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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1021; Directorate Identifier 2009–NM–054–AD; Amendment 39–16217; AD 2009–06–05 R1]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Airplanes

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

ACTION: Final rule.

SUMMARY: We are revising an existing 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:

[S]everal cases of wing anti-ice piccolo duct failure reported on CL–600–2B19 (CRJ) aircraft. Although there have been no failures reported on Challenger aircraft, similar ducts are installed on the * * * [other] Challenger models.

* * * * *

Cracking of the wing anti-ice piccolo ducts could result in air leakage, with an adverse effect on the anti-ice air distribution pattern and a possible unannunciated insufficient heat condition. * * *

The unsafe condition is anti-ice system air leakage with a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability without annunciation to the flightcrew, and consequent reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 1, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 1, 2010.

On April 28, 2009 (74 FR 12225, March 24, 2009), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD.

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: Dan Parrillo, Aerospace Engineer, Airframe and Mechanical Systems, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to revise an existing AD that applies to certain Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) airplanes. That NPRM was published in the **Federal Register** on November 5, 2009 (74 FR 57273), and proposed to revise AD 2009–06–05, Amendment 39–15841 (74 FR 12225, March 24, 2009). That AD required actions intended to address an unsafe condition for the products listed above.

Actions Since Issuance of AD 2009–06–05

Since we issued AD 2009–06–05, Bombardier requested that we change paragraphs (f)(2) and (f)(4) of AD 2009–06–05 to allow compliance within 2,000 flight hours or 60 months after the effective date of the AD, whichever occurs first, instead of prior to the accumulation of 2,000 total flight hours or within 60 months after the effective date of the AD, whichever occurs first. We agreed and proposed to revise paragraphs (f)(2) and (f)(4) of AD 2009–06–05 accordingly in the NPRM. The compliance time matches the intent of Transport Canada Civil Aviation (TCCA) AD CF–2008–18, dated May 9, 2008, and represents the maximum interval of time allowable for the affected airplanes to operate safely.

Bombardier also requested that we change Table 2 of AD 2009–06–05 to replace references to two temporary revisions (TRs): Canadair TR 600/23, dated August 16, 2006, to the Canadair Challenger Model CL–600–1A11 Airplane Flight Manual (AFM); and Canadair TR 600–1/19, dated August 16, 2006, to the Canadair Challenger Model CL–600–1A11 AFM (Winglets). These two TRs are approved by TCCA, and should be replaced in AD 2009–06–05 with references to the following FAA-approved TRs: Canadair TR 600/22, dated August 16, 2006, to the Canadair Challenger Model CL–600–1A11 AFM; and Canadair TR 600–1/17, dated August 16, 2006, to the Canadair Challenger Model CL–600–1A11 AFM (Winglets). We agreed and proposed to revise Table 2 of AD 2009–06–05 accordingly in the NPRM.

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.

Explanation of Change Made to the Manufacturer Name

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Explanation of Change to the Alternative Methods of Compliance

We have revised the "Alternative Methods of Compliance (AMOCs)" paragraph (g)(1) in this AD to specify the current contact information.

Conclusion

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

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.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect about 108 products of U.S. registry.

The actions that are required by AD 2009–06–05 and retained in this AD take about 37 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the currently required actions is $339,660, or $3,145 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 removing Amendment 39–15841 (74 FR 12225, March 24, 2009) and adding the following new AD:

2009–06–05R1 Bombardier, Inc.: Amendment 39–16217. Docket No. FAA–2009–1021; Directorate Identifier 2009–NM–054–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 1, 2010.

Affected ADs

(b) This AD revises AD 2009–06–05, Amendment 39–15841.

Applicability

(c) This AD applies to the airplanes identified in Table 1, paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, certificated in any category.

TABLE 1—AIRPLANES AFFECTED BY THIS AD

Bombardier, Inc. model	Serial Nos.
(1) CL–600–1A11 (CL–600) airplanes	1004 through 1085 inclusive.
(2) CL–600–2A12 (CL–601) airplanes	3001 through 3066 inclusive.
(3) CL–600–2B16 (CL–601–3A & CL–601–3R) airplanes	5001 through 5194 inclusive.
(4) CL–600–2B16 (CL–604) airplanes	5301 through 5635 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

Reason

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

There have been several cases of wing anti-ice piccolo duct failure reported on CL–600–2B19 (CRJ) aircraft. Although there have been no failures reported on Challenger aircraft, similar ducts are installed on the * * * [other] Challenger models.

