely altered the hydrology such that arroyo toad breeding habitat is not maintained (that is, lack of PCEs 1 and 3) (Hitchcock *et al.* 2004, p. 8; Backlin 2009, pers. comm.). The loss of the PCEs from this area has resulted in the extirpation of arroyo toads (Backlin *et al.* 2002, pp. 6, 12; Hitchcock *et al.* 2004, pp. 8–9, 29). Furthermore, the presence of the Big Tujunga Dam blocks dispersal from occupied areas upstream. Therefore, we have determined that the area does not contain the physical and biological features essential to the conservation of the arroyo toad and therefore does not meet the definition of critical habitat for the arroyo toad.

Unit 8: Lower Santa Ana River Basin

Areas meeting the definition of critical habitat that were excluded in the 2004 proposed critical habitat designation (69 FR 23254) within the Orange County Central–Coastal NCCP/HCP are now being proposed in this rule, and we are considering them for exclusion in the final rule (see ''Habitat Conservation Plans—Exclusions Under Section 4(b)(2) of the Act'' section). These areas include: (1) Black Star Creek from the NCCP/HCP boundary

downstream to the confluence with Santiago Creek, (2) Baker Canyon from the NCCP/HCP boundary downstream to the confluence with Santiago Creek, and (3) Santiago Creek from the confluence with Silverado Creek downstream to Irvine Lake. Information received since our previous 2004 proposed critical habitat designation (69 FR 23254) indicates that areas within Santiago Creek upstream of the confluence with Silverado Creek contain occupied suitable habitat on which are found the physical and biological features essential to the conservation of the species. Therefore, we also added areas to Unit 8 encompassing approximately 6.6 mi (11 km) of Santiago Creek from just below the town of Modjeska downstream to Irvine Lake. Additionally, new information indicates that Silverado Creek contains occupied suitable habitat on which are found the features essential to the conservation of the species (Haase 2005, p. 2; Haase 2008, pp. 2–3; Thomas 2009, pers. comm.). Therefore, we added areas to Unit 8 encompassing approximately 7.3 mi (12 km) of Silverado Creek from the eastern edge of section 11 (T05S, R07W) in the Cleveland National Forest downstream to the confluence with Santiago Creek. With the exception of areas that were excluded within the Orange County Central–Coastal NCCP/HCP, this unit encompassed approximately 172 ac (69 ha) in the 2004 proposed critical habitat designation (69 FR 23254). With the proposed addition of areas within the Orange County Central–Coastal NCCP/HCP and other areas described above, it now encompasses approximately 2,182 ac (883 ha).

Unit 9: San Jacinto River Basin

Areas meeting the definition of critical habitat that were excluded in the 2004 proposed critical habitat designation (69 FR 23254) within the Western Riverside County MSHCP are now being proposed in this rule, and we are considering them for exclusion in the final rule (see ''Habitat Conservation Plans—Exclusions Under Section 4(b)(2) of the Act'' section). These areas include: (1) The San Jacinto River from the Sand Canyon confluence downstream to the Soboba Indian Reservation border, and (2) Bautista Creek from areas outside of the San Bernardino National Forest downstream to near the middle of Section 27 (T5S, R1E) where the stream enters a debris basin. Unit 9 encompassed approximately 683 ac (277 ha) along Bautista Creek in the 2004 proposed critical habitat designation (69 FR 23254); with the addition of the areas described above, areas along the San Jacinto River and Bautista Creek are now proposed as separate subunits. Subunit 9a along the San Jacinto River encompasses approximately 1,226 ac (496 ha)) and Subunit 9b along Bautista Creek encompasses approximately 1,180 ac (478 ha).

Unit 10: San Juan Creek Basin

Information received since our previous 2004 proposed critical habitat designation (69 FR 23254) indicates that areas upstream of Subunit 10a in Bell Canyon, up to the southern half of section 8 (T06S, R06W) in the Cleveland National Forest, contain occupied suitable habitat on which are found the physical and biological features essential to the conservation of the species (Haase 2009a, *in litt.*). In the previous 2004 proposed critical habitat designation (69 FR 23254), Subunit 10a encompassed approximately 5,143 ac (2,076 ha) of Bell Canyon from just below Crow Canyon downstream to the confluence with San Juan Creek, in addition to areas along San Juan Creek. We added these upstream areas to Subunit 10a, which now totals 4,728 ac (1,913 ha). Although we added upstream areas to Subunit 10a, the total area of this subunit decreases from the 2004 proposed critical habitat designation (69 FR 23254) because of our change in mapping methodology.

Unit 11: San Mateo Creek and San Onofre Creek Basins

In the 2004 proposed critical habitat designation (69 FR 23254), areas in Subunits 11a and 11c within Marine Corps Base (MCB) Camp Pendleton were exempted from critical habitat under section 4(a)(3)(B) of the Act, except areas leased to outside parties for other land uses (such as San Onofre State Park and private agricultural lands). We are now exempting all lands within MCB Camp Pendleton from designation as revised critical habitat, including the leased lands (which are subject to the approved Integrated Natural Resources Management Plan (INRMP) for MCB Camp Pendleton), due to the benefits afforded to the arroyo toad by the management described in the approved INRMP for MCB Camp Pendleton (see ''Application of Section 4(a)(3) of the Act'' section). Subunit 11a encompassed approximately 4,112 ac (1,664 ha) in the 2004 proposed critical habitat designation (69 FR 23254); with the exemption of all areas within MCB Camp Pendleton, it now encompasses approximately 1,034 ac (418 ha). Subunit 11c encompassed approximately 399 ac (161 ha) as proposed in 2004; with the exemption of all areas within MCB Camp Pendleton (including the lands leased to other parties), the entire subunit is removed.

Unit 12: Lower Santa Margarita River Basin

In the 2004 proposed critical habitat designation (69 FR 23254), we exempted a portion of Unit 12 within MCB Camp Pendleton under section 4(a)(3)(B) of the Act. In this proposed rule, we are exempting all lands within both MCB Camp Pendleton and the Fallbrook Naval Weapons Station from designation as revised critical habitat (see ''Application of Section 4(a)(3) of the Act'' section). Unit 12 encompassed approximately 1,840 ac (744 ha) in the 2004 proposed critical habitat designation (69 FR 23254); with the exemption of all areas within MCB Camp Pendleton and the Fallbrook Naval Weapons Station, it now encompasses approximately 1,009 ac (408 ha).

Unit 13: Upper Santa Margarita River Basin

Areas meeting the definition of critical habitat that were excluded in the 2004 proposed critical habitat designation within the Western Riverside County MSHCP are now being proposed in this rule, and we are considering them for exclusion in the final rule (see ''Habitat Conservation Plans—Exclusions Under Section 4(b)(2) of the Act'' section). These areas include: (1) Areas around Subunit 13a along Arroyo Seco Creek, (2) areas downstream of Subunit 13b along Temecula Creek to Vail Lake, and (3) Wilson Creek from Lancaster Valley downstream to Vail Lake. Subunit 13a encompassed approximately 704 ac (285 ha) in the 2004 proposed critical habitat designation (69 FR 23254); with the addition of surrounding areas in Arroyo Seco Creek, it now encompasses approximately 1,155 ac (467 ha). Subunit 13b encompassed approximately 2,924 ac (1,183 ha) as proposed in 2004; with the addition of downstream areas of Temecula Creek, it now encompasses approximately 4,756 ac (1,925 ha). Information received since our previous critical habitat designation indicates that areas upstream of Lancaster Valley along Wilson Creek (included in this proposed rule as Subunit 13c) to the confluence with Cahuilla Creek contain occupied suitable habitat on which are found the physical and biological features essential to the conservation of the species (Haase 2009a, *in litt.*). This new subunit encompasses approximately 2,226 ac (901 ha).

Unit 15: Upper San Luis Rey River Basin

Information received since our previous 2004 proposed critical habitat designation (69 FR 23254) indicates that the area downstream of Barker Valley (formerly Subunit 15b) along the West Fork of the San Luis Rey River, which is within the geographical area occupied by the species at the time of listing, contains suitable habitat on which are found the physical and biological features essential to the conservation of the species, and provides for dispersal between populations in this area and populations in Lake Henshaw (formerly Subunit 15a) (Haase 2009, pers. comm.). In the 2004 proposed critical habitat designation (69 FR 23254), Subunits 15a and 15b together encompassed approximately 11,725 ac (4,745 ha). We are including the area between Barker Valley and Lake Henshaw in this proposed revised designation and have merged the two subunits into a single unit (Unit 15), which now totals 12,026 ac (4,867 ha).

Unit 16: Santa Ysabel Creek Basin

Areas meeting the definition of critical habitat that were excluded in the 2004 proposed critical habitat designation (69 FR 23254) within the San Diego MSCP–City and County of San Diego Subarea Plans are now being proposed in this rule, and we are considering them for exclusion in the final rule (see ''Habitat Conservation Plans—Exclusions Under Section 4(b)(2) of the Act'' section). In the previous 2004 proposed critical habitat designation (69 FR 23254), Subunits 16a, 16b, and 16c were three separate areas due to our exclusion in the 2004 proposed rule of downstream habitat along Santa Ysabel Creek. Subunit 16a encompassed approximately 2,758 ac (1,116 ha) along Santa Ysabel Creek from just below Sutherland Reservoir, Temescal Creek, and Boden Canyon; Subunit 16b encompassed approximately 2,727 ac (1,104 ha) along Guejito Creek; and Subunit 16c encompassed approximately 3,749 ac (1,517 ha) along Santa Maria Creek. We merged these three subunits into a single subunit (16a) in this proposed revised critical habitat rule; thus, Subunit 16a now totals 12,136 ac (4,911 ha).

In this proposed revised critical habitat designation, we removed areas within Subunit 16a that encompass Santa Ysabel Creek from just below Sutherland Reservoir downstream to the confluence with Temescal Creek. When we published our previous 2004 proposed critical habitat designation (69 FR 23254), we believed this area, which is within the geographical area occupied at the time of listing, met the definition of critical habitat. However, information we received since then indicates that breeding habitat is not available due to the absence of a natural flooding regime downstream of Sutherland Dam and the steepness of the stream corridor (lack of PCEs 1, 2, and 3). Furthermore, this area does not provide connectivity to upstream areas occupied by the species due to the presence of the dam. Survey information indicates arroyo toads have been extirpated from this area as a result of the loss of PCEs (Service 2006, p. 2). Therefore, we determined that this area, which is within the geographical area occupied by the species at the time of listing, does not contain features essential to the conservation of the species and therefore does not meet the definition of critical habitat for the arroyo toad.

Unit 17: San Diego River Basin/San Vicente Creek

Information received since our previous 2004 proposed critical habitat designation (69 FR 23254) indicates that areas upstream of Subunit 17a along the San Diego River to Temescal Creek, which are within the geographical area occupied by the species at the time of listing, contain occupied suitable habitat on which are found the physical and biological features essential to the conservation of the species (HELIX 2008, pp. 2, 7; Brown and Rochester 2009, pers. comm.). Subunit 17a as proposed in 2004 encompassed approximately 1,003 ac (406 ha) along the San Diego River from Ritchie Creek downstream to the upper edge of El Capitan Reservoir. In this proposed rule, we added these upstream areas to Subunit 17a, which now totals 1,241 ac (502 ha).

Areas meeting the definition of critical habitat that were excluded in the 2004 proposed critical habitat designation within the San Diego MSCP–City and County of San Diego Subarea Plans are now being proposed in this rule, and we are considering them for exclusion in the final rule (see ''Habitat Conservation Plans—Exclusions Under Section 4(b)(2) of the Act'' section). In the previous 2004 proposed critical habitat designation (69 FR 23254), Subunits 17b and 17c were two separate areas due to our exclusion in the 2004 proposed rule of downstream habitat along the San Diego River. Subunit 17b encompassed approximately 174 ac (70 ha) and Subunit 17c approximately 707 ac (286 ha) along the San Diego River as proposed in 2004. We merged the two subunits into a single subunit (17b) in this proposed revised critical habitat rule; thus Subunit 17b now totals 1,865 ac (755 ha).

Unit 18: Sweetwater River Basin

Areas meeting the definition of critical habitat that were excluded in the 2004 proposed critical habitat designation (69 FR 23254) within the San Diego MSCP–City and County of San Diego Subarea Plans are now being proposed in this rule, and we are considering them for exclusion in the final rule (see ''Habitat Conservation Plans—Exclusions Under Section 4(b)(2) of the Act'' section). In the previous 2004 proposed critical habitat designation (69 FR 23254), Subunits 18a, 18b, and 18d were three separate areas due to our exclusion in the 2004 proposed rule of downstream habitat along the Sweetwater River. As proposed in 2004, Subunit 18a encompassed approximately 4,196 ac (1,698 ha) along the Sweetwater River from the top of Upper Green Valley in Cuyamaca Rancho State Park, Subunit 18b encompassed approximately 583 ac (236 ha) along Peterson Canyon, and Subunit 18d encompassed approximately 474 ac (192 ha) along Viejas Creek. In this proposed rule, we merged these three subunits into a single subunit (18a), which now totals 4,156 ac (1,682 ha). Although we added areas that were excluded from the 2004 proposed critical habitat designation (69 FR 23254), the total area of the new Subunit 18a is smaller than the areas proposed in Subunits 18a, 18b, and 18d in the 2004 proposed rule because of our change in mapping methodology.

In this proposed revised critical habitat designation, we removed areas within Subunit 18c that encompass the Sweetwater River from just above Sycuan Resort downstream to the upper edge of Sweetwater Reservoir. These areas were erroneously included in the previous 2004 proposed rule. We now know that sand mining operations and channelization of the river through two golf courses have likely altered the hydrology in this area such that breeding habitat is not maintained (that is, lack of PCEs 1 and 3) (Brown and Rochester 2009, pers. comm.). Furthermore, information received since our previous 2004 proposed critical habitat designation (69 FR 23254) indicates that this area is no longer occupied by arroyo toads (Madden-Smith *et al.* 2005, p. 22; Brown and Rochester 2009, pers. comm.; Martin 2009, pers. comm.) because of the loss of PCEs. Therefore, we have determined that this area does not contain features essential to the conservation of the species and therefore does not meet the

definition of critical habitat for the arroyo toad. As proposed in 2004, Subunit 18c encompassed approximately 3,982 ac (1,611 ha) along the Sweetwater River from immediately below Loveland Dam downstream to the upper edge of Sweetwater Reservoir; with the proposed removal of the areas described above, Subunit 18c now totals 627 ac (254 ha).

Unit 19: Cottonwood Creek Basin

In this proposed revised critical habitat designation, we removed areas within Subunit 19b that encompass 9.9 mi (16 km) of Cottonwood Creek from approximately 2.5 mi (4 km) below Morena Reservoir downstream to Barrett Reservoir. These areas were erroneously included in the previous 2004 proposed rule. Information received since our previous 2004 proposed critical habitat designation (69 FR 23254) indicates that the hydrology in this area was altered since the construction of the Morena Dam in the early 1900s such that breeding habitat is not maintained (lack of PCEs 1 and 3), and therefore this area is no longer occupied by arroyo toads (Jennings 2009, pers. comm.). Moreover, the presence of Morena and Barrett reservoirs block arroyo toad dispersal from occupied areas upstream and downstream along Cottonwood Creek (lack of PCE 5). Therefore, we determined that this area, which is within the geographical area occupied by the toad at the time of listing, does not contain features essential to the conservation of the species and therefore does not meet the definition of critical habitat for the arroyo toad.

Areas meeting the definition of critical habitat downstream of Subunit 19b to the U.S.-Mexico border that were excluded in the 2004 proposed rule within the San Diego MSCP–City and County of San Diego Subarea Plans are now being proposed in this rule, and we are considering them for exclusion in the final rule (see ''Habitat Conservation Plans—Exclusions Under Section 4(b)(2) of the Act'' section). Subunit 19b, which encompassed approximately 5,564 ac (2,252 ha) in the 2004 proposed critical habitat designation (69 FR 23254), now encompasses approximately 5,129 ac (2,076 ha). Additionally, data received since our previous 2004 proposed critical habitat designation (69 FR 23254) indicate that Campo Creek, which is within the geographical area occupied by the species at the time of listing, has occupied suitable habitat on which are found the physical and biological features essential to the conservation of the species (LEI 2008, pp. 5, 8). Therefore, we added areas encompassing approximately 4.4 mi (7 km) of Campo Creek from Campo Lake downstream to the U.S.-Mexico border as part of Subunit 19e.

Unit 20: Upper Santa Ana River Basin/ Cajon Wash

Information received since our previous 2004 proposed critical habitat designation (69 FR 23254) indicates that areas upstream of Unit 20 to just below Cajon Junction are within the geographical area occupied by the arroyo toad at the time of listing and contain the physical and biological features essential to the conservation of the species (Rathbun 2007, *in litt.;* Meyer 2009, *in litt.*). In the previous 2004 proposed critical habitat designation (69 FR 23254), Unit 20 encompassed approximately 1,262 ac (511 ha) of Cajon Wash from just south of Cajon campground. We added these upstream areas to Unit 20, which now totals 1,775 ac (718 ha).

Unit 22: Upper Mojave River Basin

We have removed Subunit 22b (approximately 8,631 ac (3,493 ha)) within Unit 22 from our proposed revision of critical habitat. Subunit 22b is within the geographical area occupied at the time of listing. However, new information received since our previous 2004 proposed critical habitat designation (69 FR 23254) indicates that this area was erroneously proposed as critical habitat in 2004. Habitat in this area for the arroyo toad has been altered by steadily declining groundwater levels along the Upper Narrows to Lower Narrows reach of the Mojave River (Webb *et al.* 2001, p. 1) to such an extent that it does not contain features essential to the conservation of the species and therefore does not meet the definition of critical habitat for the arroyo toad.

Unit 23: Whitewater River Basin

In this proposed revised critical habitat designation, we removed areas within Unit 23 that encompass Whitewater River from the Colorado River Aqueduct downstream to Interstate Highway 10. When we published our previous 2004 proposed critical habitat designation (69 FR 23254), we believed this area, which is within the geographical area occupied at the time of listing, met the definition of critical habitat. However, information received since our previous 2004 proposed critical habitat designation (69 FR 23254) indicates that high-flow water releases and channelization of the river downstream of the aqueduct has likely altered the habitat such that it no longer supports the physical and biological features essential to the conservation of the arroyo toad (Roberts 2009, pers. comm.). We have determined that this area does not meet the definition of critical habitat for the arroyo toad and should not have been proposed in 2004. As proposed in 2004, Unit 23 encompassed approximately 1,997 ac (808 ha) along the Whitewater River from near Red Dome downstream to Interstate 10; with the removal of the areas described above, Unit 23 now totals 1,355 ac (548 ha).

Proposed Revisions to Critical Habitat Designation

We are proposing to designate 22 units (Units 2 through 23) as critical habitat for the arroyo toad. The total area identified as Unit 1 is exempted from critical habitat designation under section 4(a)(3)(B) of the Act, and therefore is not proposed. All proposed units are within the geographical area occupied by the species at the time of listing and contain the physical and biological features essential to the conservation of the arroyo toad which may require special management considerations or protection. Although not a prerequisite for designation as critical habitat, all units are currently occupied. The proposed revised critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat for the arroyo toad. Approximate area encompassing the proposed revised critical habitat by county and land ownership is shown in Table 1, and the overall area of proposed revised critical habitat units for the arroyo toad are shown by unit in Table 2. The designation of these units, if finalized, would replace the existing critical habitat designation for the arroyo toad in 50 CFR 17.95(d).

TABLE 1—APPROXIMATE PROPOSED REVISED CRITICAL HABITAT FOR THE ARROYO TOAD, IN ACRES (AC) (HECTARES (HA)) BY COUNTY (ORDERED FROM NORTH TO SOUTH) AND LAND OWNERSHIP

County	Federal	State/local	Tribal	Private	Total
Santa Barbara	3,914	0	0	2,892	6,806

TABLE 1—APPROXIMATE PROPOSED REVISED CRITICAL HABITAT FOR THE ARROYO TOAD, IN ACRES (AC) (HECTARES (HA)) BY COUNTY (ORDERED FROM NORTH TO SOUTH) AND LAND OWNERSHIP—Continued

County	Federal	State/local	Tribal	Private	Total
	(1,584)			(1,171)	(2,755)
Ventura	4,392	0	0	639	5,031
	(1,778)			(259)	(2,036)
Los Angeles	2,382	0	0	3,453	5,835
	(964)			(1,398)	(2,362)
San Bernardino	3,964	132	0	3,599	7,695
	(1,604)	(53)		(1,456)	(3,113)
Riverside	1,789	210	0	7,504	9,503
	(724)	(85)		(3,037)	(3,846)
Orange	434	1,909	0	6,362	8,705
	(176)	(773)		(2,575)	(3,524)
San Diego	6,843	3,481	4,046	51,165	65,535
	(2,769)	(1,409)	(1,636)	(20,707)	(26,521)
Total	23,718	5,732	4,046	76,951	109,110
	(9,598)	(2,320)	(1,636)	(31,141)	(44,155)

Values in table may not sum due to rounding.

TABLE 2—APPROXIMATE PROPOSED REVISED CRITICAL HABITAT UNITS FOR THE ARROYO TOAD

Unit	Critical habitat units and subunits	County	Acres	Hectares
Northern Recovery Unit				
1	San Antonio River—exempt	Monterey	0	0
2	Sisquoc River	Santa Barbara	3,775	1,528
3	Upper Santa Ynez River	Santa Barbara	3,032	1,227
4	Sespe Creek	Ventura	2,760	1,117
5	Piru Creek	Ventura	2,507	1,015
5a			1,358	550
5b			1,149	465
6	Upper Santa Clara River	Los Angeles	3,795	1,537
6a			520	210
6b			1,995	807
6c			1,279	518
7	Upper Los Angeles River Basin	Los Angeles	1,190	482
Subtotal			17,059	6,904
Southern Recovery Unit				
8	Lower Santa Ana River Basin	Orange	2,182	883
9	San Jacinto River Basin	Riverside	2,406	974
9a			1,226	496
9b			1,180	478
10	San Juan Creek Basin	Orange, Riverside	5,667	2,293
10a			4,728	1,913
10b			939	380
11	San Mateo Basin	Orange, San Diego	1,068	432
11a			1,034	418
11b			34	14
12	Lower Santa Margarita, Basin	San Diego	1,009	408
12a			394	159
12b			615	248
13	Upper Santa Margarita Basin	Riverside, San Diego	8,137	3,293
13a			1,155	467
13b			4,756	1,925
13c			2,226	901
14	Lower and Middle San Luis Rey Basin	San Diego	12,906	5,223
15	Upper San Luis Rey Basin	San Diego	12,026	4,867
16	Santa Ysabel Creek	San Diego	13,567	5,490
16a			12,136	4,911
16d			1,431	579
17	San Diego River Basin	San Diego	4,263	1,725
17a			1,241	502
17b			1,865	755
17d			1,158	469
18	Sweetwater River Basin	San Diego	4,783	1,936
18a			4,156	1,682
18c			627	254

TABLE 2—APPROXIMATE PROPOSED REVISED CRITICAL HABITAT UNITS FOR THE ARROYO TOAD—Continued

Unit	Critical habitat units and subunits	County	Acres	Hectares
19	Cottonwood Creek Basin	San Diego	14,375	5,817
19a			5,847	2,366
19b			5,129	2,076
19c			1,511	611
19d			938	380
19e			950	384
Subtotal			82,389	33,342
Desert Recovery Unit				
20	Upper Santa Ana River Basin/Cajon Wash.	San Bernardino	1,775	718
21	Little Rock Creek Basin	Los Angeles	612	248
22	Upper Mojave River Basin	San Bernardino	5,919	2,395
22a			5,684	2,300
22c			235	95
23	Whitewater River Basin	Riverside	1,355	548
Subtotal		9,661		3,909
Total		109,110		44,155

Values in table may not sum due to rounding.