Upon investigation, it has been determined that ducts manufactured since June 2000, and installed since 1 August 2000, are susceptible to cracking due to the process used to drill the holes in the ducts. These ducts were installed on CL–600–2B16 aircraft, serial numbers 5469 through 5635 in production, but may also have been installed as replacements on CL–600–1A11, CL–600–2A12 and other CL–600–2B16 aircraft.

Cracking of the wing anti-ice piccolo ducts could result in air leakage, with an adverse effect on the anti-ice air distribution pattern and a possible unannunciated insufficient heat condition. As a result, the airplane flight manual (AFM) instructions have been revised

to provide proper annunciation of an insufficient heat condition, utilizing existing messages and indications, with instructions, to the pilot, to leave icing conditions if sufficient heat cannot be achieved or maintained.

This directive mandates the amendment of the AFM procedures, in addition to checking the part numbers and serial numbers of the installed wing anti-ice piccolo ducts and replacing them as necessary.

The unsafe condition is anti-ice system air leakage with a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability without annunciation to the flightcrew, and consequent reduced controllability of the airplane.

Actions and Compliance

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

(1) For airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD: Within 30 days after the effective date of this AD, revise the Normal and Abnormal Procedures sections of the applicable Canadair Challenger Airplane Flight Manual (AFM) by inserting a copy of the applicable temporary revision (TR) listed in Table 2 of this AD. When the information in the applicable TR is included in the general revisions of the AFM, the general revisions may be inserted in the AFM, as applicable, and the TR may be removed.

TABLE 2—TEMPORARY REVISIONS

Canadair TR—	Dated—	To the—
(i) 600/22	August 16, 2006	Canadair Challenger Model CL–600–1A11 AFM.
(ii) 600–1/17	August 16, 2006	Canadair Challenger Model CL–600–1A11 AFM (Winglets).
(iii) 601/14	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, Product Support Publication (PSP) 601–1B–1.
(iv) 601/15	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1A–1.
(v) 601/19	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1B.
(vi) 601/26	August 16, 2006	Canadair Challenger Model CL–600–2B16 AFM, PSP 601A–1.
(vii) 601/27	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM.
(viii) 601/27	August 16, 2006	Canadair Challenger Model CL–600–2B16 AFM, PSP 601A–1–1.
(ix) 604/20	April 17, 2006	Canadair Challenger Model CL–604 AFM, PSP 604–1.

(2) For airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, and for Model CL–600–2B16 (CL–604) airplanes, serial numbers 5301 through 5468 inclusive: Within 2,000 flight hours or 60 months after the effective date of this AD, whichever occurs first, review the airplane maintenance records to determine if any anti-ice piccolo ducts or complete leading edge sections were replaced on or after August 1, 2000.

(3) For airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, and for Model CL–600–2B16 (CL–604) airplanes, serial numbers 5301 through 5468 inclusive: If, during the accomplishment of the action required by paragraph (f)(2) of this AD, it is determined that any anti-ice piccolo duct has been replaced on or after August 1, 2000, before further flight, inspect to determine if any affected serial number identified in paragraph 2.C. of the applicable service bulletin listed in Table 3 of this AD is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the duct can be conclusively determined from that review. If any affected serial number is installed, before further flight, replace the piccolo duct with a serviceable piccolo duct that does not have a serial number identified in paragraph 2.C. of the applicable service bulletin listed in Table 3 of this AD. Do all actions in accordance with the Accomplishment Instructions of the applicable service bulletin listed in Table 3 of this AD.

TABLE 3—SERVICE BULLETINS

Model—	Bombardier Service Bulletin—	Revision—	Dated—
(i) CL–600–1A11 (CL–600) airplanes	600–0734	Original	November 30, 2006.
(ii) CL–600–2A12 (CL–601) airplanes	601–0585	Original	November 30, 2006.
(iii) CL–600–2B16 (CL–601–3A, CL–601–3R) airplanes	601–0585	Original	November 30, 2006.
(iv) CL–600–2B16 (CL–604) airplanes	604–30–003	01	January 21, 2008.