Presented below are brief descriptions of all units. The units are grouped by recovery unit as described in the recovery plan (Service 1999) and listed in order geographically north to south and west to east within each recovery unit. A brief description of each unit and the reasons it meets the definition of critical habitat are presented below.

Northern Recovery Unit

As described in the recovery plan (Service 1999, pp. 1–119), maintaining arroyo toad populations in the areas described by the following 7 unit descriptions is necessary to conserve the species in the northern recovery unit. Because the toad populations in this recovery unit have been reduced in size and their habitat fragmented by road construction, dams, agriculture, and urbanization, it is important to protect all of them and safeguard against the loss of any one population due to random natural or human-caused events. The U.S. Forest Service is the primary landowner of proposed revised critical habitat within the northern recovery unit.

Unit 1: San Antonio River

Although the lands in this unit are exempt from critical habitat designation under section 4(a)(3)(B) of the Act, we provide the following information to explain why these lands meet the definition of critical habitat. This unit is located in Monterey County and encompasses: (1) San Antonio River and adjacent uplands from about 2 mi (3 km) upstream of the confluence with Mission Creek downstream to San Antonio Reservoir, a distance of about 17 mi (27 km); and (2) small portions of Mission Creek and other tributaries. The unit consists of 6,453 ac (2,612 ha) of Federal (Department of Defense) land and is entirely contained within Fort Hunter Liggett Military Reservation boundaries. Arroyo toads can be found along the entire length of this segment of the San Antonio River, which is still in a relatively natural state, consists of high-quality arroyo toad habitat, and supports probably one of the largest populations within the northern recovery unit (U.S. Army Reserve Command 2004, p. 38). The northernmost known population of arroyo toads is located here and is approximately 100 mi (160 km) north of the nearest documented extant population. Arroyo toads in this unit may experience climatic conditions not faced by toads farther south. Unit 1 contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy or fine gravel substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and relatively undisturbed riparian and upland habitat for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative vertebrate predators such as bullfrogs and beavers (*Castor canadensis*). These lands on Fort Hunter Liggett are exempt from critical habitat designation under section 4(a)(3)(B) of the Act because they are subject to the 2007 Integrated Natural Resources Management Plan (INRMP) for Fort Hunter Liggett, and the INRMP provides a benefit to the arroyo toad (see the ''Application of Section 4(a)(3) of the Act'' section of this proposed rule for a detailed discussion).

Unit 2: Sisquoc River (3,775 ac (1,528 ha))

This unit is located in Santa Barbara County and encompasses approximately 33 mi (54 km) of the Sisquoc River and adjacent uplands from Sycamore Campground downstream to just below the confluence with La Brea Creek. Upper stretches of the river are within the Los Padres National Forest and mostly within the San Rafael Wilderness Area. Below the National Forest boundary, the river and adjacent uplands are on rural private lands. The unit consists of 1,700 ac (688 ha) of Federal land and 2,073 ac (839 ha) of private land. This long, undammed river is one of the few remaining major rivers in southern California with a natural flow regime, and supports a core population of arroyo toad that is important for maintaining the genetic diversity of the species. Unit 2 contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy or fine gravel substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and relatively undisturbed riparian and upland habitat for foraging and dispersal (PCE 4). The physical and biological features essential to the

conservation of the species in this unit may require special management considerations or protection to address threats from the removal and alteration of habitat due to sand and gravel mining, livestock overgrazing of riparian habitats, and limited recreational activities. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Unit 3: Upper Santa Ynez River Basin (3,032 ac (1,227 ha))

This unit is located in Santa Barbara County upstream of Gibraltar Reservoir and encompasses approximately 27 mi (43 km) of the upper Santa Ynez River, Indian Creek, Mono Creek, and adjacent uplands. The unit consists of 2,214 ac (896 ha) of Federal land and 818 ac (331 ha) of private land within the Los Padres National Forest, and supports a large and well-studied arroyo toad population (Sweet 1992, pp. 1–198; 1993, pp. 1–73) that likely experiences precipitation and soil moisture conditions not faced by toads at drier sites. Potential adaptations to these conditions make this unit important for maintaining the genetic diversity of the species. Unit 3 contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy or fine gravel substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and relatively undisturbed riparian and upland habitat for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats, primarily along the lower Santa Ynez River and lower Mono Creek, from nonnative species, recreation, and problems associated with an upstream dam (such as sediment trapping, altered hydrological regime, and temperature changes). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Unit 4: Sespe Creek (2,760 ac (1,117 ha))

This unit is located in Ventura County and encompasses approximately 27 mi (43 km) of Sespe Creek and adjacent uplands, from the lower end of Sespe Gorge (elevation approximately 3,530 ft (1,076 m)) downstream to the confluence with Alder Creek. The unit consists of 2,498 ac (1,011 ha) of Federal land and 262 ac (106 ha) of private land. This unit supports one of the largest arroyo toad populations on the Los Padres National Forest along Sespe Creek, which is undammed and retains its natural flooding regime. Up to several hundred adult arroyo toads inhabit this reach of the Sespe River (Sweet 1992, p. 192), and during years of successful reproduction, such as 2003, thousands of juveniles can be found as well (Murphy 2008, pers. comm.). Arroyo toads have been found up to 3,300 ft (1,000 m) in elevation in this area, which is one of the highest known occurrences in the northern recovery unit. The arroyo toads in this unit likely experience temperature extremes or other environmental conditions not faced by toads at lower elevations so that potential adaptations to these conditions make this unit important for maintaining the genetic diversity of the species. Unit 4 contains the physical and biological features that are essential to the conservation of the species, including numerous suitable breeding pools (shallow, sand- or gravel-based pools with a minimum of vegetation along one or both margins during the breeding season from late March to June (Sweet 1992, p. 28)) and an abundance of sandy substrates (PCEs 1 and 2), unimpeded seasonal flood flows (PCE 3), and relatively undisturbed riparian habitat and upland benches for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from recreational activities and nonnative predators. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Unit 5: Piru Creek (2,507 ac (1,015 ha))

This unit is located in Ventura and Los Angeles Counties and consists of two subunits totaling 2,105 ac (852 ha) of Federal land and 402 ac (163 ha) of private inholdings.

Subunit 5a

Subunit 5a encompasses approximately 17 mi (27 km) of Piru Creek and adjacent uplands from the confluence with Lockwood Creek downstream to Pyramid Reservoir. The subunit consists of 1,277 ac (517 ha) of Federal land and 81 ac (33 ha) of private land. The upper portion of Subunit 5a is free of nonnative vertebrate predators, and the substantial arroyo toad population supported by this subunit has been increasing and expanding in this area over the past several years (Uyehara 2003, pers. comm.). Subunit 5a contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from horse and cattle grazing and recreational activities. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Subunit 5b

Subunit 5b is primarily within the Sespe Wilderness and encompasses approximately 15 mi (24 km) of Piru Creek from the confluence with Fish Creek downstream to Lake Piru, as well as Agua Blanca Creek from Devil's Gateway downstream to the confluence with Piru Creek. The subunit supports a substantial arroyo toad population and consists of 828 ac (335 ha) of Federal land and 321 ac (130 ha) of private land. Subunit 5b contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (modified to some extent below Pyramid Dam) (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). Because lower Piru Creek in Subunit 5b is downstream of a large dam, the habitat there has experienced some degradation over the years from perennial water releases, rapid changes in flow volume, excessive flows during the breeding season, and an increased presence of nonnative predators. However, Pyramid Dam has permanently changed the water release schedule to one that will more closely mimic natural flows and will benefit the arroyo toad (State Water Board 2008, p. 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative predators and recreational activities. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo

toad habitat and potential management considerations.

Unit 6: Upper Santa Clara River Basin (3,795 ac (1,537 ha))

This unit is located in northwestern Los Angeles County and consists of three subunits totaling 443 ac (179 ha) of Federal land and 3,351 ac (1,356 ha) of private land.

Subunit 6a

Subunit 6a encompasses approximately 7 mi (12 km) of Castaic Creek from Bear Canyon downstream to Castaic Lake, and 0.7 mi (1.2 km) of Fish Creek from Cienaga Spring to the confluence with Castaic Creek. Subunit 6a encompasses approximately 11 mi (18 km) of upper Santa Clara River from Arrastre Canyon downstream to the confluence with Bee Canyon Creek. The subunit consists of 284 ac (115 ha) of Federal land and 236 ac (96 ha) of private land. Subunit 6a contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urban development, agriculture, recreation, mining, and nonnative predators. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Subunit 6b

Subunit 6b encompasses: (1) Approximately 2.6 mi (4.2 km) of Castaic Creek from the downstream edge of The Old Road right-of-way (adjacent to Interstate 5) down to the confluence with the Santa Clara River, (2) 6 mi (10 km) of the Santa Clara River from the confluence with Bouquet Creek down to the confluence with Castaic Creek, and (3) 1.1 mi (2 km) of San Francisquito Creek from Newhall Ranch Road downstream to the confluence with the Santa Clara River. The subunit consists of 159 ac (65 ha) of Federal land and 1,995 ac (807 ha) of private land. This subunit allows for natural population expansion and fluctuation of the Santa Clara River population by connecting arroyo toad habitat in Castaic Creek with San Francisquito Creek and the occupied reach of the Santa Clara River. Subunit 6b contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urban development, agriculture, recreation, mining, and nonnative predators. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Subunit 6c

Subunit 6c encompasses approximately 11 mi (18 km) of upper Santa Clara River from Arrastre Canyon downstream to the confluence with Bee Canyon Creek. The subunit consists of 159 ac (64 ha) of Federal land and 1,120 ac (453 ha) of private land. This subunit is important for maintaining the arroyo toad metapopulation in the upper Santa Clara River Basin. Additionally, the upper portion of the Santa Clara River in this subunit supports a breeding population of arroyo toads (Sandburg 2001, *in litt.;* Farris 2001, pers. comm.; Hovore 2001, *in litt.*) that has the potential to greatly increase in size. Subunit 6c contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urban development, agriculture, recreation, mining, and nonnative predators. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Unit 7: Upper Los Angeles River Basin (1,190 ac (482 ha))

This unit is located in central Los Angeles County and encompasses: (1) Approximately 8 mi (13 km) of upper Big Tujunga Creek from immediately above Big Tujunga Reservoir upstream to approximately 1.2 mi (2 km) above the confluence with Alder Creek, (2) almost 3.7 mi (6 km) of Mill Creek from the Monte Cristo Creek confluence downstream to Big Tujunga Creek, and (3) approximately 1.9 mi (3 km) of Alder Creek from the Mule Fork confluence downstream to Big Tujunga Creek. The unit consists of 1,113 ac (451 ha) of Forest Service land and 77 ac (31 ha) of private land. This unit supports an important high-elevation arroyo toad population in the Big Tujunga Canyon watershed in the Upper Los Angeles River Basin within the Angeles National Forest, which is atypical for arroyo toads, and supports the only significant known population remaining in the coastal foothills of the San Gabriel Mountains. Unit 7 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative predators, such as crayfish, bullfrogs, and nonnative plants such as *Arundo donax.* Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Southern Recovery Unit

As described in the recovery plan (Service 1999, pp. 1–119), maintaining arroyo toad populations in the following 12 critical habitat units is necessary to conserve the species in the southern recovery unit. The units consist of a range of geographic locations from coastal regions to interior mountains. Arroyo toads likely occurred throughout each of these river and creek basins, but are now found only in segments of the rivers and creeks due to loss or change of habitat and nonnative predators. Conserving arroyo toad populations in these river basins is necessary for preserving the species' full range of genetic and phenotypic (observable characteristics produced by the interaction of the genotype and the environment) variation.

Unit 8: Lower Santa Ana River Basin (2,182 ac (883 ha))

This unit is located in east-central Orange County and encompasses: (1) Approximately 6.6 mi (11 km) of Santiago Creek from just below the town of Modjeska downstream to Irvine Lake, (2) approximately 2 mi (3 km) of Black Star Creek downstream to the

confluence with Santiago Creek, (3) an approximately 2.4 mi (4 km) stretch of lower Baker Canyon downstream to the confluence with Santiago Creek, and (4) approximately 7.3 mi (12 km) of Silverado Creek from the eastern edge of section 11 (T05S, R07W) in the Cleveland National Forest downstream to the confluence with Santiago Creek. The unit consists of 54 ac (22 ha) of Forest Service land and 2,128 ac (861 ha) of private land. This unit contains a vital arroyo toad population in central Orange County that may represent one of the last remnants of a greater historical population from the Santa Ana River Basin that was mostly extirpated due to urbanization of the greater Los Angeles metropolitan area. It is also possible that this population belongs to a larger metapopulation that extends across the lower coastal mountain slopes of the Santa Ana Mountains from Santiago Creek to San Mateo Creek (including Units 10 and 11 discussed below). Unit 8 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nearby residential activities and degrading habitat conditions due to past commercial sand and gravel removal operations. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 1,497 ac (606 ha) of lands in Unit 8 within the Orange County Central–Coastal NCCP/HCP from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Unit 9: San Jacinto River Basin (2,406 ac (974 ha))

This unit is located in west-central Riverside County and consists of two subunits totaling 13 ac (5 ha) of Bureau of Land Management land, 492 ac (199 ha) of Forest Service land, 210 ac (85 ha) of State land, and 1,691 ac (684 ha) of private land. This unit supports the most northeastern arroyo toad populations within the coastal region of the species' range and is effectively isolated from other known toad populations to the south in the Santa Margarita Watershed, to the west in the San Juan Watershed, and from residual populations to the north in the Santa Ana Watershed due to geographic features. It is likely that this isolation occurred over a long geologic time period; therefore, toads in the San Jacinto Watershed may have evolved unique genetic, phenotypic, or behavioral characteristics that are important for the conservation of the species.

Subunit 9a

Subunit 9a encompasses approximately 6.3 mi (10 km) of the San Jacinto River from the Sand Canyon confluence downstream to the Soboba Indian Reservation border. The subunit consists of 64 ac (26 ha) of Forest Service land, 8 ac (3 ha) of Bureau of Land Management land, and 1,154 ac (467 ha) of private land. Subunit 9a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from cumulative impacts from human activities, including direct mortality from vehicular traffic, trampling, trash dumping, and collection (Ortega 2009, *in litt.* p. 1; Wilcox 2009, pers. comm.). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 678 ac (274 ha) of private lands in Subunit 9a within the Western Riverside County MSHCP from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Subunit 9b

Subunit 9b encompasses approximately 7.4 mi (12 km) of Bautista Creek from near the eastern edge of Section 20 (T6S, R2E) downstream to approximately the middle of Section 27 (T5S, R1E), where the stream enters a debris basin. The subunit consists of 428 ac (173 ha) of Forest Service land, 5 ac (2 ha) of Bureau of Land Management land, 210 ac (85 ha) of State land, and 537 ac (217 ha) of private land. Subunit 9b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from recreation and vehicular traffic (USGS 2001, p. 8). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 475 ac (192 ha) of private lands in Subunit 9b within the Western Riverside County MSHCP from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Unit 10: San Juan Creek Basin (5,667 ac (2,293 ha))

This unit is located in southern Orange County and southwestern Riverside County and consists of two subunits totaling 558 ac (225 ha) of Forest Service land, 1,909 ac (773 ha) of local government land, and 3,200 ac (1,295 ha) of private land. This unit supports a vital arroyo toad population in the San Juan Creek Basin, and arroyo toad populations in this unit may function as an important linkage between toads in Santiago Creek (Unit 8) to the north and the San Mateo Creek Basin (Unit 11) to the south.

Subunit 10a

This subunit is located in southern Orange County and southwestern Riverside County. Subunit 10a encompasses: (1) Approximately 5 mi (8 km) of San Juan Creek from immediately above the Upper San Juan Campground downstream to Interstate 5, (2) approximately 9.9 mi (16 km) of Bell Canyon from the southern half of section 8 (T06S, R06W) in the Cleveland National Forest downstream to the confluence with San Juan Creek, and (3) approximately 1.2 mi (2 km) of an unnamed tributary to the west of Bell Canyon in sections 8 and 18 (T06S, R06W) downstream to the confluence with Bell Creek. The subunit consists of 547 ac (221 ha) of Forest Service land, 1,406 ac (569 ha) of local government land, and 2,775 ac (1,123 ha) of private land. Subunit 10a contains the physical and biological features that are essential to the conservation of the species,

including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative predators (bullfrogs), increased water diversions, and residual effects of recent gravel mining operations (Bloom 1998, p. 2). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 3,405 ac (1,378 ha) of permittee-owned or controlled lands in Subunit 10a within the Southern Orange County NCCP/Master Streambed Alteration Agreement/HCP from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Subunit 10b

This subunit is located in southern Orange County. Subunit 10b encompasses 5.2 mi (8 km) of Trabuco Creek downstream from approximately the middle of section 6 (T06S, R06W) in the Cleveland National Forest. The subunit consists of 11 ac (4 ha) of Forest Service land, 503 ac (204 ha) of local government land, and 425 ac (172 ha) of private land. Subunit 10b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative predators (bullfrogs), increased water diversions, and residual effects of recent gravel mining operations (Bloom 1998, p. 2). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Unit 11: San Mateo Creek Basin (1,068 ac (432 ha))

This unit is located in northwestern San Diego County, southern Orange County, and southwestern Riverside County and consists of two subunits totaling 34 ac (14 ha) of Forest Service land and 1,034 ac (418 ha) of private land. This unit supports large arroyo toad populations in close proximity to the coast. Nearly all of the other near-coastal, historical populations of arroyo toad were extirpated due to extensive urbanization and river channelization along the coastal regions of southern California. Distinctive climatic conditions near the coast may provide different selective pressures on toads in this area, and favor specific genetic characteristics that help maintain the genetic diversity of the species. We are exempting from designation approximately 5,994 ac (2,426 ha) of military land that fall within the boundaries of this proposed revised critical habitat unit under section 4(a)(3)(B) of the Act because the lands are subject to the 2007 INRMP for MCB Camp Pendleton, and the INRMP provides a benefit to the arroyo toad (see the ''Application of Section 4(a)(3) of the Act'' section of this proposed revised rule for a detailed discussion).

Subunit 11a

Subunit 11a encompasses: (1) Approximately 1.7 mi (3 km) of Cristianitos Creek from just above Gabino Creek downstream to the MCB Camp Pendleton boundary; (2) approximately 3.1 mi (5 km) of Gabino Creek upstream from its confluence with Cristianitos Creek, including about 0.6 mi (1 km) of La Paz Creek; and (3) approximately 4 mi (6 km) of Talega Creek upstream from its confluence with Cristianitos Creek and beyond the boundaries of MCB Camp Pendleton. The subunit consists of 1,034 ac (418 ha) of private land. Subunit 11a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from cumulative impacts from human activities, including direct mortality from vehicle collisions and vehicular crossings of streambeds, grazing, and nonnative predators (Bloom 1996, pp. 4–5; Bloom 1998, *in litt.,* pp. 1, 3). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 963 ac (390 ha) of permittee-owned or controlled lands in Subunit 11a within the Southern Orange County NCCP/Master Streambed Alteration Agreement/HCP from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Subunit 11b

Subunit 11b encompasses approximately 1 mi (2 km) of San Mateo Creek beyond the boundaries of MCB Camp Pendleton within the Cleveland National Forest near Devil Canyon. The subunit consists of 34 ac (14 ha) of Forest Service land. Subunit 11b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative predators (ECORP 2004, p. 16). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Unit 12: Lower Santa Margarita River Basin (1,009 ac (408 ha))

This unit is located in northwestern San Diego County and consists of two subunits totaling 5 ac (2 ha) of State land and 1,004 ac (406 ha) of private land. This unit supports large arroyo toad populations in proximity to other large populations to the north (Unit 11), and provides potential connectivity to populations in the upper Santa Margarita River Basin (Unit 13). We are exempting from designation approximately 7,239 ac (2,929 ha) of military land (7,016 ac (2,839 ha) on MCB Camp Pendleton and 223 ac (90 ha) on Fallbrook Naval Weapons Station) that fall within the boundaries of this critical habitat unit from the proposed revised designation of critical habitat under section 4(a)(3)(B) of the Act because the lands are subject to the 2007 INRMP for MCB Camp Pendleton and the 2006 INRMP for the Fallbrook Naval Weapons Station, and each INRMP provides a benefit to the arroyo toad (see the ''Application of Section 4(a)(3) of the Act'' section of this proposed revised rule for a detailed discussion).

Subunit 12a

Subunit 12a encompasses approximately 2.1 mi (3 km) of De Luz Creek from the town of De Luz downstream to the MCB Camp Pendleton boundary. The subunit consists of 394 ac (159 ha) of private land. Subunit 12a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from cumulative impacts to the species' habitat from recreation, nonnative predators, and nonnative plants (CNDDB 2008 EO 26). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Subunit 12b

Subunit 12b encompasses approximately 5.5 mi (9 km) of the Santa Margarita River upstream from the MCB Camp Pendleton boundary. The subunit consists of 5 ac (2 ha) of State land and 610 ac (247 ha) of private land. Subunit 12b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from cumulative impacts to the species' habitat from nonnative predators, nonnative plants, and vehicular traffic (Varanus Biological Services, Inc. 1999, pp. 34–35). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Unit 13: Upper Santa Margarita River Basin (8,137 ac (3,293 ha))

This unit is located in southern Riverside County and northern San Diego County and consists of three subunits totaling 23 ac (9 ha) of Bureau of Land Management land, 434 ac (176 ha) of Forest Service land, and 7,682 ac (3,109 ha) of private land. This unit provides potential links to arroyo toad populations in the lower Santa Margarita River Basin and other nearby drainages containing suitable habitat.

Subunit 13a

Subunit 13a encompasses approximately 7.3 mi (12 km) of Arroyo Seco Creek from just south of the San Diego-Riverside County boundary downstream to Vail Lake. The subunit consists of 343 ac (139 ha) of Forest Service land and 813 ac (329 ha) of private land. Subunit 13a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative predators and campground activities (USGS 2000, p. 3). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 690 ac (279 ha) of private land in Subunit 13a within the Western Riverside County MSHCP from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Subunit 13b

Subunit 13b encompasses approximately 16.3 mi (26 km) of Temecula Creek from Dodge Valley downstream to Vail Lake. The subunit consists of 91 ac (37 ha) of Forest Service land, 23 ac (9 ha) of Bureau of Land Management land, and 4,643 ac (1,879 ha) of private land. Subunit 13b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from road maintenance and sand-mining operations (HELIX 2004, p. 1). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 2,318 ac (938 ha) of private land in Subunit 13b within the Western Riverside County MSHCP from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Subunit 13c

Subunit 13c encompasses approximately 6.5 mi (10 km) of Wilson Creek from the confluence with Cahuilla Creek downstream to Vail Lake. The subunit consists of 2,226 ac (901 ha) of private land. Subunit 13c contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from direct mortality and habitat degradation from off-highway vehicular traffic, and upstream sedimentation caused by urbanization, agriculture, or wildfire (R. Haase, MCAS Camp Pendleton, *in litt.* 2009b, p. 1). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 2,225 ac (900 ha) of private land in Subunit 13c within the Western Riverside County MSHCP from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Unit 14: Lower and Middle San Luis Rey River Basin (12,906 ac (5,223 ha))

This unit is located in northern San Diego County and encompasses approximately 30 mi (48 km) of the San Luis Rey River from the western edge of the La Jolla Indian Reservation downstream to the confluence with Guajome Creek near the City of Oceanside. It also includes approximately 3.4 mi (5.5 km) of Pala Creek and 1.7 mi (2.7 km) of Keys Creek upstream from their confluence with the San Luis Rey River. The unit consists of approximately 5 ac (2 ha) of Bureau of Land Management land, 10 ac (4 ha) of State land, 3,540 ac (1,432 ha) of tribal land, and 9,351 ac (3,785 ha) of private land, and supports one of the largest

contiguous river reaches that is occupied by the species. Unit 14 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from dams and water diversions, intensive urbanization, agriculture, and nonnative predators and plants. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

As discussed in the ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule, we recognize the importance of government-to-government relationships with Tribes; therefore, we are considering the exclusion of approximately 1,155 ac (467 ha) of Rincon Band of Luiseño Mission Indians Tribal Lands and approximately 2,385 ac (963 ha) of Pala Band of Luiseño Mission Indians Tribal Lands in Unit 14 from the final revised critical habitat designation under section 4(b)(2) of the Act. We are seeking public comment on the appropriateness of the inclusion or exclusion of these lands from final designation of revised critical habitat and whether the conservation needs of the arroyo toad can be achieved by limiting the designation to non-tribal lands (see Public Comments section).

Unit 15: Upper San Luis Rey River Basin (12,026 ac (4,867 ha))

This unit is located in northern San Diego County and encompasses: (1) Approximately 8.6 mi (14 km) of the West Fork of the San Luis Rey River from Barker Valley downstream to the upper end of Lake Henshaw, (2) approximately 11.4 mi (18 km) of the upper San Luis Rey River from the Indian Flats area downstream to the upper end of Lake Henshaw, and (3) approximately 6.9 mi (11 km) of Agua Caliente Creek from the western edge of section 13 (T10S, R3E) to the confluence with the San Luis Rey River. The unit consists of 1,428 ac (578 ha) of Forest Service land and 10,598 ac (4,289 ha) of private land. This unit supports a unique assemblage of several small, disjunct, high-elevation arroyo toad populations and one significant population on Agua Caliente Creek (Gergus 1992, *in litt.*; Ervin 2000, *in litt.*; CNDDB 2008, Element Occurrences (EOs) 27, 32) in an area where in-stream and overland dispersal between populations is likely still possible. Unit 15 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from groundwater pumping on private lands, nonnative predators, and grazing. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Unit 16: Santa Ysabel Creek Basin (13,567 ac (5,490 ha))

This unit is located in north-central San Diego County and consists of two subunits totaling 6 ac (2 ha) of Bureau of Land Management land, 138 ac (56 ha) of Forest Service land, 182 ac (74 ha) of State land, 143 ac (58 ha) of local government land, 23 ac (9 ha) of tribal land, and 13,074 ac (5,291 ha) of private land. This unit supports large amounts of suitable habitat connecting large populations with several additional populations.

Subunit 16a

Subunit 16a encompasses: (1) Approximately 12 mi (19 km) of Santa Ysabel Creek from the confluence with Temescal Creek downstream to the confluence with Santa Maria Creek, (2) approximately 10 mi (16.1 km) of Guejito Creek from the 2,000 ft (610 m) elevation contour downstream to the confluence with Santa Ysabel Creek, (3) approximately 2.5 mi (4.0 km) of Boden Canyon upstream from the Santa Ysabel Creek confluence, (4) approximately 4.3 mi (7 km) of Temescal Creek from the northern edge of Pamo Valley to the confluence with Santa Ysabel Creek, and (5) approximately 9.1 mi (15 km) of Santa Maria Creek from the west side of Ramona to the confluence with Santa Ysabel Creek. The subunit consists of 138 ac (56 ha) of Forest Service land, 6 ac (2 ha) of Bureau of Land Management land, 182 ac (74 ha) of State land, 143 ac (58 ha) of local government land, and 11,667 ac (4,721 ha) of private land. Subunit 16a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from grazing, nonnative predators, and urbanization (Tierra Environmental Services 2001, *in litt.*; CNDDB 2008, EOs 59, 61). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 3,915 ac (1,585 ha) of private lands in Subunit 16a within the San Diego MSCP–City and County of San Diego Subarea Plans from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Subunit 16d

Subunit 16d encompasses approximately 5.2 mi (8.3 km) of Santa Ysabel Creek about 0.5 mi (0.8 km) east of Highway 79 downstream to approximately 0.25 mi (0.4 km) downstream of the confluence with Witch Creek. The subunit consists of 23 ac (9 ha) of Mesa Grande Reservation tribal land and 1,408 ac (570 ha) of private land. Subunit 16d contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from grazing (CNDDB 2008, EO 62). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

As discussed in the ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule, we recognize the importance of government-to-government relationships with Tribes; therefore, we are considering the exclusion of approximately 23 ac (9 ha) of Mesa Grande Band of Diegueno Mission Indians Tribal Lands in Subunit 16d from the final revised critical habitat designation under section 4(b)(2) of the Act. We are seeking public comment on the appropriateness of the inclusion or exclusion of these lands from final designation of revised critical

habitat and whether the conservation needs of the arroyo toad can be achieved by limiting the designation to non-tribal lands (see Public Comments section).

Unit 17: San Diego River Basin/San Vicente Creek (4,263 ac (1,725 ha))

This unit is located in central San Diego County and consists of three subunits totaling 35 ac (14 ha) of Bureau of Land Management land, 390 ac (158 ha) of Forest Service land, 93 ac (38 ha) of Capitan Grande Band of Diegueno Mission Indians tribal land, and 3,746 ac (1,516 ha) of private land. This unit supports suitable habitat for population expansion, thus increasing the probability of the long-term persistence of these populations.

Subunit 17a

Subunit 17a encompasses: (1) Approximately 8.7 mi (14 km) of the San Diego River from Temescal Creek downstream through 0.5 mi (0.9 km) of the Capitan Grande Reservation to the upper edge of El Capitan Reservoir, and (2) approximately 1 mi (2 km) of lower Cedar Creek. The subunit consists of 354 ac (143 ha) of Forest Service land, 92 ac (37 ha) of Capitan Grande Band of Diegueno Mission Indians tribal land, and 795 ac (322 ha) of private land. Subunit 17a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urbanization and nonnative predators. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

As discussed in the ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule, we recognize the importance of government-to-government relationships with Tribes; therefore, we are considering the exclusion of approximately 92 ac (37 ha) of Capitan Grande Band of Diegueno Mission Indians Tribal Lands in Subunit 17a from the final revised critical habitat designation under section 4(b)(2) of the Act. We are seeking public comment on the appropriateness of the inclusion or exclusion of these lands from final designation of revised critical habitat and whether the conservation needs of the arroyo toad can be achieved by limiting the designation to non-tribal lands (see Public Comments section).

Subunit 17b

Subunit 17b encompasses approximately 7.2 mi (12 km) of the San Diego River downstream from San Vicente Reservoir. The subunit consists of 12 ac (5 ha) of Bureau of Land Management land, 36 ac (15 ha) of Forest Service land, and 1,817 ac (735 ha) of private land. Subunit 17b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urbanization, agriculture, nonnative predators, and adverse water releases (based on timing or amount) from the Sutherland/San Vicente Aqueduct. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 1,730 ac (700 ha) of private lands in Subunit 17b within the San Diego MSCP–City and County of San Diego Subarea Plans from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Subunit 17d

Subunit 17d encompasses approximately 7.6 mi (12 km) of San Vicente Creek upstream from San Vicente Reservoir. The subunit consists of 23 ac (9 ha) of Bureau of Land Management land and 1,134 ac (459 ha) of private land. Subunit 17d contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urbanization, agriculture, nonnative predators, and adverse water releases (based on timing or amount) from the Sutherland/San Vicente Aqueduct (Varanus Biological Services, Inc. 1999, p. 20; RECON 2008, pp. 1, 3–4). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 931 ac (377 ha) of private lands in Subunit 17d within the San Diego MSCP–City and County of San Diego Subarea Plans from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Unit 18: Sweetwater River Basin (4,783 ac (1,936 ha))

This unit is located in south-central San Diego County and consists of two subunits totaling 553 ac (224 ha) of Forest Service land, 3 ac (1 ha) of San Diego National Wildlife Refuge land, 1,659 ac (671 ha) of State land, 391 ac (158 ha) of tribal land, and 2,178 ac (882 ha) of private land. This unit supports several significant populations over large stretches of rivers and streams (Gergus 1992, *in litt.*; Ervin 1997, *in litt.*; Varanus Biological Services, Inc. 1999, pp. 4–16; CNDDB 2008, EOs 38, 43, 67, 73, 77, 85, 99, 100).

Subunit 18a

Subunit 18a encompasses: (1) Approximately 26.6 mi (43 km) of the Sweetwater River from the top of Upper Green Valley in Cuyamaca Rancho State Park downstream to the top of Loveland Reservoir, (2) approximately 4.3 mi (7 km) of Viejas Creek from the western border of the Viejas Indian Reservation downstream to the confluence with the Sweetwater River, and (3) approximately 1.5 mi (2 km) of Peterson Canyon from just east of the Taylor Creek confluence downstream to the top of Loveland Reservoir. The subunit consists of 553 ac (224 ha) of Forest Service land, 1,554 ac (629 ha) of State land, and 2,049 ac (829 ha) of private land. Subunit 18a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from vehicular traffic, including off- highway vehicular traffic; horse-riding activities; nonnative predators; reservoir inundation; and cumulative impacts from human activities, including direct mortality from trampling and trash

dumping (Varanus Biological Services, Inc. 1999, p. 14; Mendelsohn *et al.* 2005, pp. 10–11). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 545 ac (221 ha) of private lands in Subunit 18a within the San Diego MSCP–City and County of San Diego Subarea Plans from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Subunit 18c

Subunit 18c encompasses approximately 5.8 mi (9.3 km) of the Sweetwater River from immediately below Loveland Dam downstream to just above the Sycuan Resort. The subunit consists of 3 ac (1 ha) of San Diego National Wildlife Refuge land, 391 ac (158 ha) of Sycuan Band of the Kumeyaay Nation tribal land, 105 ac (42 ha) of State land, and 129 ac (53 ha) of private land. Subunit 18c contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from adverse water releases (based on timing or amount) from the Loveland Reservoir and gravel mining operations (Madden-Smith *et al.* 2003, pp. 15, 17). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

As discussed in the ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule, we recognize the importance of government-to-government relationships with Tribes; therefore, we are considering the exclusion of approximately 391 ac (158 ha) of Sycuan Band of the Kumeyaay Nation Tribal Lands in Subunit 18c from the final revised critical habitat designation under section 4(b)(2) of the Act. We are seeking public comment on the appropriateness of the inclusion or exclusion of these lands from final designation of revised critical habitat and whether the conservation needs of the arroyo toad can be achieved by limiting the designation to non-tribal lands (see Public Comments section).

We are also considering the exclusion of approximately 595 ac (241 ha) of private lands in Subunit 18c within the San Diego MSCP–City and County of San Diego Subarea Plans from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Unit 19: Cottonwood Creek Basin (14,375 ac (5,817 ha))

Unit 19 is located in southern San Diego County and consists of five subunits totaling 190 ac (77 ha) of Bureau of Land Management land, 3,928 ac (1,589 ha) of Forest Service land, 1,482 ac (600 ha) of local government land, and 8,778 ac (3,551 ha) of private land. This unit encompasses a large number of distinct arroyo toad occurrences (Gergus 1992, *in litt.;* Varanus Biological Services, Inc. 1999, pp. 2–3; Gergus 2000, *in litt.;* CNDDB 2008, EOs 20–22, 30, 40, 44, 63–65, 69, 79) in an area where in-stream and overland dispersal between populations is likely still possible and where there is room for population expansion.

Subunit 19a

Subunit 19a encompasses: (1) Approximately 7 mi (11.2 km) of Cottonwood Creek from Buckman Springs (near Interstate 8) downstream to Morena Reservoir, (2) approximately 2.8 mi (4.5 km) of Morena Creek downstream to the Cottonwood Creek confluence, (3) approximately 0.5 mi (1 km) of an unnamed tributary of Morena Creek in section 35 (T16S, R04E) downstream to the confluence with Morena Creek, (4) approximately 5 mi (8 km) of Kitchen Creek downstream to the Cottonwood Creek confluence, and (5) approximately 3.7 mi (6 km) of La Posta Creek downstream to the Cottonwood Creek confluence. The subunit consists of 2,129 ac (862 ha) of Forest Service land, 1,482 ac (600 ha) of local government land, and 2,237 ac (905 ha) of private land. Subunit 19a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from grazing, recreational activities, and nonnative plants and predators (Ervin 2000, *in litt.;* TAIC 2005, p. 1; CNDDB 2008, EOs 20, 44, 69). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Subunit 19b

Subunit 19b encompasses approximately 12.7 mi (20 km) of Cottonwood Creek from immediately below Barrett Lake downstream to the U.S.-Mexico border and includes 10.3 mi (17 km) of Potrero Creek from approximately the 2,466-ft (752-m) elevation benchmark downstream to the confluence with Cottonwood Creek. The subunit consists of 80 ac (32 ha) of Forest Service land, 129 ac (52 ha) of Bureau of Land Management land, and 4,921 ac (1,991 ha) of private land. Subunit 19b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from grazing, and nonnative plants and predators (Ervin 1997, *in litt.*; TAIC 2005, pp. 1, 3; CNDDB 2008, EOs 40, 64, 65, 79). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 1,226 ac (496 ha) of private lands in Subunit 19b within the San Diego MSCP–City and County of San Diego Subarea Plans from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Subunit 19c

Subunit 19c encompasses: (1) Approximately 7.6 mi (12 km) of Pine Valley Creek from the north edge of section 12 (T15S, R4E) downstream to approximately 0.6 mi (1 km) south of Interstate 8, (2) approximately 0.6 mi (1 km) of Noble Creek downstream to the confluence with Pine Valley Creek, (3) approximately 2.4 mi (4 km) of Scove Canyon downstream to the confluence with Pine Valley Creek, and (4) approximately 1.3 mi (2 km) of an unnamed tributary upstream of Scove Canyon in sections 25 and 36 (T15S, R04E). The subunit consists of 809 ac (327 ha) of Forest Service land and 703 ac (284 ha) of private land. Subunit 19c contains the physical and biological

features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urbanization, grazing, vehicular traffic, and nonnative predators (Holland and Sisk 2001, p. 9; CNDDB 2008, EOs 21, 22, 30). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Subunit 19d

Subunit 19d encompasses approximately 8 mi (13 km) of Pine Valley Creek from the Nelson Canyon confluence downstream to Barrett Reservoir and approximately 1.6 mi (3 km) of Horsethief Canyon downstream to the confluence with Pine Valley Creek. The subunit consists of 910 ac (368 ha) of Forest Service land and 28 ac (11 ha) of private land. Subunit 19d contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from grazing and U.S. Border Patrol activities (Varanus Biological Services, Inc. 1999, p. 2; CNDDB 2008, EO 63). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Subunit 19e

Subunit 19e encompasses approximately 4.4 mi (7 km) of Campo Creek from Campo Lake downstream to the U.S.-Mexico border. The subunit consists of 61 ac (25 ha) of Bureau of Land Management land and 889 ac (360 ha) of private land. Subunit 19e contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from fire management activities along the U.S.-Mexico border (LEI 2008, p. 2). Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Desert Recovery Unit

As described in the recovery plan (Service 1999, pp. 1–119), maintaining arroyo toad populations in the following 4 critical habitat units is necessary to conserve the species in the desert recovery unit. Each of these units is isolated from each other and from any other recovery units, making the issues of inbreeding, fragmentation, and random negative impacts of great concern. However, this recovery unit also represents unique ecological conditions for arroyo toads, and likely harbors important genetic diversity.

Unit 20: Upper Santa Ana River Basin/ Cajon Wash (1,775 ac (718 ha))

This unit is located in southwestern San Bernardino County and encompasses approximately 7.9 mi (13 km) of Cajon Wash upstream from the San Bernardino National Forest boundary. The unit consists of 711 ac (288 ha) of Forest Service land and 1,065 ac (431 ha) of private land. This unit supports a population that may represent some of the last vestiges of a much greater population that historically existed along the upper Santa Ana River Basin, but was almost entirely extirpated due to urbanization of the greater Los Angeles area, and helps preserve a critical outlier segment of the genetic, phenotypic, or behavioral variation of the species. Unit 20 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from recreational activities. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Unit 21: Little Rock Creek Basin (612 ac (248 ha))

This unit is located in central Los Angeles County and encompasses: (1) Approximately 5.9 mi (9.5 km) of Little Rock Creek from the South Fork confluence downstream to the upper end of Little Rock Reservoir (in the vicinity of Rocky Point Picnic Ground), and (2) approximately 1.1 mi (1.8 km) of Santiago Creek upstream from the confluence with Little Rock Creek in the Little Rock Creek Basin. The unit consists of 612 ac (248 ha) of Forest Service land. This unit is on the periphery of the species' range in the Mojave Desert and geographically isolated from other known toad populations; therefore, it is possible that arroyo toads in this area possess unique genetic and phenotypic variation. Unit 21 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from recreational activities. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Unit 22: Upper Mojave River Basin (5,919 ac (2,395 ha))

This unit is located in San Bernardino County and consists of two subunits totaling 3,253 ac (1,316 ha) of Federal land, 2,534 ac (1,025 ha) of private land, and 132 ac (54 ha) of State land.

Subunit 22a

Subunit 22a includes: (1) Approximately 9.3 mi (18 km) of Deep Creek from near Holcomb Creek downstream to the confluence with the West Fork; (2) approximately 4 mi (6 km) of Little Horsethief Creek upstream from its confluence with Horsethief Creek; (3) approximately 4 mi (6 km) of Horsethief Creek from approximately 1 mi (1.6 km) above the Little Horsethief Creek confluence downstream to the West Fork confluence; (4) approximately 6 mi (10 km) of the West Fork of the Mojave River from Highway 173 downstream to Mojave River Forks Dam; (5) approximately 1 mi (1.6 km) of the Mojave River below Mojave River Forks Dam; (6) approximately 1.4 mi (2.2 km) of Grass Valley Creek upstream

from the confluence with the West Fork; and (7) approximately 2.8 mi (4.5 km) of Kinley Creek upstream from the Deep Creek confluence. The subunit consists of 3,209 ac (1,299 ha) of Federal land and 2,474 ac (1,001 ha) of private land. This subunit supports the largest population of the species on the desert side of the San Bernardino Mountains and is important for maintaining the range of genetic and phenotypic diversity of the species. Subunit 22a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative species, urban development, and recreation. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Subunit 22c

Subunit 22c includes approximately 1 mi (1.6 km) of the upper West Fork of the Mojave River, above Silverwood Lake, from near the 3,613 ft (1,462 m) elevation benchmark downstream to the upper end of the lake. The subunit consists of 43 ac (17 ha) of Federal land, 132 ac (54 ha) of county land, and 60 ac (24 ha) of private land. This subunit contains Summit Valley, which encompasses the lower portions of Horsethief Creek and the West Fork of the Mojave River, a broad, flat, alluvial valley that supports a substantial arroyo toad population (Ramirez 2003, pp. 16–17). Additionally, the downstream portion of this subunit contains the driest conditions of any unit proposed for arroyo toad critical habitat (Teale Data Center 1998, p. 1; CIMS 2000, p. 1), which suggests that this population may possess unique physiological adaptations, such as a reduced rate of evaporative water loss, and is important for maintaining the range of genetic and phenotypic diversity of the species. Subunit 22c contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative species, urban development, and recreation. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations.

Unit 23: Whitewater River Basin (1,355 ac (548 ha))

This unit is located in northern Riverside County and encompasses approximately 6.4 mi (10 km) of the Whitewater River from near Red Dome downstream to the Colorado River Aqueduct. The unit consists of 783 ac (317 ha) of Bureau of Land Management land and 572 ac (231 ha) of private land. This unit supports an isolated desert population on the easternmost periphery of the species' range in the Colorado Desert that may possess unique phenotypic and genetic variation that are distinct from other desert populations in the Mojave Desert (including Units 21 and 22 discussed above). Unit 23 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from unsuitable water flow for breeding and off-highway vehicular traffic. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to arroyo toad habitat and potential management considerations. We are considering the exclusion of approximately 538 ac (218 ha) of private lands in Unit 23 within the Coachella Valley MSHCP from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section of this proposed revised rule for a detailed discussion).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuit Courts of Appeal have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report or opinion are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) of the Act through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

An exception to the concurrence process referred to in (1) above occurs in consultations involving National Fire Plan projects. In 2004, the U.S. Forest Service and the Bureau of Land Management reached agreements with the Service to streamline a portion of the section 7 consultation process (BLM–ACA 2004, pp. 1–8; FS–ACA 2004, pp. 1–8). The agreements allow the U.S. Forest Service and the Bureau of Land Management the opportunity to make ''not likely to adversely affect'' determinations for projects implementing the National Fire Plan. Such projects include prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. The U.S. Forest Service and the Bureau of Land Management will insure staff is properly trained and both agencies will submit monitoring reports to the Service to determine if the procedures are being implemented properly and effects on endangered species and their habitats are being properly evaluated. As a result we do not believe the alternative consultation processes being implemented as a result of the National Fire Plan will differ significantly from those consultations being conducted by the Service.