(4) For Model CL–600–2B16 (CL–604) airplanes, serial numbers 5469 through 5635 inclusive: Within 2,000 flight hours or 60 months after the effective date of this AD, whichever occurs first, inspect the anti-ice piccolo ducts to determine if any affected serial number identified in paragraph 2.C. of Bombardier Service Bulletin 604–30–003, Revision 01, dated January 21, 2008, is installed. If any affected serial number is installed, before further flight, replace the piccolo duct with a serviceable piccolo duct that does not have a serial number identified in paragraph 2.C. of Bombardier Service Bulletin 604–30–003, Revision 01, dated January 21, 2008. Do all actions in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 604–30–003, Revision 01, dated January 21, 2008.

(5) As of April 28, 2009 (the effective date of AD 2009–06–05), no person may install on any airplane an anti-ice piccolo duct with a serial number identified in paragraph 2.C. of the applicable service bulletin identified in Table 3 of this AD.

(6) Actions done before April 28, 2009, in accordance with Bombardier Service Bulletin 604–30–003, dated November 30, 2006, are acceptable for compliance with the corresponding actions in this AD.

FAA AD Differences

Note 1: 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, New York Aircraft Certification Office, ANE–170, 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: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate 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 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2008–18, dated May 9, 2008, and the service information identified in Table 2 and Table 3 of this AD, for related information.

Material Incorporated by Reference

(i) You must use the service information specified in Table 4 and Table 5 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 4—SERVICE BULLETINS INCORPORATED BY REFERENCE

Bombardier Service Bulletin—	Revision—	Dated—
600–0734	Original	November 30, 2006.
601–0585	Original	November 30, 2006.
604–30–003	01	January 21, 2008.

TABLE 5—TEMPORARY REVISIONS INCORPORATED BY REFERENCE

Canadair TR—	Dated—	To the—
600/22	August 16, 2006	Canadair Challenger Model CL–600–1A11 Airplane Flight Manual (AFM).
600–1/17	August 16, 2006	Canadair Challenger Model CL–600–1A11 AFM (Winglets).
601/14	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1B–1.
601/15	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1A–1.
601/19	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1B.
601/26	August 16, 2006	Canadair Challenger Model CL–600–2B16 AFM, PSP 601A–1.
601/27	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM.
601/27	August 16, 2006	Canadair Challenger Model CL–600–2B16 AFM, PSP 601A–1–1.
604/20	April 17, 2006	Canadair Challenger Model CL–604 AFM, PSP 604–1.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 6 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 6—NEW MATERIAL INCORPORATED BY REFERENCE

Canadair TR—	Dated—	To the—
600/22	August 16, 2006	Canadair Challenger Model CL–600–1A11 AFM.
600–1/17	August 16, 2006	Canadair Challenger Model CL–600–1A11 AFM (Winglets).

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 7 and Table 8 of this AD on April 28, 2009 (74 FR 12225, March 24, 2009).

TABLE 7—SERVICE BULLETINS PREVIOUSLY INCORPORATED BY REFERENCE

Bombardier Service Bulletin—	Revision—	Dated—
600—0734	Original	November 30, 2006.
601–0585	Original	November 30, 2006.
604–30–003	01	January 21, 2008.

TABLE 8—TEMPORARY REVISIONS PREVIOUSLY INCORPORATED BY REFERENCE

Canadair TR—	Dated—	To the—
601/14	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1B–1.
601/15	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1A–1.
601/19	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1B.
601/26	August 16, 2006	Canadair Challenger Model CL–600–2B16 AFM, PSP 601A–1.
601/27	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM.
601/27	August 16, 2006	Canadair Challenger Model CL–600–2B16 AFM, PSP 601A–1–1.

TABLE 8—TEMPORARY REVISIONS PREVIOUSLY INCORPORATED BY REFERENCE—Continued

Canadair TR—	Dated—	To the—
604/20	April 17, 2006	Canadair Challenger Model CL–604 AFM, PSP 604–1.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com.*

(4) 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.