If we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected, and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the arroyo toad or its designated critical habitat will require section 7(a)(2) consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit under section 10 of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features (PCEs) to an extent that appreciably reduces the conservation value of critical habitat for the arroyo toad.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may adversely affect critical habitat and, therefore, should result in consultation for the arroyo toad include, but are not limited to, the following:

(1) Actions that alter water chemistry or temperature. Such activities include, but are not limited to: Release of chemicals, biological pollutants, or heated effluents into the surface water or into connected groundwater at a point source or by dispersed release (non-point source). These activities can alter water conditions beyond the tolerances of the arroyo toad and result in direct or cumulative adverse effects to these individuals and their life cycles.

(2) Actions that increase sediment deposition within the stream channel or disturb upland foraging and dispersal habitat. Such activities include, but are not limited to: Excessive sedimentation from livestock overgrazing, road construction, commercial or urban development, channel alteration, timber harvest, off-highway vehicle or recreational use, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the arroyo toad by increasing the sediment deposition to levels that would adversely affect their ability to complete their life cycles.

(3) Actions that alter channel morphology or geometry. Such activities include, but are not limited to: Flood control and water diversion structures, such as dams and reservoirs, that regulate stream flows and trap sediments, direct groundwater extraction, channelization, impoundment, road and bridge construction, development, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes to the hydrologic functioning of the stream and alter the timing, duration, water flows, and levels that would degrade or eliminate the arroyo toad and its habitat. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the arroyo toad and provide habitat for

nonnative species that prey on arroyo toads.

(4) Actions that eliminate upland foraging, aestivating, or dispersal habitat for the arroyo toad. Such activities include, but are not limited to: Road construction, commercial or urban development, timber harvest, off-highway vehicle or recreational use, and other watershed and floodplain disturbances. These actions could affect the species' habitat through erosion, siltation, soil compaction, water quality degradation from urban runoff containing contaminants, fertilizers and pesticides, and the spread of introduced nonnative plants.

(5) Actions that lead to introducing, spreading, or augmenting nonnative aquatic species in stream segments used by arroyo toad. Possible actions include, but are not limited to: Introduction of chytrid fungus or other diseases, fish stocking for sport, nonnative aquatic plant species for aesthetics, or other related actions. These activities could affect the growth and reproduction of the arroyo toad by subjecting eggs, larvae, tadpoles, and adult arroyo toads to increased predation pressure or limit the amount of habitat available for the species, which would adversely affect the arroyo toad's ability to complete its life cycle.

Note that the scale of these activities is a crucial factor in determining whether, in any instance, they would directly or indirectly alter critical habitat to the extent that the value of the critical habitat would be appreciably diminished in providing for the physical or biological features essential to the conservation of the arroyo toad.

We consider all of the units and subunits proposed as critical habitat to contain features essential to the conservation of the arroyo toad. All units are within the geographical area occupied by the species at the time it was listed, and are currently occupied by arroyo toads. To ensure that their actions do not jeopardize the continued existence of the arroyo toad, Federal agencies already consult with us on activities in areas currently occupied by the arroyo toad, or in unoccupied areas if the species may be affected by their actions.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Endangered Species Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with federally listed species. INRMPs developed by military installations located within the range of the arroyo toad and which contain those features essential to the species' conservation were analyzed for exemption under the authority of section 4(a)(3)(B) of the Act.

Approved INRMPS

Fort Hunter Liggett Military Reservation, MCB Camp Pendleton, and Fallbrook Naval Weapons Station have approved INRMPs. The U.S. Army Reserve and Marine Corps (on both MCB Camp Pendleton and Fallbrook Naval Weapons Station) committed to working closely with us and California Department of Fish and Game (as well as California Department of Parks and Recreation (California State Parks) with regards to lands leased by MCB Camp Pendleton) to continually refine the existing INRMPs as part of the Sikes Act's INRMP review process. Based on our review of the INRMPs for these military installations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the lands within these installations identified as meeting the definition of critical habitat are subject to the INRMPs, and that conservation efforts identified in these INRMPs will provide a benefit to the arroyo toad (see the following sections that detail this determination for each installation). Therefore, lands within these installations are exempt from critical habitat designation under section 4(a)(3)(B) of the Act. We are not including approximately 19,686 ac (7,967 ha) of habitat on Fort Hunter Liggett, MCB Camp Pendleton, and Fallbrook Naval Weapons Station in this proposed revised critical habitat designation because of this exemption.

Fort Hunter Liggett Military Reservation

Fort Hunter Liggett was established in 1940 as Hunter Liggett Military Reservation, when the Army purchased lands belonging to William Randolph Hearst and other private landowners. The installation was used intensively to prepare troops for World War II, the Korean and Vietnam conflicts, and the Cold War, as a training ground for the 7th Infantry Division formerly stationed at Fort Ord, and as a Test and Experimentation Command Center. Fort Hunter Liggett occupies approximately 163,000 ac (66,000 ha) of varied habitats within the Santa Lucia Mountains in southern Monterey County. Currently, the installation is used for training by the 40th Mechanized Infantry Division of the California Army National Guard; reserve units from several branches of the Armed Forces; active components of the Army Rangers, Special Forces, Navy Seabees, and Marines; and other government agencies.

The Fort Hunter Liggett INRMP is a planning document that guides the management and conservation of natural resources under the installation's control. The INRMP was prepared to ensure that natural resources are managed in support of the Fort Hunter Liggett military training mission and that all activities are consistent with Federal stewardship requirements. The Fort Hunter Liggett INRMP was completed in 2005, followed by a revised and updated version in 2007, to address conservation and management of its natural resources, including conservation measures for the arroyo toad (U.S. Army Reserve Command 2007, pp. 171–174).

The INRMP is Fort Hunter Liggett's adaptive plan for managing natural resources to support and be consistent with the military mission while protecting and enhancing the biological integrity of lands under its use (U.S. Army 2004, p. iv). Fort Hunter Liggett is committed to an ecosystem management approach for its natural resources program by integrating all components of natural resource management into a comprehensive and coordinated effort. An integrated approach to ecosystem management will help protect the biological diversity found at Fort Hunter Liggett.

The INRMP identifies the following management and protection measures for the arroyo toad: (1) Implement monitoring that will meet the Service's criteria to demonstrate population status of arroyo toads on Fort Hunter Liggett; (2) reduce public and military vehicle encroachment into sandy riverine habitat, particularly during the breeding season for the arroyo toad; (3) minimize adverse effects to arroyo toads from roads and borrow sites (sites where soil and other material is removed for construction purposes); (4) gain an understanding of the timing of arroyo toad upland use, extent of upland use and distance traveled from breeding sites, characteristics of preferred upland habitat to include micro- and macro-habitats and substrate of burrowing sites, and use of rodent burrows; (5) identify threat posed by noxious weeds and reduce noxious weed presence to improve native habitat and site diversity; (6) obtain geomorphology information that will provide a foundation for development of management strategies for arroyo toad habitat and a better idea of habitat sustainability for arroyo toads; (7) identify threat posed by nonnative beavers in the San Antonio River in arroyo toad breeding habitat and outlying areas and implement control if threats warrant; (8) reduce bullfrog abundance in areas most likely to benefit arroyo toads; (9) prevent introduction and spread of disease at Fort Hunter Liggett; (10) maintain a viable population of arroyo toads and suitable habitat on Fort Hunter Liggett; (11) evaluate current management goals and actions and adapt to meet species management requirements; (12) integrate species management and conservation with Fort Hunter Liggett training and maintenance activities; (13) provide for adaptive management in accordance with the Fort Hunter Liggett INRMP; and (14) monitor mortality in order to augment the Service's ability to determine effects of Fort Hunter Liggett activities on arroyo toad and identify mortality factors at Fort Hunter Liggett.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2005 INRMP and 2007 updated INRMP for Fort Hunter Liggett provide a benefit to the arroyo toad and features essential to its conservation, and will benefit arroyo toads occurring in habitats on the installation. This includes habitat located in the Salinas River Basin (Service 1999, p. 14). Therefore, lands subject to the INRMP for the Fort Hunter Liggett Military Reservation are exempt from critical habitat designation under section 4(a)(3)(B) of the Act, and we are not including approximately 6,453 ac (2,612 ha) of habitat in this proposed revised critical habitat designation because of this exemption.

Marine Corps Base (MCB) Camp Pendleton

MCB Camp Pendleton is the Marine Corps' premier amphibious training installation and its only west coast amphibious assault training center. The installation has been conducting air, sea, and ground assault training since World War II. MCB Camp Pendleton occupies over 125,000 ac (50,586 ha) of coastal southern California in the northwest corner of San Diego County. Aside from nearly 10,000 ac (4,047 ha) that is developed, most of the installation is largely undeveloped land that is used for training. MCB Camp Pendleton is situated between two major metropolitan areas: Los Angeles, 82 miles (132 kilometers) to the north, and San Diego, 38 miles (61 kilometers) to the south. Nearby communities include Oceanside to the south, Fallbrook to the east, and San Clemente to the northwest. Aside from a portion of the installation's border that is shared with the San Mateo Wilderness Area and the Fallbrook Naval Weapons Station, surrounding land use is urban development, rural residential development, and agricultural farming and ranching. The largest single leaseholder on the installation is California State Parks, which includes a 50-year real estate lease granted on September 1, 1971, for 2,000 ac (809 ha) that encompasses San Onofre State Beach.

The MCB Camp Pendleton INRMP is a planning document that guides the management and conservation of natural resources under the installation's control. The INRMP was prepared to assist installation staff and users in their efforts to conserve and rehabilitate natural resources consistent with the use of MCB Camp Pendleton to train Marines and set the agenda for managing natural resources on MCB Camp Pendleton. MCB Camp Pendleton completed its INRMP in 2001, followed by a revised and updated version in 2007 to address conservation and management recommendations within the scope of the installation's military mission, including conservation measures for the arroyo toad (MCB Camp Pendleton 2007, Appendix F, Section F.1, pp. F1–F5). Additionally, according to the 2007 INRMP, California State Parks is required to conduct its natural resources management consistent with the philosophies and supportive of the objectives of the revised 2007 INRMP (MCB Camp Pendleton 2007, Chapter 2, p. 31).

The arroyo toad receives programmatic protection from training and other installation activities within the riparian component of its habitat, as outlined and required in the Riparian Ecosystem Conservation Plan (MCB Camp Pendleton 2007, Appendix C). Management and protection measures for the arroyo toad identified in Appendix C of the INRMP include, but are not limited to, the following: (1) Eliminating nonnative, invasive species (such as *Arundo donax*) on the installation and off the installation in partnership with upstream landowners to enhance ecosystem value; (2) providing viable riparian corridors and promoting connectivity of native riparian habitats; (3) maintaining natural floodplain processes and extent of these areas by avoiding and minimizing further permanent loss of floodplain habitats; (4) maintaining to the extent practicable stream and river flows needed to support riparian habitat; (5) monitoring and maintaining groundwater levels and basin withdrawals to avoid loss and degradation of habitat quality; (6) restoring areas to their original condition after disturbance, such as following project construction or fire damage; and (7) promoting increased arroyo toad populations in watersheds through perpetuation of natural ecosystem processes and programmatic instruction application for avoidance and minimization of impacts (MCB Camp Pendleton 2007, Appendix C, pp. C5–C8).

Current environmental regulations and restrictions apply to all threatened and endangered species on the installation (including the arroyo toad) and are provided to all users of ranges and training areas to guide activities and protect the species and its habitat. First, specific conservation measures are applied to arroyo toad and its habitat

that include: (1) Controlling nonnative animal species (such as bullfrogs) and nonnative plant species (such as *Arundo donax* and *Rorippa* spp. (watercress)); and (2) restricting military-related traffic use within riparian areas to existing roads, trails, and crossings. Second, MCB Camp Pendleton's environmental security staff review projects and enforce existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including the arroyo toad and its habitat. Third, MCB Camp Pendleton provides training to personnel on environmental awareness for sensitive resources on the base, including the arroyo toad and its habitat. As a result of these regulations and restrictions, activities occurring on MCB Camp Pendleton are currently conducted in a manner that minimizes impacts to arroyo toad habitat.

MCB Camp Pendleton's INRMP also benefits the arroyo toad through ongoing monitoring and research efforts. The installation conducts annual monitoring to track arroyo toad populations and has conducted a study to examine arroyo toad use of habitat dominated by *Arundo donax* (although analysis of this study is not yet complete). Data are provided to all necessary personnel through MCB Camp Pendleton's GIS database on sensitive resources and in their published resource atlas. Additionally, MCB Camp Pendleton collaborated with the U.S. Geological Survey's Biological Resources Division to develop and implement a rigorous, science-based monitoring protocol for arroyo toad populations throughout the installation, including surveying for presence of eggs and larvae (Atkinson *et al.* 2003, pp. 4–5).

We are consulting with the Marine Corps under section 7 of the Act to programmatically address potential upland impacts to the arroyo toad (and several other species) as a result of military training and other activities on MCB Camp Pendleton. Upon completion of this consultation, we expect additional measures that benefit the arroyo toad will be incorporated into the INRMP for MCB Camp Pendleton. This consultation is currently in progress, and we did not rely on any proposed measures in our consideration of the INRMP under section 4(a)(3)(B) of the Act. However, upland habitat conservation measures being considered include, but are not limited to: (1) Implementing programmatic measures to avoid and minimize impacts to upland habitats adjacent to riparian habitats occupied by arroyo toads, and (2) compensating for impacts to upland habitats used by arroyo toads by implementing ongoing installation-wide upland habitat enhancement programs (such as nonnative vegetation control, erosion control, and upland habitat restoration).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2007 INRMP for MCB Camp Pendleton provide a benefit to the arroyo toad and its habitat. This includes habitat located in the following areas: San Mateo Creek, San Onofre Creek, and Santa Margarita River Basins (names of areas used follow those used in the recovery plan (Service 1999, pp. 25–27). Therefore, lands subject to the INRMP for MCB Camp Pendleton, which includes the lands leased from the Department of Defense by other parties, are exempt from critical habitat designation under section 4(a)(3)(B) of the Act, and we are not including approximately 13,010 ac (5,265 ha) of habitat in this proposed revised critical habitat designation because of this exemption.

Fallbrook Naval Weapons Station

The Naval Weapons Station Seal Beach, Detachment Fallbrook (Fallbrook Naval Weapons Station), is the primary west coast supply point of ordinance for the U.S. Marine Corps and the large deck amphibious assault ships of the Pacific Fleet. The Fallbrook Naval Weapons Station also has the only west coast maintenance facility for air-launched missiles for the Pacific Fleet. The installation encompasses approximately 8,852 acres (3,582 ha) and is located within the southern foothills of the Santa Ana Mountains of northern San Diego County, adjacent to the city of Fallbrook, California. It is bounded to the north, west, and much of the south by MCB Camp Pendleton, with the Santa Margarita River forming the common border on the north between the two properties. Other than training lands on MCB Camp Pendleton, surrounding land use includes semi-rural agricultural lands that include plant nurseries, avocado and citrus groves, vineyards, and limited urban development.

The Fallbrook Naval Weapons Station INRMP is a planning document that guides the management and conservation of natural resources under the installation's control. The INRMP was prepared to assist installation staff and users in their efforts to support mission operations and accommodate increased military mission requirements for national security and emergency homeland security, while meeting all environmental compliance responsibilities. The INRMP also provides ecosystem-based management to preserve, protect, and enhance natural resources on the installation, and provides the organizational support and communication links necessary for effective planning, implementation, and administration of the installation's natural resources. The Fallbrook Naval Weapons Station completed its INRMP in 2006 (which was updated from an INRMP developed by the Naval Ordnance Center Pacific Division in 1996) to address conservation and management of its natural resources, including conservation measures for the arroyo toad (Fallbrook Naval Weapons Station 2006, Chapter 3, pp. 108–110).

The arroyo toad primarily receives protection from installation activities because no training occurs on the installation, and maintenance and potential development activities typically do not occur in arroyo toad habitat due to the steep sloping topography along the Santa Margarita River that immediately surrounds the suitable habitat. However, some impacts could occur associated with activities (such as fuel break grading, fire management, and possible infrastructure) that may impact the arroyo toad and thus require implementation of specified protection measures. The INRMP identifies the following management and protection measures for the arroyo toad: (1) Avoidance and minimization measures applied to infrastructure development and maintenance to protect the arroyo toad that are part of the National Environmental Policy Act approval process; (2) placement of riparian filter strip and buffer along firebreaks that lead into riparian zones where arroyo toads may be active; (3) avoidance of firebreak maintenance and fire suppression activities (where possible); (4) avoidance of discing for firebreaks leading to the Santa Margarita River during arroyo toad dispersal periods; (5) implementation of erosion and sediment control; (6) timing and location protections associated with prescribed burns; (7) implementation of nonnative vegetation control measures, including removal of *Arundo donax;* (8) implementation of standardized survey methods; (9) evaluation and control of nonnative bullfrogs; and (10) implementation of long-term monitoring activities, including upland sites (Fallbrook Naval Weapons Station 2006, Chapter 3, pp. 108–110).

The ongoing monitoring efforts outlined in the INRMP (as listed above) include surveys of sites at two or more locations along the Santa Margarita

River, which includes upland surveys conducted every 5 years, offset from breeding surveys by 2 years. Surveys are also conducted after major alteration of the flow regime (natural or anthropogenic). Finally, the installation conducts annual monitoring to track arroyo toad populations as part of the fire plan activities, with survey data available since 2001 (Fallbrook Naval Weapons Station 2006, Chapter 3, p. 109).

Environmental regulations and restrictions apply to all threatened and endangered species on the installation (including the arroyo toad) and are provided to all users of the installation to guide activities and protect the species and its habitat (Fallbrook Naval Weapons Station 2006, Chapter 5, p. 25). Biennial meetings are held with the Service to evaluate all management items associated with threatened and endangered species, including the arroyo toad.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2006 INRMP for the Fallbrook Naval Weapons Station provide a benefit to the arroyo toad, and will benefit arroyo toads occurring on the installation, which includes habitat located in the Santa Margarita River Basin (as identified in the recovery plan (Service 1999, pp. 26–27). Therefore, lands subject to the INRMP for the Fallbrook Naval Weapons Station are exempt from critical habitat designation under section 4(a)(3)(B) of the Act, and we are not including approximately 223 ac (90 ha) of habitat in this proposed revised critical habitat designation because of this exemption.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we consider all relevant impacts, including economic impacts. In compliance with section 4(b)(2) of the Act, we are preparing a new analysis of the economic impacts of this proposed revision to critical habitat for the arroyo toad, to evaluate the potential economic impact of the proposed revised designation. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Ventura Fish and Wildlife Office or Carlsbad Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**). During the development of the final revised designation, we will consider economic impacts, public comments, and other new information, and areas, including those identified for potential exclusion in this proposed rule, may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

In addition to economic impacts, we consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned by the Department of Defense where a national security impact might exist. We also consider whether landowners have developed any habitat conservation plans (HCPs) or other management plans for the area, or whether there are conservation partnerships that would be encouraged or discouraged by designation of, or exclusion from, critical habitat in an area. In addition, we look at the presence of Tribal lands or Tribal Trust resources that might be affected, and consider the government-to-government relationship of the United States with the Tribal entities. We also consider any social impacts that might occur because of the designation.

As discussed in further detail in the ''Habitat Conservation Plan Lands—Exclusions under Section 4(b)(2) of the Act'' and ''Tribal Lands—Exclusions Under Section 4(b)(2) of the Act'' sections below, we have preliminarily identified certain areas that we are considering excluding from the final revised critical habitat designation for the arroyo toad under section 4(b)(2) of the Act. However, we specifically solicit comments on the inclusion or exclusion of such areas (see Public Comments section).

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995, p. 2), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998; p. 1407; Crouse *et al.* 2002; p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners are essential to our understanding the status of species on non-Federal lands, and necessary for us to implement recovery actions such as reintroducing listed species and restoring and protecting habitat.

Many private landowners, however, are wary of the possible consequences of attracting endangered species to their property. Mounting evidence suggests that some regulatory actions by the Federal Government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996; pp. 5–6; Bean 2002, pp. 2–3; Conner and Mathews 2002, pp. 1–2; James 2002, pp. 270–271; Koch 2002, pp. 2–3; Brook *et al.* 2003, pp. 1639–1643). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999, pp. 1264–1265; Brook *et al.* 2003, pp. 1644–1648).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome

of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus, the benefits of excluding areas that are covered by effective partnerships or other conservation commitments can often be high.

Habitat Conservation Plans—Exclusions Under Section 4(b)(2) of the Act

Section 10(a)(1)(B) of the Act authorizes us to issue permits to non-Federal entities for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We may exclude from critical habitat designation non-Federal public lands and private lands that are covered by an existing operative HCP and any applicable implementation agreement under section 10(a)(1)(B) of the Act, if we make a determination that the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. We are considering whether to exclude lands covered by the Western Riverside County Multiple Species HCP (Western Riverside County MSHCP), San Diego Multiple Species Conservation Program (MSCP), Coachella Valley Multiple-Species HCP (Coachella Valley MSHCP), the Southern Orange County Natural Community Conservation Plan (NCCP)/Master Streambed Alteration Agreement/HCP (Southern Orange HCP), and the Orange County Central–Coastal Subregional NCCP/HCP (Orange County Central–Coastal NCCP/HCP) (see the ''Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act'' section below).

If the Secretary decides to exercise his discretion under section 4(b)(2) of the Act, the following areas of habitat are being considered for possible exclusion from final revised critical habitat for the arroyo toad: 6,386 ac (2,583 ha) in the Western Riverside County MSHCP (Units 9 and 13); 8,942 ac (3,620 ha) in the San Diego MSCP–City and County of San Diego's Subarea Plans (Subunits 16a, 17b, 17d, 18a, 18c, and 19b); 538 ac (218 ha) in the Coachella Valley MSHCP (Unit 23); 1,497 ac (606 ha) in the Orange County Central–Coastal NCCP/HCP; and 4,407 ac (1,784 ha) in the Southern Orange HCP (Subunit 10a and Subunit 11a).

Table 3 below provides approximate areas (in acres and hectares) of lands that meet the definition of critical habitat but are exempt from designation under section 4(a)(3) of the Act (see ''Application of Section 4(a)(3) of the Act'' section above) or the Service is considering for possible exclusion under section 4(b)(2) of the Act from the final revised critical habitat rule.