(5) 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 February 16, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3463 Filed 2–24–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0783; Directorate Identifier 2009–NM–081–AD; Amendment 39–16213; AD 2010–05–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Model MD–90–30 airplanes. This AD requires repetitive inspections for cracking of the overwing frames at stations 883, 902, 924, 943, and 962, left and right sides, and corrective actions if necessary. This AD results from reports of cracked overwing frames. We are issuing this AD to detect and correct such cracking, which could sever the frame, increase the loading of adjacent frames, and result in damage to adjacent structure and loss of overall structural integrity of the airplane.

DATES: This AD is effective April 1, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 1, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.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: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

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 all Model MD–90–30 airplanes. That NPRM was published in the **Federal Register** on September 4, 2009 (74 FR 45785). That NPRM proposed to require repetitive inspections for cracking of the overwing frames at stations 883, 902, 924, 943, and 962, left and right sides, and corrective actions if necessary.

Comments

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

Request To Revise Wording in the Summary Section and Unsafe Condition Paragraph of the NPRM

The Boeing Company requests that we revise the wording of the precipitating event in the Summary section and Unsafe Condition paragraph of the NPRM to clarify that the reported cracking was found on Model MD–80 airplanes, and that frames of the same design are installed on Model MD–90 airplanes. The commenter explains that the proposed revision will be in line with the first paragraph of the "Discussion" section of the NPRM. The commenter asserts that otherwise, the Summary section and paragraph (e) of the NPRM read that "Model MD–90 overwing frames have cracked," which is not the case.

We agree that clarification might be necessary. While the commenter's proposed revision is more precise with respect to the history of the service difficulties, the Summary section of ADs is designed to provide only a brief description of the action being proposed. Likewise, the Unsafe Condition paragraph in the regulatory text of an AD is meant to be only a brief statement. Detailed background information is provided in the Discussion section of a proposed AD. We addressed the issues raised by the commenter in the Discussion section of the NPRM. That section is not restated in this final rule. We have not changed the AD in this regard.

Request To Revise Wording in the Discussion Section of the NPRM

The Boeing Company requests that we revise the first sentence of the second paragraph of the "Discussion" section of the NPRM to read, "The cracked overwing frames on McDonnell Douglas Model MD–90–30 airplanes have the same design as those installed on Model MD–80 series airplanes." The commenter explains that the proposed revision sounds more logical than how it reads in the NPRM and that the issue is the Model MD–90 frames cracking, not the Model MD–80 frames.

We agree that clarification is needed. The proposed revision would indicate that we have reports of cracks on Model MD–90–30 airplanes, which is not the case. As stated in the NPRM, the reports

we received were of cracked frames on Model MD–80 airplanes. This AD is being issued because Model MD–90–30 airplanes have frames with the same design, and therefore, are also susceptible to the unsafe condition addressed by this AD. Regardless, the Discussion section of the NPRM is not restated in this final rule. No change to the AD is necessary in this regard.

Explanation of Name Change Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Explanation of Delegation Authorization Change Made to This AD

Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA), which replaces their previous designation as a Delegation Option Authorization (DOA) holder. We have revised paragraph (h)(3) of this AD to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Boeing Commercial Airplanes ODA.

Conclusion

We reviewed the relevant data, considered the comment 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.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD affects 16 airplanes of U.S. registry. We also estimate that it takes about 10 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $13,600, or $850 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

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:

2010–05–04 McDonnell Douglas Corporation: Amendment 39–16213. Docket No. FAA–2009–0783; Directorate Identifier 2009–NM–081–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 1, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Corporation Model MD–90–30 airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from reports of cracked overwing frames. We are issuing this AD to detect and correct such cracking, which could sever the frame, increase the loading of adjacent frames, and result in damage to adjacent structure and loss of overall structural integrity 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.