TABLE 3—EXEMPTIONS AND POTENTIAL EXCLUSIONS FROM PROPOSED REVISED CRITICAL HABITAT FOR THE ARROYO TOAD

	Acres	Hectares
Exemptions Under Section 4(a)(3) of the Act		
Military Lands:		
Fort Hunter Liggett Military Reservation	6,453	2,612
Marine Corps Base, Camp Pendleton	13,010	5,265
Fallbrook Naval Weapons Station	223	90
Total	19,686	7,967
Potential Exclusions Considered Under Section 4(b)(2) of the Act		
Habitat Conservation Plans:		
Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)	6,386	2,583
City of San Diego and County of San Diego Subarea Plans under the San Diego Multiple Species Conservation Program (MSCP)	8,942	3,620
Coachella Valley Multiple Species Habitat Conservation Plan (Coachella Valley MSHCP)	538	218
Southern Orange Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan (Southern Orange HCP)	4,407	1,784
Orange County-Coastal Subregional Habitat Conservation Plan/Natural Community Conservation Plan (Orange County Central–Coastal NCCP/HCP)	1,497	606
Total	21,770	8,811
Tribal Lands:		
Rincon Band of Luiseño Mission Indians Tribal Lands	1,155	467
Pala Band of Luiseño Mission Indians	2,385	963
Sycuan Band of the Kumeyaay Nation Tribal Lands	391	158
Capitan Grande Band of Diegueno Mission Indians	92	37
Mesa Grande Band of Diegueno Mission Indians	23	9
Total	4,046	1,634

Values in table may not sum due to rounding.

Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)

The Western Riverside County MSHCP is a large-scale, multi-jurisdictional HCP encompassing about 1.26 million ac (510,000 ha) in western Riverside County (including lands within Units 9 and 13). The Western Riverside County MSHCP addresses 146 listed and unlisted ''covered species,'' including the arroyo toad. Participants in the Western Riverside County MSHCP include 14 cities; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency (County Flood Control), Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; California State Parks; and the California Department of Transportation. The Western Riverside County MSHCP was designed to establish a multi-species conservation program that minimizes and mitigates the expected loss of habitat and the incidental take of covered species. On June 22, 2004, the Service issued a single incidental take permit (Service 2004, p. 140) under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP for a period of 75 years. For the reasons discussed under the ''Application of Section 4(b)(2) of the Act'' section of this rule, if the Secretary decides to exercise his discretion under section 4(b)(2) of the Act, we are considering the possible exclusion of non-Federal lands that meet the definition of critical habitat within the Western Riverside County MSHCP from the final designation. Specifically, we are considering the exclusion of 6,386 ac (2,583 ha) in Units 9 and 13.

The Western Riverside County MSHCP will establish approximately 153,000 ac (61,917 ha) of new conservation lands (Additional Reserve Lands) to complement the approximately 347,000 ac (140,426 ha) of pre-existing natural and open space areas (Public/Quasi-Public lands). These Public/Quasi-Public lands include those under Federal ownership, primarily Forest Service and Bureau of Land Management lands, and also permittee-owned or controlled open-space areas (such as wildlife habitat within State and County parks). Collectively, the Additional Reserve Lands and Public/Quasi-Public lands form the overall Western Riverside County MSHCP Conservation Area. The configuration of the 153,000 ac (61,916 ha) of Additional Reserve Lands is not mapped or precisely identified (''hard-lined'') in the Western Riverside County MSHCP, but rather is based on textual descriptions of the type of habitat conservation necessary to meet the conservation goals for all covered species within the bounds of the approximately 310,000-ac (125,453-ha) Criteria Area as implementation of the Western Riverside County MSHCP takes place. We internally mapped a ''Conceptual Reserve Design'' that illustrates existing Public/Quasi-Public lands and predicts the geographic distribution of the Additional Reserve Lands based on our interpretation of the textual descriptions of habitat conservation necessary to meet conservation goals.

Specific conservation objectives in the Western Riverside County MSHCP for the arroyo toad include conserving 9,695 ac (3,914 ha) of occupied habitat or suitable habitat for the species in the Western Riverside County MSHCP Conservation Area (Service 2004, p. 163). This acreage goal can be attained through acquisition or other dedications of land assembled from within the Criteria Area (the Additional Reserve Lands) and through coordinated management of existing Public/Quasi-Public lands. (See paragraph below for discussion of amount of habitat expected to be conserved on Additional Reserve Lands.) Preservation and management of arroyo toad habitat under the Western Riverside County MSHCP will contribute to the conservation and ultimate recovery of this species. The arroyo toad is threatened primarily by: Alterations of stream hydrology and geomorphology; development; agriculture, including livestock grazing; recreational activities; and nonnative species (Service 2004, pp. 156–158). The Western Riverside County MSHCP removes or reduces threats to this species and its PCEs by placing large blocks of occupied and unoccupied habitat into preservation throughout the Conservation Area. Areas identified for preservation and conservation include nine of the known occurrences along portions of San Juan Creek, Los Alamos Creek, San Jacinto River, Indian Creek, Bautista Creek, Wilson Creek, Temecula Creek, Arroyo Seco, and Vail Lake. The Western Riverside County MSHCP will maintain ecological processes within the MSHCP Conservation Area given existing constraints and activities covered under the MSHCP along portions of San Juan Creek, San Jacinto River, Indian Creek, Bautista Creek, Wilson Creek, Temecula Creek, Arroyo Seco, and Vail Lake. Additionally, the Western Riverside County MSHCP requires surveys for the arroyo toad as part of the project review process for public and private projects where suitable habitat is present within defined survey areas (see Amphibian Species Survey Area Map, Figure 6–3 of the Western Riverside County MSHCP, Volume I in Dudek and Associates, Inc. 2003). For locations with positive survey results, 90 percent of those portions of the property that provide long-term conservation value for the species will be avoided until it is demonstrated that the conservation objectives for the species are met (see Additional Survey Needs and Procedures, Western Riverside County MSHCP, Volume 1, section 6.3.2 in Dudek and Associates, Inc. 2003). Once the species-specific objectives are met, avoided areas would be evaluated to determine whether they should be released for development or included in the MSHCP Conservation Area.

The survey requirements, avoidance and minimization measures, and management for the arroyo toad—(and its PCEs) provided for in the Western Riverside County MSHCP are expected to benefit this species on public and private lands covered by the plan. We are considering the exclusion of approximately 6,386 ac (2,583 ha) of private lands in Units 9 and 13 within the Western Riverside County MSHCP Plan Area from the final revised critical habitat designation under section 4(b)(2) of the Act. Projects in the areas proposed as critical habitat that occur on these lands are subject to approval by Western Riverside County MSHCP permittees, therefore the conservation requirements of the MSHCP would apply. At this time, approximately 43 ac (38 ha) within Units 9 and 13 have been acquired for conservation under the Western Riverside County MSHCP. Our Conceptual Reserve Design indicates that another 68 percent (4,359 ac (1,764 ha)) of the lands in Units 9 and 13 that we are considering for exclusion will likely be acquired for conservation as Additional Reserve Lands. Of the remaining 31 percent of lands in Units 9 and 13 that we are considering for exclusion, 1,814 ac (728 ha), or 91 percent, of these lands are within the Western Riverside County MSHCP survey area for the arroyo toad and are subject to the Additional Survey Needs and Procedures Policy described above.

The Western Riverside County MSHCP incorporates processes that allow for Service oversight and participation in program implementation. These processes include: (1) Consultation with the Service on a long-term management and monitoring plan; (2) submission of

annual monitoring reports; (3) annual status meetings with the Service; and (4) submission of annual implementation reports to the Service (Service 2004, pp. 18–23).

In summary, we are considering exclusion of 6,386 ac (2,583 ha) of arroyo toad habitat on private lands in Units 9 and 13 that meet the definition of critical habitat for arroyo toad within the Western Riverside County MSHCP under section 4(b)(2) of the Act. The 1994 final listing rule for arroyo toad identified the following primary threats to the arroyo toad: habitat degradation, predation, and small population size (59 FR 64866). The implementation of the Western Riverside County MSHCP helps to address these threats through a regional planning effort, and outlines species-specific objectives and criteria for the conservation of the arroyo toad. We will analyze the benefits of inclusion and exclusion of this area from proposed revised critical habitat under section 4(b)(2) of the Act. We encourage any public comment in relation to our consideration of the areas in Units 9 and 13 for inclusion or exclusion (see Public Comments section above).

San Diego Multiple Species Conservation Plan (MSCP–City and County of San Diego's Subarea Plans

The MSCP is a framework HCP that has been in place for more than a decade. The plan area encompasses approximately 582,243 ac (235,626 ha) (County of San Diego 1997, p. 1–1; City of San Diego 1998, pp. 2–1, and 4–2 to 4–4) and provides for conservation of 85 federally listed and sensitive species (''covered species'') through the establishment and management of approximately 171,920 ac (69,574 ha) of preserve lands within the Multi-Habitat Planning Area (City of San Diego) and Pre-Approved Mitigation Areas (County of San Diego). The MSCP was developed in support of applications for incidental take permits for several federally listed species by 12 participating jurisdictions and many other stakeholders in southwestern San Diego County. Under the umbrella of the MSCP, each of the 12 participating jurisdictions is required to prepare a subarea plan that implements the goals of the MSCP within that particular jurisdiction. Separate Subarea Plans for the County of San Diego and the City of San Diego have been completed and include evaluations of the arroyo toad. For the reasons discussed under the ''Application of Section 4(b)(2) of the Act'' section of this rule, if the Secretary decides to exercise his discretion under section 4(b)(2) of the Act, we are considering the possible exclusion of lands that meet the definition of critical habitat within the City of San Diego Subarea Plan and County of San Diego Subarea Plan. Specifically, we are considering the exclusion of 8,942 ac (3,620 ha) in Subunits 16a, 17b, 17d, 18a, 18c, and 19b.

Upon completion of preserve assembly, approximately 171,920 ac (69,574 ha) of the 582,243-ac (235,626-ha) MSCP plan area will be preserved (City of San Diego 1998, pp. 2–1, and 4–2 to 4–4). The City of San Diego's preserve is delineated by mapped preserve boundaries referred to as ''hardline'' boundaries (the Multi-Habitat Planning Area). The County of San Diego has both ''hardline'' boundaries as well as preserve areas that do not have ''hardline'' boundaries. In areas where the ''hardlines'' are not defined, the County's subarea plan identifies areas where mitigation activities should be focused to assemble its preserve areas (the Pre-Approved Mitigation Areas). Those areas of the MSCP preserve that are already conserved, as well as those areas that are designated for inclusion in the preserve under the plan, are referred to as the ''preserve area'' in this proposed revised critical habitat designation. When the preserve is completed, the public sector (Federal, State, and local government, and the general public) will have contributed 108,750 ac (44,010 ha) (63.3 percent) to the preserve, of which 81,750 ac (33,083 ha) (48 percent) was existing public land when the MSCP was established and 27,000 ac (10,927 ha) (16 percent) will have been acquired. At completion, the private sector will have contributed 63,170 ac (25,564 ha) (37 percent) to the preserve as part of the development process, either through avoidance of impacts or as compensatory mitigation for impacts to biological resources outside the preserve. Federal and State governments, local jurisdictions and special districts, and managers of privately owned lands currently and in the future will manage and monitor their lands in the preserve for species and habitat protection (City of San Diego 1998, pp. 2–1, and 4–2 to 4–4).

Private lands within the Multi-Habitat Planning Area and Pre-Approved Mitigation Areas are subject to special restrictions on development, and lands that are dedicated to the preserve must be legally protected and permanently managed to conserve the covered species. Public lands owned by the City, County, State of California, and the Federal Government that are identified for conservation under the MSCP must also be protected and permanently managed to protect the covered species.

Numerous processes are incorporated into the MSCP that allow our oversight of the MSCP implementation. For example, the MSCP imposes annual reporting requirements and provides for our review and approval of proposed subarea plan amendments and preserve boundary adjustments and for Service review and comment on projects during the California Environmental Quality Act review process. We also chair the MSCP Habitat Management Technical Committee and the Monitoring Subcommittee (City of San Diego 1998, pp. 5–11 to 5–23). Each MSCP subarea plan must account annually for the progress it is making in assembling conservation areas. We must receive annual reports that include, both by project and cumulatively, the habitat acreage destroyed and conserved within the subareas. This accounting process ensures that habitat conservation proceeds in rough proportion to habitat loss and in compliance with the MSCP subarea plans and the plans' associated implementing agreements.

The subarea plans under the MSCP contain requirements to monitor and adaptively manage arroyo toad habitat and provide for the conservation of this species' PCEs. The framework and area-specific management plans are comprehensive and address a broad range of management needs at the preserve and species levels that are intended to reduce the threats to covered species and thereby contribute to the recovery of the species. These plans include the following: (1) Fire management, which includes deferring to the California Department of Forestry and Fire Protection for management activities; (2) public access control; (3) fencing and gates; (4) ranger patrol; (5) trail maintenance; (6) visitor, interpretive, and volunteer services; (7) hydrological management; (8) signage and lighting; (9) trash and litter removal; (10) access road maintenance; (11) enforcement of property or homeowner requirements; (12) removal of invasive species; (13) nonnative predator control; (14) species monitoring; (15) habitat restoration; (16) management for diverse age classes of covered species; (17) use of herbicides and rodenticides; (18) biological surveys; (19) research; and (20) species management conditions (City of San Diego 1998, pp. 6–7).

Specific conservation objectives for the arroyo toad in the subarea plans under the MSCP include preservation of all known (breeding) locations of this species and minimization of impacts to uplands areas within the MSCP planning area. Additionally, impacts to

the species will be minimized within the preserve through required implementation of area-specific management directives, which must address maintenance of arroyo toad populations through control of nonnative predators, protection and maintenance of sufficient suitable low-gradient sandy stream habitat (including appropriate water quality) to meet breeding requirements, and preservation of sheltering and foraging habitat within 0.62 mi (1 km) of breeding habitat that supports or is likely to support the arroyo toad (City of San Diego 1997, p. 142; Service 1997, pp. 80, 102).

At this time, 10 years into the implementation of the City and County of San Diego's subarea plans, approximately 1,622 ac (656 ha), or 19 percent, of lands that we are considering for exclusion have been conserved. An additional 2,891 ac (1,170 ha), or 34 percent, are targeted for conservation in accordance with the subarea plans inside the Pre-Approved Mitigation Areas and Multi-Habitat Planning Area. Similarly, although some areas placed in conservation are not yet fully managed, such management will occur over time as the subarea plans continue to be implemented.

In summary, we are considering exclusion of 8,942 ac (3,620 ha) of arroyo toad habitat on non-Federal lands in Subunits 16a, 17b, 17d, 18a, 18c, and 19b that meet the definition of critical habitat for arroyo toad within the City of San Diego's Subarea Plan and the County of San Diego's Subarea Plan under section 4(b)(2) of the Act, of which 19 percent (1,593 ac (644 ha)) have been conserved. The 1994 final listing rule for arroyo toad identified the following primary threats to the arroyo toad: habitat degradation, predation, and small population size (59 FR 64866). The implementation of both subarea plans helps to address these threats through a regional planning effort rather than through a project-by-project approach, and outlines species-specific objectives and criteria for the conservation of the arroyo toad. We will analyze the benefits of inclusion and exclusion of the areas within the jurisdictions of each subarea plan from critical habitat under section 4(b)(2) of the Act. We encourage any public comment in relation to our consideration of the areas in Subunits 16a, 17d, 18a, 18c, and 19b for inclusion or exclusion (see Public Comments section above).

Coachella Valley Multiple Species Habitat Conservation Plan (Coachella Valley MSHCP)

The Coachella Valley MSHCP is a large-scale, multi-jurisdictional habitat conservation plan encompassing about 1.1 million ac (445,156 ha) in the Coachella Valley of Riverside County (including lands within Unit 23). An additional 69,000 ac (27,923) of Indian Reservation lands are not included in the Coachella Valley MSHCP, but are within the plan area boundary. The Coachella Valley MSHCP addresses 27 listed and unlisted ''covered species,'' including arroyo toad. Participants in the Coachella Valley MSHCP include eight cities (Cathedral City, Coachella, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage); the County of Riverside, including the Riverside County Flood Control and Water Conservation District, Riverside County Parks and Open Space District, Riverside County Waste Management District; the Coachella Valley Association of Governments; Coachella Valley Water District; Imperial Irrigation District; California Department of Transportation; California State Parks; Coachella Valley Mountains Conservancy; and the Coachella Valley Conservation Commission (the created joint powers regional authority). The Coachella Valley MSHCP was designed to establish a multiple species habitat conservation program that minimizes and mitigates the expected loss of habitat and the incidental take of covered species. On October 1, 2008, the Service issued a single incidental take permit (TE–104604–0) under section 10(a)(1)(B) of the Act to 19 permittees under the Coachella Valley MSHCP for a period of 75 years. For the reasons discussed under the ''Application of Section 4(b)(2) of the Act'' section of this rule, if the Secretary decides to exercise his discretion under section 4(b)(2) of the Act, we are considering the possible exclusion of lands that meet the definition of critical habitat within the Coachella Valley MSHCP. Specifically, we are considering the exclusion of 538 ac (218 ha) in Unit 23.

The Coachella Valley MSHCP will establish an approximately 721,457-ac (291,964-ha) Reserve System comprised of 557,100 ac (225,451 ha) of Existing Conservation Lands, up to 29,990 ac (12,137 ha) of Complementary Conservation, and up to 8,777 ac (3,552 ha) of Public and Quasi-Public lands. The permittees will mitigate for the impacts of the take on covered species by conserving 96,400 ac (39,012 ha) (7,500 ac (3,035 ha) of existing local permittee lands and 88,900 ac (35,977 ha) of new conservation) of habitat and perpetually managing 125,590 ac (50,825 ha) within the Reserve System. The location and configuration of the 88,900 ac (35,977 ha) of new local permittee mitigation lands and the 21,390 ac (8,656 ha) that will be acquired through State and Federal contributions are not precisely mapped, but will be assembled from the 21 conservation areas identified in the Coachella Valley MSHCP. Within each conservation area, 90 percent of each natural community within each jurisdiction will be conserved and no more than 10 percent of the habitat will be lost. In general, the design of the overall Reserve System was intended to capture core habitats, ecological processes, and biological corridors and linkages. The permittees' collection and use of development mitigation fees, landfill tipping fees, and other funding specified in the Coachella Valley MSHCP and related documents will be used to acquire, protect, and manage the Reserve System in perpetuity. The permittees, the State, and Service will work cooperatively to enter into a Memorandum of Understanding or other appropriate agreements with Federal, State, and non-governmental organization land managers to cooperatively manage the Existing Conservation Lands in conformance with the MSHCP. In addition, the Coachella Valley MSHCP includes measures to avoid and minimize impacts on covered species resulting from covered activities.

The Coachella Valley MSHCP plan area includes about 2,095 ac (846 ha) of suitable arroyo toad habitat (Dudek and CVAG 2007, pp. 9–88) of which approximately 1,301 ac (526 ha) contain the physical and biological features essential to the conservation of the species. Of suitable habitat, 2,082 ac (841 ha) are identified in the Coachella Valley MSHCP as ''Core Habitat'' for the species. Core Habitat is defined as areas of habitat that: (1) Are of sufficient size to support a self-sustaining population for the species; (2) are not fragmented in a way to cause separation into isolated populations; (3) have functional essential ecological processes; and (4) have effective biological corridors or linkages to other habitats, where feasible, to allow gene flow among populations (Dudek and CVAG 2007, p. xxxi). Specific conservation goals, conservation objectives, and required measures for the arroyo toad in the Coachella Valley MSHCP include protection of 2,007 ac (810 ha) of arroyo toad habitat comprised of 2,004 ac (809

ha) (96 percent) of Core Habitat along with 3 ac (1 ha) of Other Conserved Habitat (land that is permanently protected and managed for the benefit of the species) (Dudek and CVAG 2007, pp. xxxi, 9–88). Of the habitat identified for protection in the Reserve System, approximately 1,301 ac (525 ha) are on Bureau of Land Management lands (Existing Conservation Lands) and are anticipated to be managed pending a Memorandum of Understanding with the Bureau of Land Management (Service 2008, p. 176). The remaining 706 ac (285 ha) will be acquired from willing sellers on private lands (Dudek and CVAG 2007, pp. 9–87). We are considering for exclusion approximately 538 ac (218 ha) of non-Federal lands that meet the definition of critical habitat for the arroyo toad within the Coachella Valley MSHCP. Of these lands, approximately 483 ac (195 ha), or 90 percent, are within Core Habitat areas.

The Coachella Valley MSHCP Reserve System will protect and manage Core Habitat areas for the arroyo toad in perpetuity. The Coachella Valley MSHCP provides for management and monitoring programs to ensure the conservation of this species, including control of activities that adversely impact water quality and the hydrological regime, disturbance from recreational activity in sensitive areas, control of invasive species where necessary, and restoration and enhancement of degraded habitat as necessary (Dudek and CVAG 2007, pp. 9–89). Additionally, the Coachella Valley MSHCP includes an educational program for residents and visitors in Whitewater Canyon to inform them about the arroyo toad and its conservation needs (Dudek and CVAG 2007, pp. 9–89).

At this time, approximately 481 ac (195 ha), or 89 percent, of lands that we are considering for exclusion have been acquired for conservation under the Coachella Valley MSHCP. In addition, 45 ac (18 ha) that meet the definition of critical habitat are not identified as either Core or Other Conserved Habitat by the Coachella Valley MSHCP, but fall within Conservation Areas under the Coachella Valley MSHCP. We anticipate that 41 ac (17 ha), or 90 percent, of these lands will be conserved under the Coachella Valley MSHCP.

In summary, we are considering exclusion of 538 ac (218 ha) of arroyo toad habitat on non-Federal lands in Unit 23 that meets the definition of critical habitat for arroyo toad within the Coachella Valley MSHCP under section 4(b)(2) of the Act, of which 89 percent (481 ac (195 ha)) have been conserved. The 1994 final listing rule for arroyo toad identified the following primary threats to the arroyo toad: habitat degradation, predation, and small population size (59 FR 64866). The implementation of the Coachella Valley MSHCP helps to address these threats through a regional planning effort, and outlines species-specific objectives and criteria for the conservation of the arroyo toad. We will analyze the benefits of inclusion and exclusion of this area from critical habitat under section 4(b)(2) of the Act. We encourage any public comment in relation to our consideration of the areas in Unit 23 for inclusion or exclusion (see Public Comments section above).

Orange County Central–Coastal Subregional Habitat Conservation Plan/ Natural Community Conservation Plan (Orange County Central–Coastal NCCP/ HCP)

The Orange County Central–Coastal NCCP/HCP in central Orange County (Unit 8) was developed in cooperation with numerous local and State jurisdictions and agencies, and participating landowners, including the cities of Anaheim, Costa Mesa, Irvine, Orange, and San Juan Capistrano; Southern California Edison; Transportation Corridor Agencies; The Irvine Company; California Department of Parks and Recreation; Metropolitan Water District of Southern California; and Orange County. Approved in 1996, the Orange County Central–Coastal NCCP/HCP provides for the establishment of approximately 38,738 ac (15,677 ha) of reserve lands for 39 covered species within the 208,713-ac (84,463-ha) planning area. We issued an incidental take permit under section 10(a)(1)(B) of the Act that provides conditional incidental take authorization for the arroyo toad for all areas within the Orange County Central–Coastal Subregion, except the North Ranch Policy Plan Area. This take authorization only applies to smaller arroyo toad populations, reintroduced populations, or populations that have expanded due to NCCP/HCP reserve management. It also requires implementation of a mitigation plan to relocate toads to protected areas within reserves, when necessary. For the reasons discussed under the ''Application of Section 4(b)(2) of the Act'' section of this rule, we are considering the possible exclusion of lands that meet the definition of critical habitat within the Orange County Central–Coastal NCCP/HCP. Specifically, we are considering the exclusion of 1,497 ac (606 ha) in Unit 8.

The North Ranch Policy Plan Area was excluded from take authorization provided under the Orange County Central–Coastal NCCP/HCP due to a lack of detailed biological information and specific conservation commitments at the time of adoption of the NCCP/ HCP. We have since determined that arroyo toad habitat within the North Ranch Policy Plan Area meets the definition of critical habitat for the arroyo toad in that it has the features essential to the conservation of the species and because it helps support a viable Santa Ana Mountain arroyo toad population. In 2002, the owner, The Irvine Company, granted a conservation easement to The Nature Conservancy over a portion of the North Ranch Policy Plan Area and has taken steps to conserve this area, including a $10 million management endowment. Approximately 761 ac (308 ha), or 51 percent, of lands that we are considering for exclusion fall within the conservation easement.

The Orange County Central–Coastal NCCP/HCP's reserve system includes approximately 592 ac (240 ha), or 40 percent, of lands that we are considering for exclusion. The Orange County Central–Coastal NCCP/HCP provides for monitoring of covered species, including the arroyo toad, and adaptive management for covered species and their habitat within this reserve system. Adaptive management activities may include a program to control nonnative predators, such as bullfrogs, clawed frogs, and nonnative fishes. To date, monitoring related to arroyo toad has consisted of reserve-wide herpetofauna surveys conducted from 1997 through 2001 and management activities with potential to benefit arroyo toad, which include ongoing control of invasive nonnative vegetation in the upland environment throughout the reserve system.

The Orange County Central–Coastal NCCP/HCP requires the implementation of a mitigation plan if a planned activity results in take of arroyo toads. The mitigation plan will: (1) Address design modifications and other on-site measures that are consistent with the project's purposes, minimize impacts, and provide appropriate protections for the arroyo toad; (2) provide for arroyo toad relocation to a location acceptable to the Service and California Department of Fish and Game, coupled with compensatory habitat management/enhancement activities at the relocation site; and (3) provide for monitoring and adaptive management of arroyo toads and their habitat.

In summary, we are considering exclusion of 1,497 ac (606 ha) of arroyo

toad habitat on permittee-owned or controlled lands in Unit 8 that meets the definition of critical habitat for arroyo toad within the Orange County Central–Coastal Subregional NCCP/HCP under section 4(b)(2) of the Act. Approximately 51 percent (761 ac (308 ha)) of these lands are conserved within the North Ranch Policy Plan Area and another 40 percent (592 ac (240 ha)) are conserved within this NCCP/HCP's reserve system. The 1994 final listing rule for arroyo toad identified the following primary threats to the arroyo toad: habitat degradation, predation, and small population size (59 FR 64866). The implementation of the Orange County Central–Coastal Subregional NCCP/HCP helps to address these threats through a regional planning effort, and outlines species-specific objectives and criteria for the conservation of the arroyo toad. We will analyze the benefits of inclusion and exclusion of this area from critical habitat under section 4(b)(2) of the Act. We encourage any public comment in relation to our consideration of the areas in Unit 8 for inclusion or exclusion (see Public Comments section above).

Southern Orange County Natural Community Conservation Plan/Master Streambed Alteration Agreement/ Habitat Conservation Plan (Southern Orange HCP)

The Southern Orange HCP is a large-scale multi-jurisdictional HCP encompassing approximately 86,021 ac (34,811 ha) in southern Orange County (including lands within Subunit 10a and Subunit 11a). The Southern Orange HCP was developed by the County of Orange (County), Rancho Mission Viejo, and the Santa Margarita Water District (Water District) to address impacts to 32 species, including the arroyo toad, resulting from residential and associated infrastructure development. On January 10, 2007, the Service issued incidental take permits (Service 2007, p. 431) under section 10(a)(1)(B) of the Act to the three permittees for a period of 75 years. For the reasons discussed under the ''Application of Section 4(b)(2) of the Act'' section of this rule, we are considering the possible exclusion of lands that meet the definition of critical habitat within the Southern Orange HCP. Specifically, we are considering the exclusion of 4,407 ac (1,784 ha) in Subunit 10a and Subunit 11a.

The Southern Orange HCP will establish approximately 30,426 ac (12,313 ha) of habitat reserve (Service 2007, p. 19). The HCP provides for a large, biologically diverse and permanent habitat reserve that will protect: (1) Large blocks of natural vegetation communities that provide habitat for the covered species; (2) ''important'' and ''major'' populations of the covered species in key locations; (3) wildlife corridors and habitat linkages that connect the large habitat blocks and covered species populations to each other, the Cleveland National Forest, and the adjacent Orange County Central–Coastal NCCP/HCP; and (4) the underlying hydrogeomorphic processes that support the major vegetation communities providing habitat for the covered species (Service 2007, p. 10).

Habitat for the arroyo toad was modeled during the Southern Orange HCP process. Specific conservation goals in the Southern Orange HCP for the arroyo toad include the conservation and management of 1,322 ac (534 ha) of HCP-modeled habitat within Rancho Mission Viejo (Service 2007, p. 59), of which approximately 1,208 ac (489 ha), or 28 percent, meet the definition of critical habitat. An additional 2,297 ac (943 ha), or 52 percent, of lands that we are considering for exclusion fall outside of the HCP-modeled habitat, but entirely within Southern Orange HCP's habitat reserve. Thus, Southern Orange HCP's habitat reserve encompasses 3,505 ac (1415 ha), or 80 percent, of lands that we are considering for exclusion. While not all habitat in the reserve will be conserved, the habitat reserve will contain habitat to support all of the known populations in Rancho Mission Viejo and County lands, including San Juan Creek, Talega Canyon, Bell Canyon, and Lower Cristianitos Creek/Lower Gabino Canyon (Service 2007, p. 62). Following implementation of the HCP, all of the known populations will be conserved as follows:

(1) Almost all of the documented breeding habitat will be conserved;

(2) Only a small portion (a maximum of 28 of 650 ac (11 of 263 ha), or 4 percent) of HCP-modeled habitat for arroyo toad in the San Mateo Creek watershed (Subunit 11a) will be impacted. The conservation and management of all breeding habitat and remaining upland habitat is anticipated to maintain the populations in Talega Creek and lower Cristianitos Creek/ lower Gabino Canyon;

(3) Implementation of the HCP will impact a substantial portion (402 of 1,074 ac (163 of 435 ha), or 37 percent) of HCP-modeled upland habitat for arroyo toad along San Juan Creek (Subunit 10a) on Rancho Mission Viejo. However, the conservation and management of breeding habitat and remaining upland habitat in San Juan Creek combined with the already-conserved habitat in Bell Canyon (Subunit 10a) on County land and restoration of 24 ac (10 ha) of breeding habitat in upper San Juan Creek on County land is anticipated to maintain the population along San Juan Creek; and

(4) The population in Bell Canyon and the portion of the population in upper San Juan Creek (Subunit 10a) are already conserved on County land and will be cooperatively managed by the County (Service 2007, p. 67).

In addition to the creation of a habitat reserve, the following conservation measures specified in the Southern Orange HCP will contribute to the protection and management of arroyo toad habitat:

(1) Potential impacts to arroyo toads associated with construction activities on Rancho Mission Viejo will be avoided and minimized through preparation of Biological Resources Construction Plans in coordination with the Service;

(2) Potential impacts to arroyo toad habitat from grazing activities will be addressed through implementation of the Grazing Management Plan, which includes the management of grazing activities and restoration of upland habitat with native grasses and coastal sage scrub;

(3) Implementation of the Invasive Species Control Plan on Rancho Mission Viejo will result in removal of nonnative plant species that degrade aquatic habitats and removal of aquatic predators of the arroyo toad;

(4) Through Water Quality Management Plans, flow duration (which influences channel morphology) and water quality will be maintained such that hydrologic conditions of concern such as erosion or sedimentation or pollutants of concern will be addressed; and

(5) A detailed monitoring program for the arroyo toad that includes monitoring conducted both at a species-specific level and also at a habitat-landscape level will be developed in coordination with the Service (Service 2007, pp. 62–64).

In summary, we are considering exclusion of 4,407 ac (1,784 ha) of arroyo toad habitat on permittee-owned or controlled lands in Subunit 10a and Subunit 11a that meets the definition of critical habitat for arroyo toad within the Southern Orange HCP under section 4(b)(2) of the Act. Although not all lands proposed as critical habitat that are targeted for preservation and management within the Southern Orange HCP have been officially dedicated to the preserve system, we believe that all conservation anticipated under the Southern Orange HCP will

occur. The 1994 final listing rule for arroyo toad identified the following primary threats to the arroyo toad: habitat degradation, predation, and small population size (59 FR 64866). The implementation of the Southern Orange HCP helps to address these threats through a regional planning effort, and outlines species-specific objectives and criteria for the conservation of the arroyo toad. We will analyze the benefits of inclusion and exclusion of this area from critical habitat under section 4(b)(2) of the Act. We encourage any public comment in relation to our consideration of the areas in Subunit 10a and Subunit 11a for inclusion or exclusion (see Public Comments section above).

Tribal Lands—Exclusions Under Section 4(b)(2) of the Act

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by tribes as unwarranted and an unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend. We will take into consideration our partnerships and existing conservation actions that tribes have or are currently implementing when conducting our exclusion analysis in the final revised critical habitat designation. We will also take into consideration conservation actions that are planned (such as a Memorandum of Understanding addressing arroyo toad conservation that is under development between the Service, Bureau of Indian Affairs, and affected tribes (as discussed in detail below)) as part of our on-going commitment to the government-to-government relationship with tribes. If the Secretary decides to exercise his discretion under section 4(b)(2) of the Act, we are considering lands covered by the tribes identified below for possible exclusion from final critical habitat.

Considered Exclusion for Several Tribal Lands

We are considering the exclusion of 4,046 ac (1,636 ha) of arroyo toad habitat proposed in Units 14, 16, 17, and 18 under section 4(b)(2) of the Act. These areas overlap with tribal lands that are owned or managed by the following tribes: (1) Rincon Band of Luiseño Mission Indians; (2) Pala Band of Luiseño Mission Indians; (3) Sycuan Band of the Kumeyaay Nation; (4) the Mesa Grande Band of Diegueno Mission Indians; and (5) the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, which jointly manage the Capitan Grande Band of Diegueno Mission Indians Reservation (Capitan Grande Reservation). Conservation afforded (or currently being developed) for the arroyo toad and its habitat on each of these tribe's lands is addressed in the following paragraphs.

The Rincon Band of Luiseño Mission Indians of the Rincon Reservation (Rincon Band of Luiseño Mission Indians) encompasses approximately 4,026 ac (1,625 ha) in northern San Diego County (Unit 14), which includes approximately 910 ac (368 ha) of arroyo toad habitat proposed as critical habitat. Additionally, a total of 245 ac (99 ha) of off-reservation lands (such as fee-owned) are owned or managed by the Tribe and contain arroyo toad habitat proposed as critical habitat. The Rincon Band of Luiseño Mission Indians developed a management plan for the arroyo toad in 2005 that provides guidelines for the protection and management of arroyo toad habitat within a 97-ac (39-ha) Habitat Management Plan area, which is within the area proposed as critical habitat. Specific tasks that will be implemented include: (1) Removal and monitoring of nonnative species within the plan area that pose a threat to the arroyo toad; (2) removal and monthly monitoring of trash and debris within the plan area; (3) maintenance and monitoring of oil and grease traps at the edge of facility parking lots; (4) assessment and monthly monitoring of vehicle, livestock, and other incursions (such as trespassing) into the plan area; (5) reporting of unauthorized activities within the plan area to the Service; (6) development of an arroyo toad education program; and (7) placement of signs at regular intervals along the plan area boundary.

The Pala Band of Luiseño Mission Indians of the Pala Reservation (Pala Band of Luiseño Mission Indians) encompasses approximately 12,429 ac (5,018 ha) in northern San Diego County (Unit 14), which includes approximately 1,662 ac (673 ha) of arroyo toad habitat proposed as critical habitat. Additionally, a total of 723 ac (293 ha) of off-reservation lands (such as fee-owned) are owned or managed by the Tribe and contain arroyo toad habitat proposed as critical habitat. The Reservation is located in the Middle San Luis Rey River basin approximately 6 miles (9.7 km) east of Interstate 15 on California Highway 76. The town of Pala is located along California Highway 76 in approximately the center of the Reservation. The Reservation was established for the Cupeno and Luiseño Indians, who considered themselves to be one ''people''—Pala. The Pala Band of Luiseño Mission Indians developed a Master Plan in 2005 that is currently being implemented to guide management and land use on the Reservation. Additionally, the Tribe has developed a management plan to address resource management and conservation of the arroyo toad, which outlines the following conservation goals to benefit the species: (1) Maintenance of designated open space and waterways for the arroyo toad along Pala Creek and the San Luis Rey River; (2) encouraging allottees (owners of individual allotments within reservation lands) to locate new construction away from inland allotment areas; (3) replacing the Lilac Extension vehicle crossing of the San Luis Rey River with a bridge; (4) reducing off-highway vehicle activity by establishing a designated area for these activities outside of arroyo toad habitat; (5) purchasing adjacent property known to be occupied by arroyo toads and placing occupied areas in reserve; (6) discouraging development of six allotments within the San Luis Rey River; and (7) removal of nonnative species within arroyo toad habitat corridors.

The Sycuan Band of the Kumeyaay Nation own reservation lands that encompass approximately 806 ac (325 ha) in southern San Diego County (Unit 18), which includes approximately 22 ac (9 ha) of arroyo toad habitat proposed as critical habitat. Additionally, a total of 369 ac (149 ha) of off-reservation lands (such as fee-owned) are owned or managed by the Tribe and contain arroyo toad habitat proposed as critical habitat. The Sycuan Band of the

Kumeyaay Nation has two land management plans in place relevant to their reservation that provide direct and indirect benefits to the arroyo toad and its habitat on the reservation: an Interim Land Use Master Plan that was adopted by the Sycuan General Council on January 10, 2002 (BRG 2002), and the Sycuan Tribal Environmental Plan that was approved by the Tribal Council in June 2003 (Sycuan 2003). The Land Use Master Plan provides recommended land use planning for the reservation and additional surrounding properties that are to be brought into Trust, and is based on preservation of sensitive environmental and tribal resources (BRG 2002, p. 1). The Sycuan Tribal Environmental Plan includes policies, procedures, and guidance that are in compliance with the Tribal Environmental Policy Act (Sycuan 2003, p. 1). The Sycuan Tribal Environmental Plan outlines procedures for environmental planning, project implementation, and operations that minimize adverse considerations where potential negative impacts to human health and the environment could occur. Additionally, the Sycuan Tribal Environmental Plan promotes environmental protection through responsible management practices that will benefit conservation of threatened and endangered species, including the arroyo toad and its habitat. Conservation measures are organized into the following three categories that are outlined in more detail within the ''Sycuan Conservation Strategy and Conservation Measures Plan'' (Conservation Plan) portion of the Sycuan Tribal Environmental Plan: (1) Conservation area site selection, design, and management; (2) land cover type conservation measures; and (3) species-specific conservation measures (which protect and restore populations and habitat of each covered species) (Sycuan 2003, p. 5). The overall Conservation Plan includes the following types of conservation measures for arroyo toad and other covered species: (1) Protection of existing habitat for compliance and species recovery; (2) enhancement of existing habitat; (3) restoration to create new habitat; (4) management of habitat to maintain and preserve ecological functions; avoidance and minimization of direct impacts on individuals and habitat of covered species; (5) population enhancement measures that directly or indirectly increase abundance of covered species; and (6) research necessary to improve conservation measure effectiveness (Sycuan 2003, pp. 5–6).

The Mesa Grande Reservation, which is owned and managed by the Mesa Grande Band of Diegueno Mission Indians, is situated in the hills above Sutherland Reservoir near the mountain community of Santa Ysabel, which is approximately 35 miles northeast of San Diego, San Diego County. The Reservation encompasses approximately 1,818 ac (734 ha) of land in Unit 16, which includes approximately 23 ac (9 ha) of arroyo toad habitat proposed as critical habitat. Although an arroyo toad management plan currently does not exist for the Mesa Grande Reservation, the Service, Bureau of Indian Affairs, and Tribe are currently coordinating to discuss management of the arroyo toad and its habitat on the Reservation.

The Capitan Grande Reservation lands fall within the Capitan Grande Canyon where the San Diego River once ran, which is approximately 35 miles (56 km) east of San Diego, San Diego County. The Reservation encompasses approximately 15,619 ac (6,306 ha) of land in Unit 17, which includes approximately 92 ac (37 ha) of arroyo toad habitat proposed as critical habitat. Following an 1875 Presidential Executive Order, a number of small reservations (including the Capitan Grande Reservation) was formed. It was from this reservation that the following two tribes were formed: Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation. Both the Barona Group of Capitan Grande Band of Mission Indians and the Viejas Group of Capitan Grande Band of Mission Indians jointly manage the Capitan Grande Reservation. Although an arroyo toad management plan currently does not exist for the Capitan Grande Reservation, the Service, Bureau of Indian Affairs, and both Tribes are currently coordinating to discuss management of the arroyo toad and its habitat on the Reservation.

In summary, we are considering exclusion of the following lands under section 4(b)(2) of the Act: 1,155 ac (467 ha) in Unit 14 within the Rincon Band of Luiseño Mission Indians Reservation and other associated tribal lands owned/managed by the Rincon Band of Luiseño Mission Indians; 2,385 ac (963 ha) in Unit 14 within the Pala Band of Luiseño Mission Indians Reservation and other associated tribal lands owned/managed by the Pala Band of Luiseño Mission Indians; 391 ac (158 ha) in Unit 18 within the Sycuan Band of the Kumeyaay Nation's Reservation and other associated tribal lands owned/managed by the Sycuan Band of the Kumeyaay Nation; 92 ac (37 ha) in Unit 17 within the Capitan Grande Reservation; and 23 ac (9 ha) in Unit 16 within the Mesa Grande Reservation. We are seeking public comment on whether the conservation needs of the arroyo toad can be achieved by limiting the designation to non-Tribal lands and the appropriateness of the inclusion or exclusion of these lands from the final revised critical habitat designation (see Public Comments section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will be obtaining the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed revised designation of critical habitat.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to the addresses listed in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) determines whether this rule is significant under Executive Order (E.O.) 12866. OMB bases its determination upon the following four criteria:

(1) 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.

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

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

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

An analysis of the economic impacts of the 2004 proposed critical habitat designation was made available to the public on February 14, 2005 (70 FR 7459), and finalized in the final rule to designate critical habitat published in the **Federal Register** on April 13, 2005 (70 FR 19562). In our economic analysis of that designation (70 FR 19562, p. 19613), we evaluated small business entities in three categories: Land development, fruit and nut farms, and cattle ranching. On the basis of our analysis we determined that the designation of critical habitat for the arroyo toad would result in: (1) An annual impact of less than one percent (17 projects and therefore businesses, assuming one project per business) of land development small businesses and that those businesses could realize an impact of approximately 20 percent of total annual sales; (2) an annual impact to less than one percent (one farm) of small fruit and nut farms and that that farm would realize an impact of less than three percent of total annual sales; (3) an annual impact of less than one percent of cattle ranches (one ranch) and that the ranch would realize an impact of less than approximately $100,000 of total annual sales; (4) an annual impact of less than one percent of small viticulture firms (one firm) and that the firm would realize an impact of less than approximately five percent of total annual sales; and (5) an annual impact of less than one percent of small governments as a percent of the county total and small governments would realize an impact of less than one percent of annual government budget. Based on these data, the impacts on small business, small governments, and small nonprofits were expected to be negligible (Economic & Planning, Inc. 2005, pp. A–5—A–18). However, the economic analysis prepared for the 2005 critical habitat designation does not accurately reflect the full range of potential economic impacts that may result from this proposed revision to arroyo toad critical habitat.

We will prepare a new economic analysis for this proposed revised critical habitat designation for the arroyo toad. At this time, we lack current economic information necessary to provide an updated factual basis for the required RFA finding with regard to this proposed revision to critical habitat. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. The draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce its availability in the **Federal Register** and reopen the public comment period for the proposed revised designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, we make the following findings:

1. This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

2. Based in part on an analysis conducted for the previous designation of critical habitat and extrapolated to

this designation, we do not expect this rule to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, as we conduct our economic analysis for the revised rule, we will further evaluate this issue and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating revised critical habitat for the arroyo toad in a takings implications assessment. The takings implications assessment concludes that this designation of revised critical habitat for the arroyo toad does not pose significant takings implications for lands within or affected by the revised designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed revised critical habitat designation with appropriate State resource agencies in California. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), it has been determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed to revise critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the arroyo toad.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the Circuit Court of Appeals of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the Circuit Court of Appeals of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

1. Be logically organized;
2. Use the active voice to address readers directly;
3. Use clear language rather than jargon;
4. Be divided into short sections and sentences; and
5. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We are currently coordinating with affected Tribes regarding this proposed revised critical habitat designation, and have included Tribal lands in this revised proposal. We are requesting public comment on the appropriateness of including or excluding these lands in the final revised critical habitat rule. We will continue to coordinate with the Tribal governments during the designation process.

Energy Supply, Distribution, or Use—Executive Order 13211

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on an analysis conducted for the previous designation of critical habitat and extrapolated to this designation, along with a further analysis of the additional areas included in this revision, we have determined that this proposed rule to revise critical habitat for the arroyo toad is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further

evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rulemaking is available on *http://www.regulations.gov* and upon request from the Field Supervisor, Ventura Fish and Wildlife Office, or the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this notice are staff from the Ventura Fish and Wildlife Office and the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Toad, arroyo (= arroyo southwestern)'' under ''Amphibians'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Toad, arroyo (= arroyo southwestern.	*Anaxyrus californicus*	U.S.A. (CA), Mexico ..	Entire	E	568	17.95(d)	NA
*	*	*	*	*	*		*

3. In § 17.95(d), revise the entry for ''Arroyo Toad (*Bufo californicus*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Arroyo Toad (*Anaxyrus californicus*)

(1) Critical habitat units are depicted for Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements for the arroyo toad consist of four components:

(i) Rivers or streams with hydrologic regimes that supply water to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads. Breeding pools must persist a minimum of 2 months for the completion of larval development. However, due to the dynamic nature of southern California riparian systems and flood regimes, the location of suitable breeding pools may vary from year to year. Specifically, the conditions necessary to allow for successful reproduction of arroyo toads are:

(A) Breeding pools with areas less than 12 in (30 cm) deep;

(B) Areas of flowing water with current velocities less than 1.3 ft per second (40 cm per second); and

(C) Surface water that lasts for a minimum of 2 months during the breeding season (*i.e.,* a sufficient wet period in the spring months to allow arroyo toad larvae to hatch, mature, and metamorphose).

(ii) Riparian and adjacent upland habitats, particularly low-gradient (typically less than 6 percent) stream segments and alluvial streamside terraces with sandy or fine gravel substrates that support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; and adjacent valley bottomlands that include areas of loose soil where toads can burrow underground, to provide foraging and living areas for juvenile and adult arroyo toads.

(iii) A natural flooding regime, or one sufficiently corresponding to natural, characterized by intermittent or near perennial flow that contributes to the persistence of shallow pools into at least mid-summer, and that maintains areas of open, sparsely vegetated, sandy stream channels and terraces by periodically scouring riparian vegetation; and also that modifies stream channels and terraces and redistributes sand and sediment, such that breeding pools and terrace habitats with scattered vegetation are maintained.

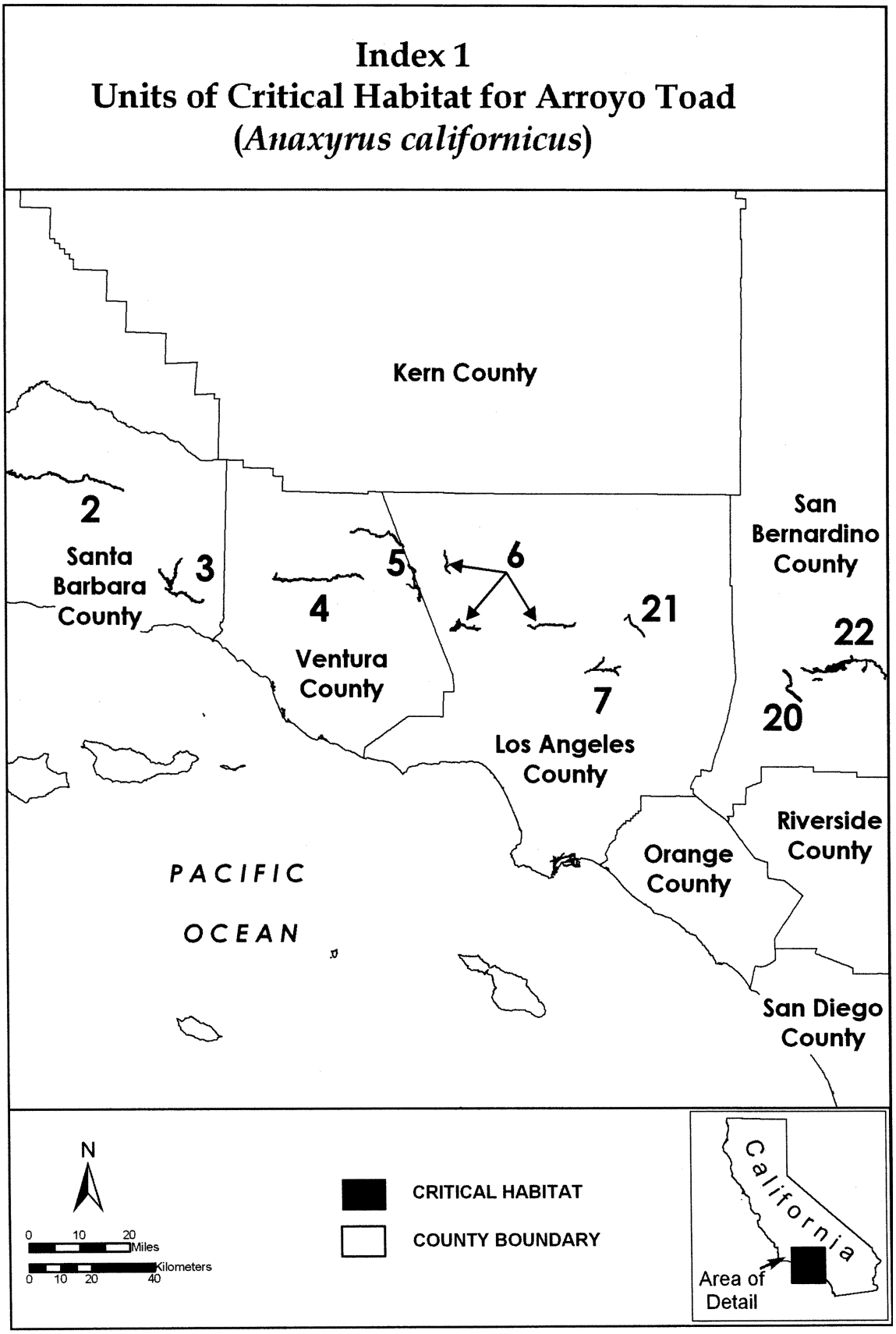
(iv) Stream channels and adjacent upland habitats that allow for movement to breeding pools, foraging areas, overwintering sites, upstream and downstream dispersal, and recolonization of areas that contain suitable habitat.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

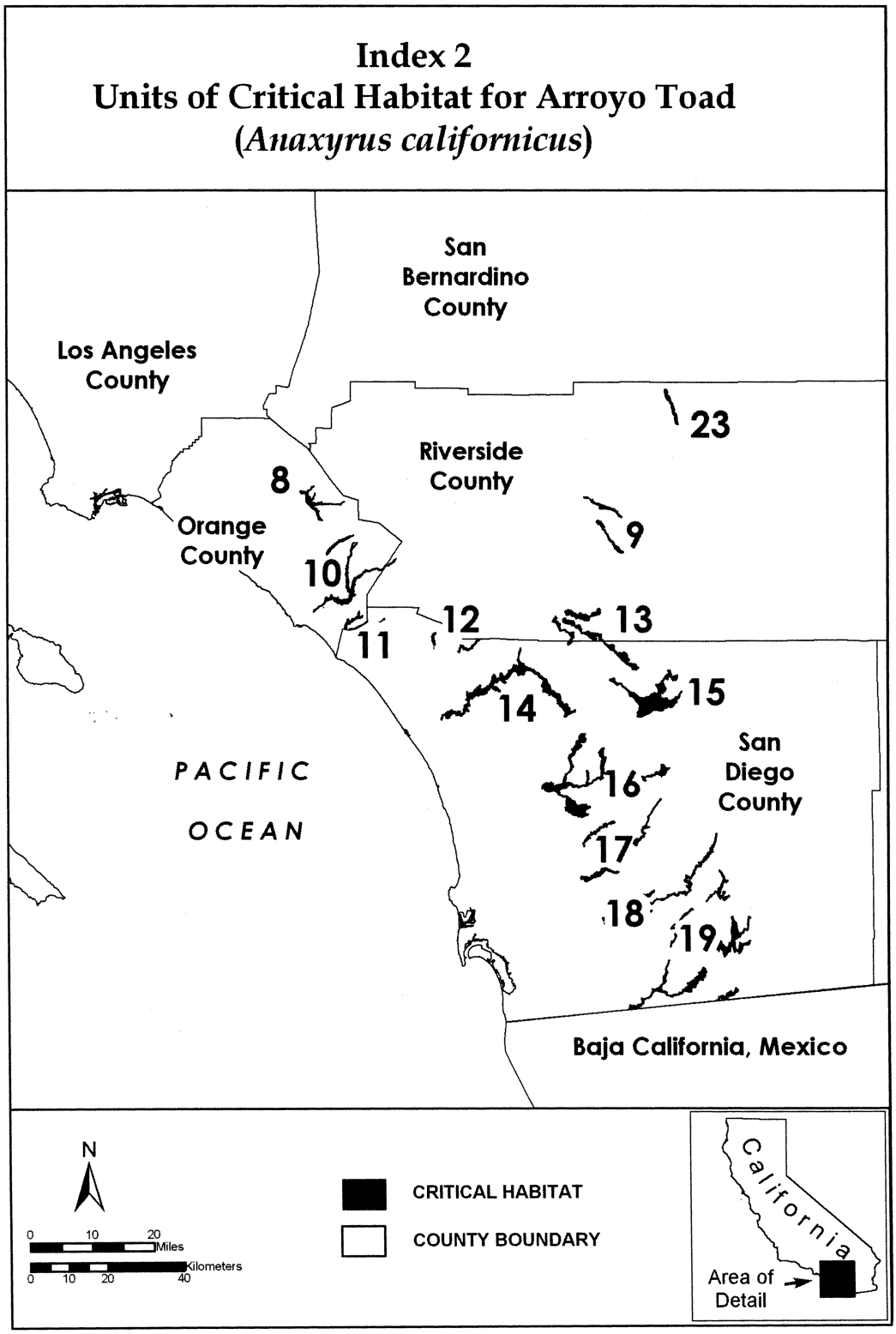
(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 7.5' quadrangles using USDA National Agricultural Imagery Program (NAIP) county-wide MrSID compressed mosaics of 1 meter resolution and natural color aerial photography from summer 2005. Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 10, North American Datum (NAD) 1983 coordinates.

(5) Note: Index map 1 of Units of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*) follows:

BILLING CODE 4310–55–P


Index 1
Units of Critical Habitat for Arroyo Toad
(Anaxyrus californicus)
Kern County
2
Santa Barbara County
3
4
Ventura County
5
6
21
San Bernardino County
22
20
7
Los Angeles County
Riverside County
Orange County
PACIFIC
OCEAN
San Diego County
N
0 10 20 Miles
0 10 20 40 Kilometers
CRITICAL HABITAT
COUNTY BOUNDARY
California
Area of Detail

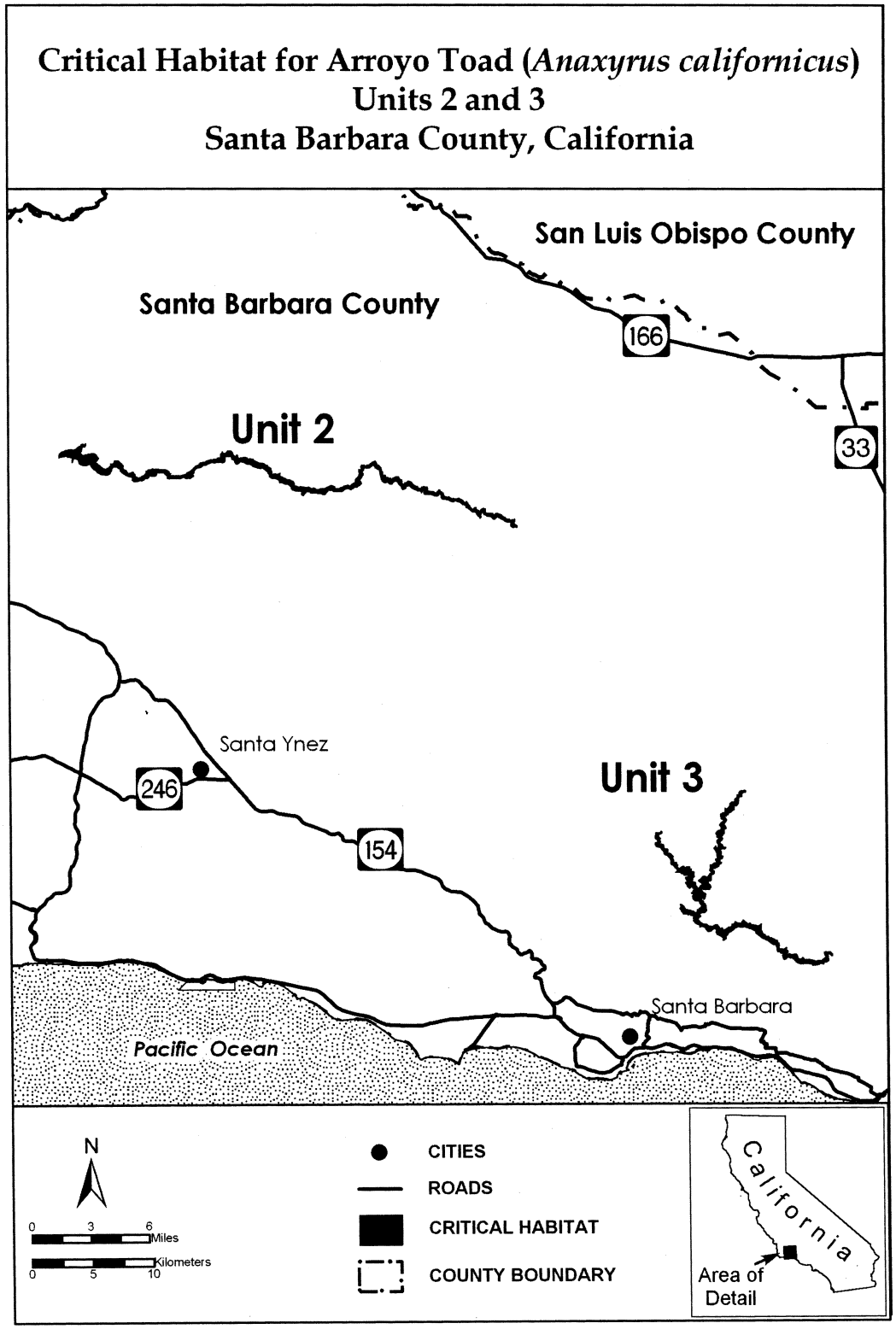
(6) Note: Index map 2 of Units of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*) follows:



(7) Units 2 and 3, Santa Barbara County, California.

(i) [Reserved for textual description of units.]

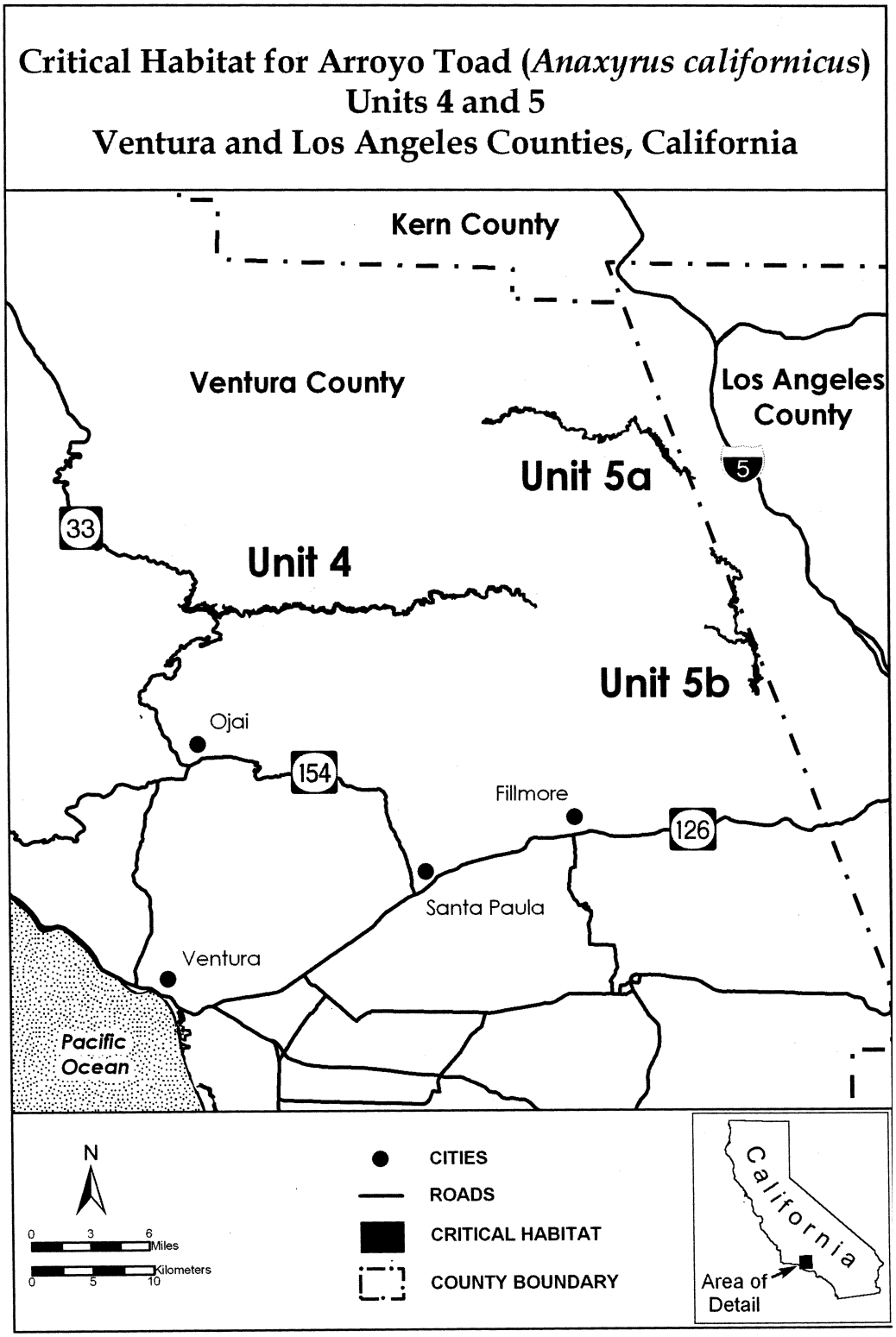
(ii) Note: Map of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*), Units 2 and 3, Santa Barbara County, California, follows:



(8) Units 4 and 5, Ventura and Los Angeles Counties, California.

(i) [Reserved for textual description of units.]

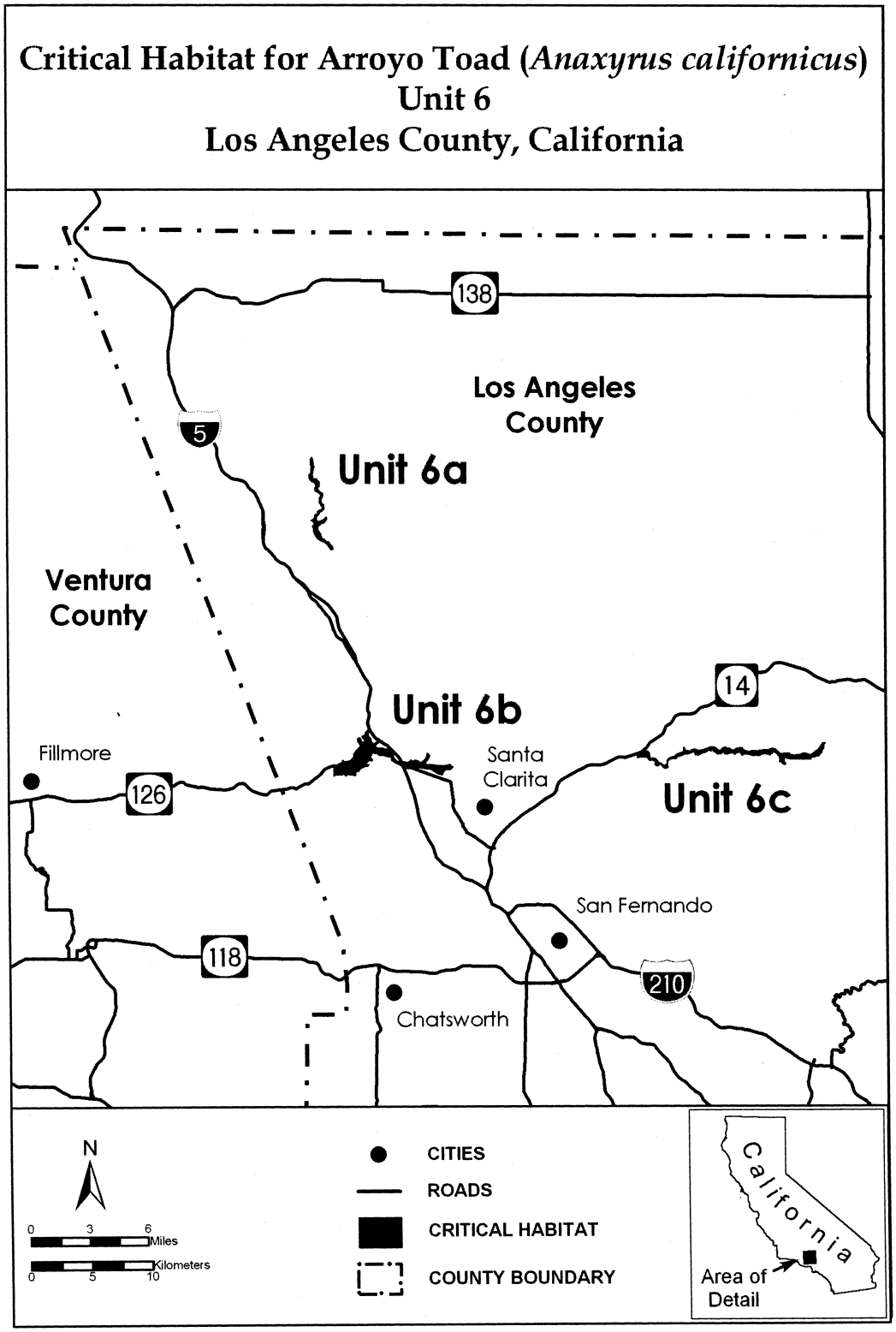
(ii) Note: Map of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*), Units 4 and 5, Ventura and Los Angeles Counties, California, follows:



(9) Unit 6, Los Angeles County, California.

(i) [Reserved for textual description of units.]

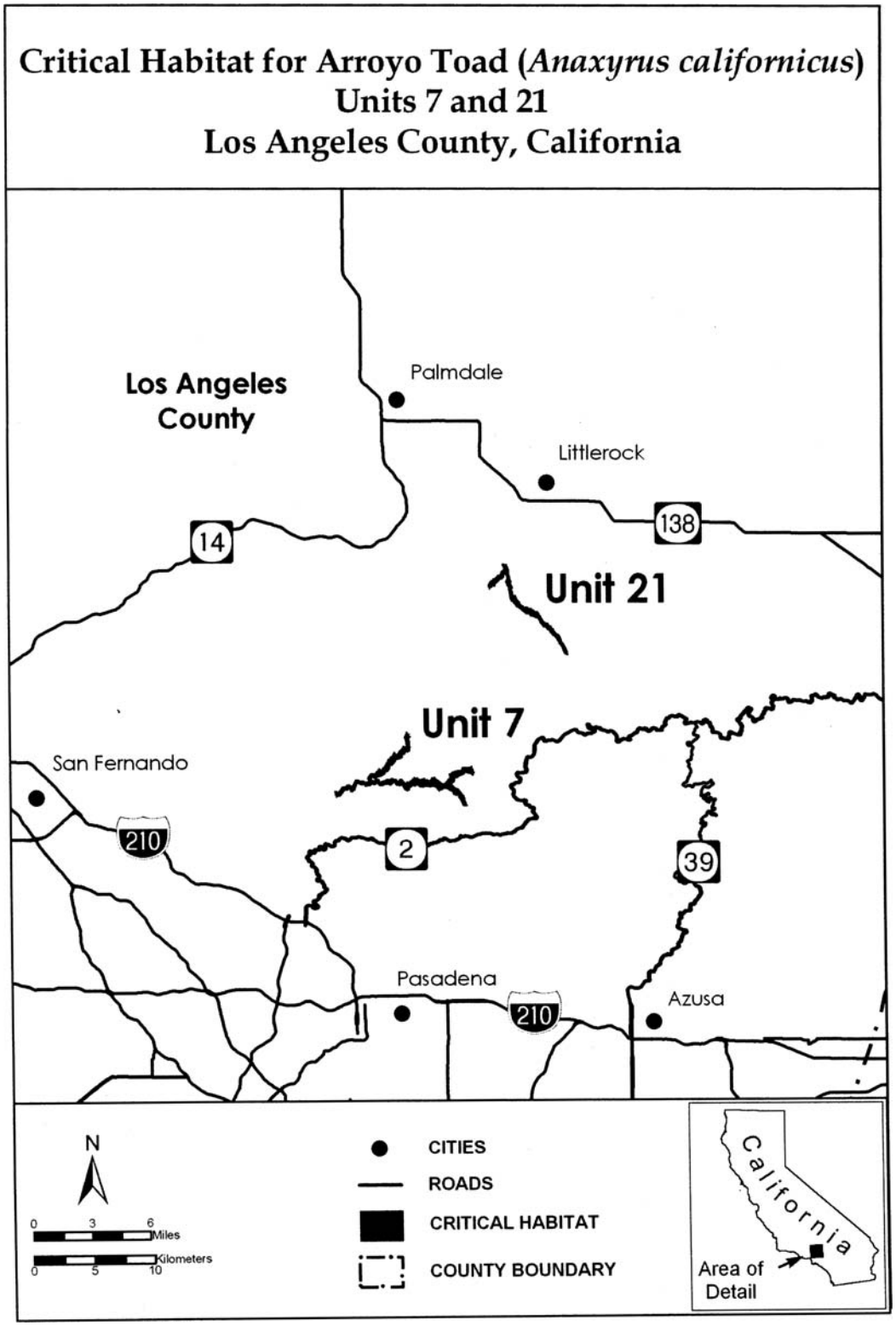
(ii) Note: Map of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*), Unit 6, Los Angeles County, California, follows:



(10) Units 7 and 21, Los Angeles County, California.

(i) [Reserved for textual description of units.]

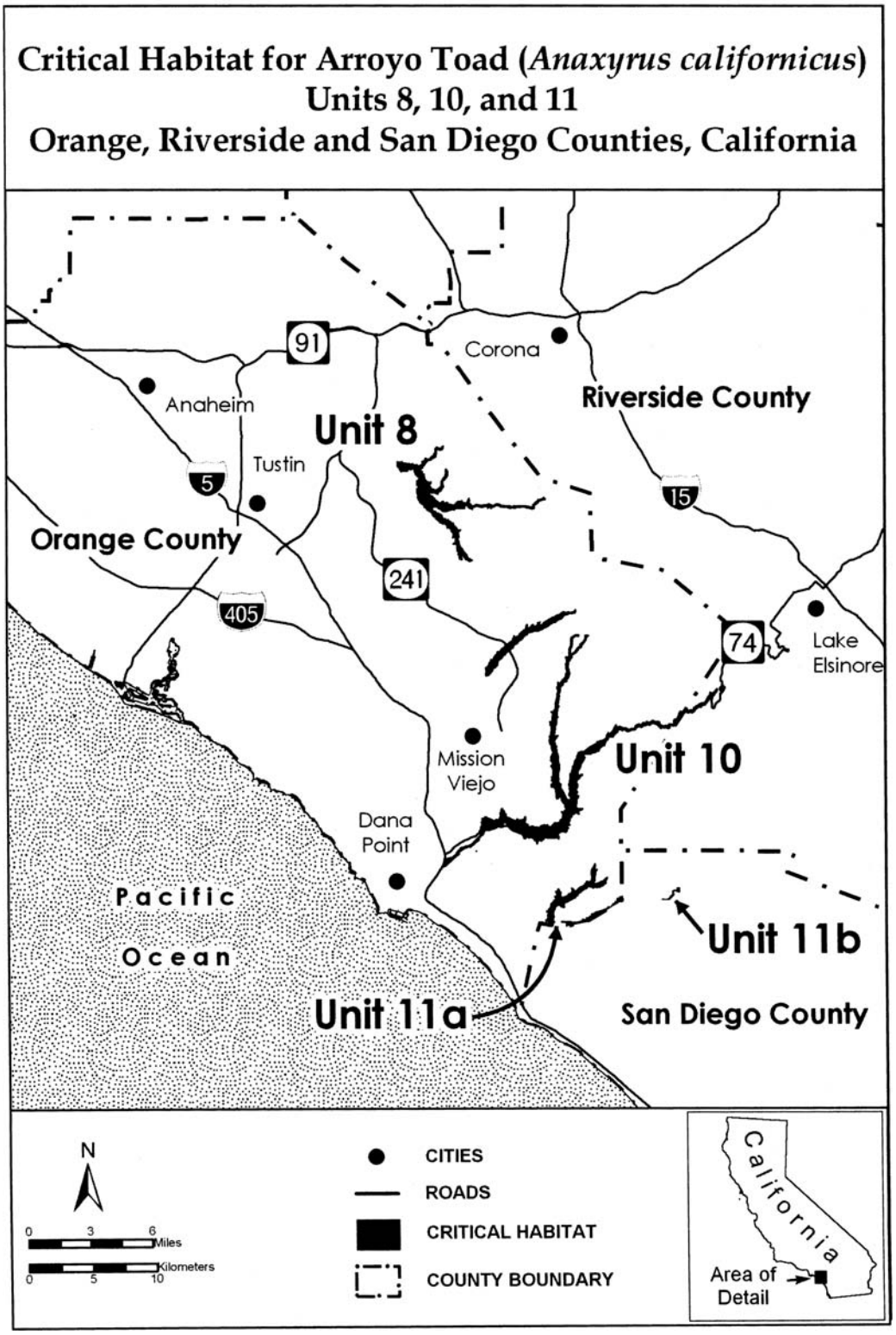
(ii) Note: Map of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*), Units 7 and 21, Los Angeles County, California, follows:



(11) Units 8, 10, and 11, Orange, Riverside, and San Diego Counties, California.

(i) [Reserved for textual description of units.]

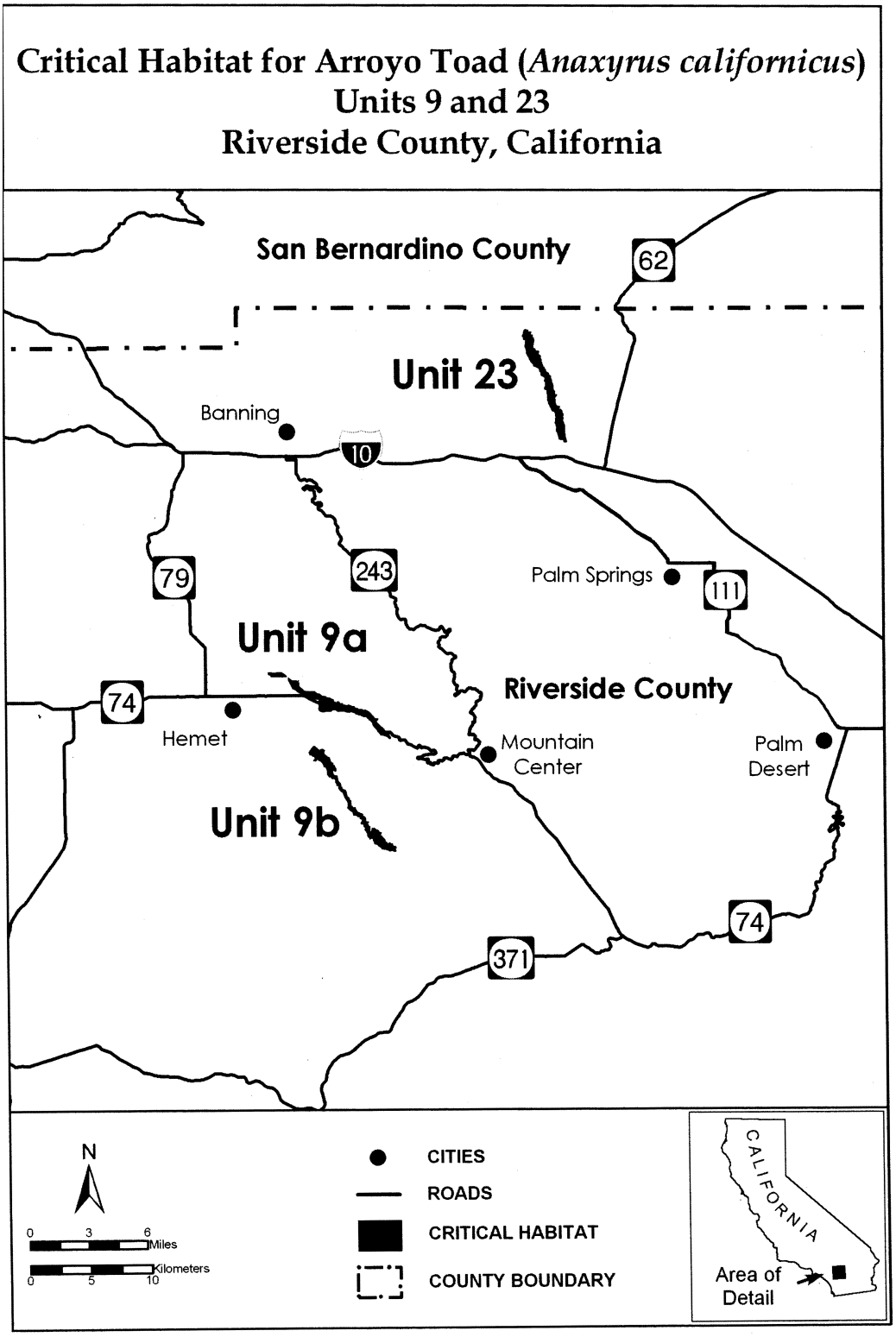
(ii) Note: Map of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*), Units 8, 10, and 11, Orange, Riverside, and San Diego Counties, California, follows:



(12) Units 9 and 23, Riverside County, California.

(i) [Reserved for textual description of units.]

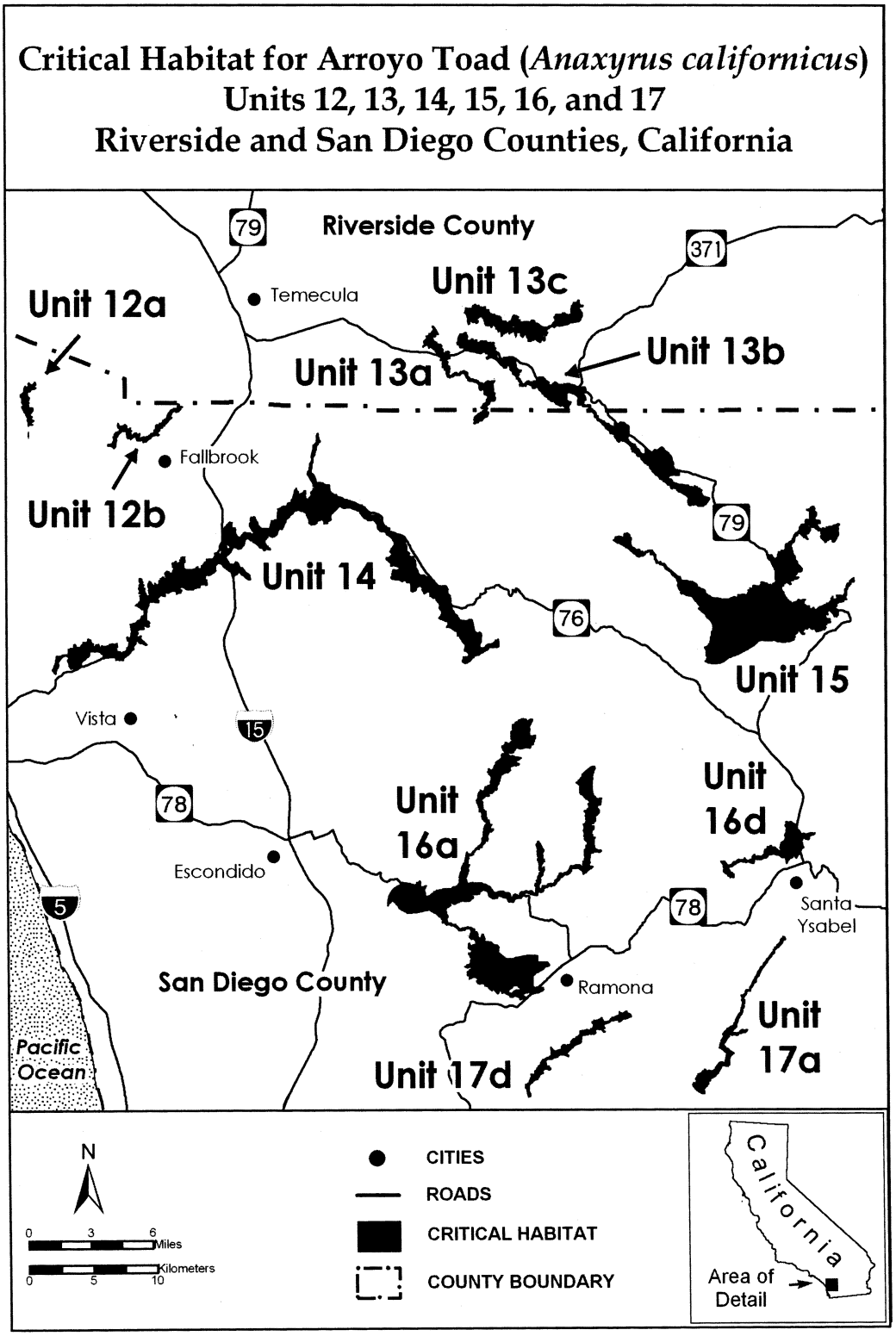
(ii) Note: Map of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*), Units 9 and 23, Riverside County, California, follows:



(13) Units 12, 13, 14, 15, 16, and 17, Riverside and San Diego Counties, California.

(i) [Reserved for textual description of units.]

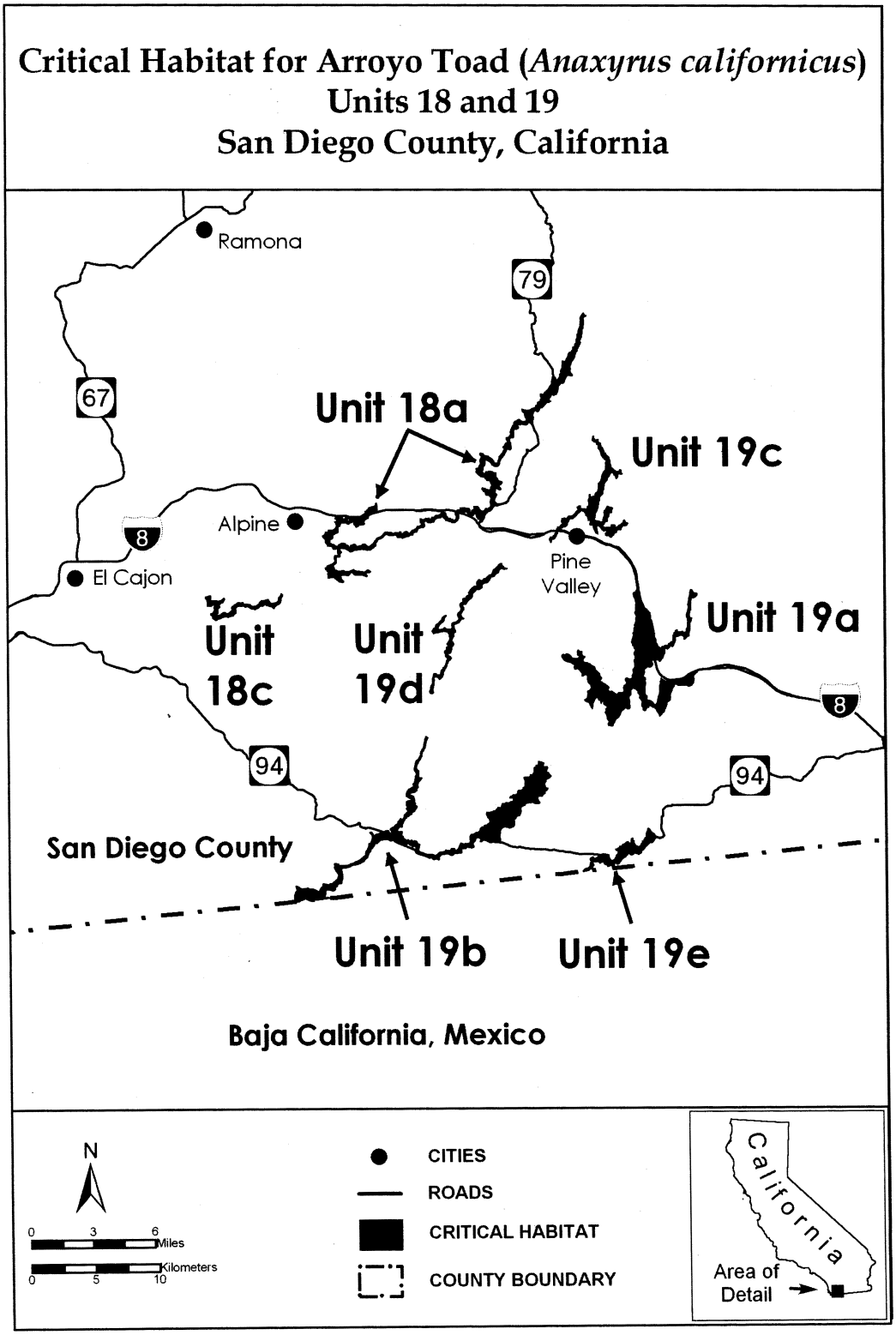
(ii) Note: Map of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*), Units 12, 13, 14, 15, 16, and 17, Riverside and San Diego Counties, California, follows:



(14) Units 18 and 19, San Diego County, California.

(i) [Reserved for textual description of units.]

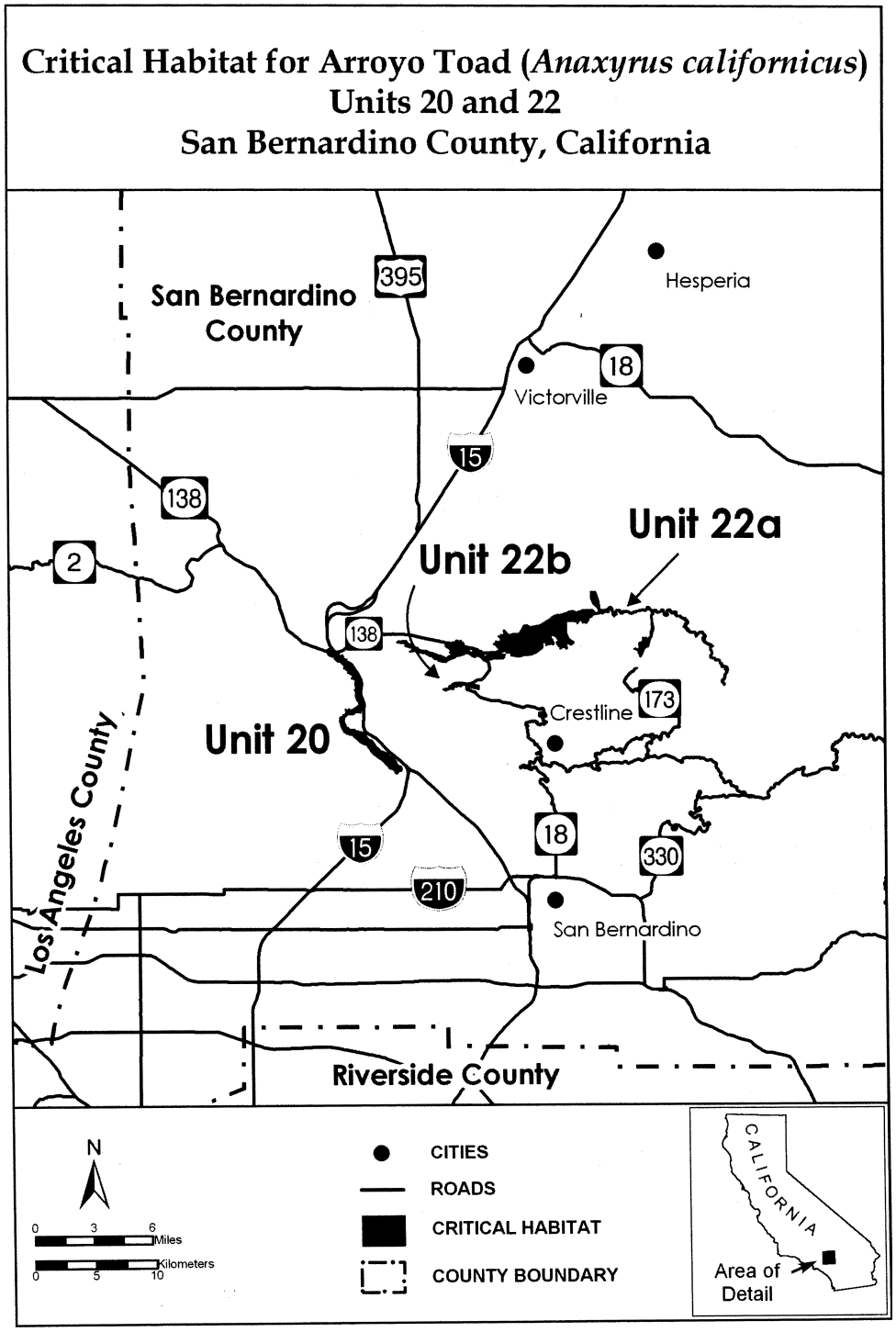
(ii) Note: Map of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*), Units 18 and 19, San Diego County, California, follows:



(15) Units 20 and 22, San Diego County, California.

(i) [Reserved for textual description of units.]

(ii) Note: Map of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*), Units 20 and 22, San Diego County, California, follows:



* * * * *

Dated: September 28, 2009.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–24076 Filed 10–9–09; 8:45 am]

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