Inspections

(g) Before the accumulation of 20,000 total flight cycles, or within 60 months after the effective date of this AD, whichever occurs later: Do general visual and high frequency eddy current inspections for cracking of the overwing frames, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–53A031, dated April 10, 2009. Do the applicable corrective actions before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–53A031, dated April 10, 2009. Repeat the inspections thereafter at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin MD90–53A031, dated April 10, 2009.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles 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: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

(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 the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles 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

(i) You must use Boeing Alert Service Bulletin MD90–53A031, dated April 10, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(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, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.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 February 16, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3469 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0130; Directorate Identifier 2009–NM–087–AD; Amendment 39–16214; AD 2010–05–05]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (Operations) Limited Model ATP Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. 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:

A review of the results of the final fuselage fatigue test identified the need for additional and revised safety-related fatigue- and environmental inspections for the fuselage. These additional tasks were introduced by Service Bulletin (SB) ATP–51–002 * * *.

As it was determined that these inspections were necessary to maintain the structural integrity of the aeroplane, EASA AD 2006–0090 [which corresponds to FAA AD 2007–15–08] was issued * * *.

Since the original Issue of the SB, three revisions have been published. Revision 1 of the SB included only editorial changes. Revision 2 of the SB corrected the fuselage frame designations in Parts 50 and 50A and extended the allowable time before initial inspection. In addition, the repeat inspection interval in Part 43 of the SB was reduced. In the latest Revision 3 of the SB, the grace period for the initial inspection in Part 50 has been clarified.

* * * * *

The unsafe condition is fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane and consequent rapid decompression of the airplane. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective March 12, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 12, 2010.

On September 21, 2006 (71 FR 52418, September 6, 2006), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD.

We must receive comments on this AD by April 12, 2010.

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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

On July 15, 2007, we issued AD 2007–15–08, Amendment 39–15137 (72 FR 40230, July 24, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–15–08, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0074, dated March 31, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

A review of the results of the final fuselage fatigue test identified the need for additional and revised safety-related fatigue- and environmental inspections for the fuselage. These additional tasks were introduced by Service Bulletin (SB) ATP–51–002, which supplemented and in some cases revised those previously published in the Aircraft Maintenance Manual (AMM) Chapter 05–10–17 and the Maintenance Review Board Report (MRBR).

As it was determined that these inspections were necessary to maintain the structural integrity of the aeroplane, EASA AD 2006–0090 [which corresponds to FAA AD 2007–15–08] was issued to require the inspections and, depending on findings, corrective actions as defined in BAE Systems (Operations) Limited SB ATP–51–002 (the SB) at original issue.

Since the original Issue of the SB, three revisions have been published. Revision 1 of the SB included only editorial changes. Revision 2 of the SB corrected the fuselage frame designations in Parts 50 and 50A and extended the allowable time before initial

inspection. In addition, the repeat inspection interval in Part 43 of the SB was reduced. In the latest Revision 3 of the SB, the grace period for the initial inspection in Part 50 has been clarified.

Fatigue tasks in Parts 1 through 50 of the SB, i.e. those without an "A" suffix, have now been replicated in AMM Chapter 05–10–17 and MRBR Section 6. In addition, environmental tasks, those identified with an "A" suffix, have now been replicated in MRBR Section 6.

For the reasons described above, this AD retains the requirements of EASA AD 2006–0090, which is superseded, and requires the accomplishment of the inspections and, depending on findings, corrective actions as defined in BAE Systems (Operations) Limited SB ATP–51–002 at Revision 3.

The unsafe condition is fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane and consequent rapid decompression of the airplane. The corrective actions include repairing cracking and corrosion, and depending on findings, repairing or replacing damaged components. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE SYSTEMS (Operations) Limited has issued Service Bulletin ATP–51–002, Revision 3, dated April 3, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the 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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Change to Existing AD

This AD retains all requirements of AD 2007–15–08. Since AD 2007–15–08 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2007–15–08	Corresponding requirement in this AD
paragraph (f)	paragraph (g).
paragraph (g)	paragraph (h).
paragraph (h)	paragraph (i).
paragraph (i)	paragraph (j).
paragraph (j)	paragraph (k).
paragraph (k)	paragraph (l).

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0130; Directorate Identifier 2009–NM–087–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

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.

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 removing Amendment 39–15137 (72 FR 40230, July 24, 2007) and adding the following new AD:

2010–05–05 BAE Systems (Operations) Limited: Amendment 39–16214. Docket No. FAA–2010–0130; Directorate Identifier 2009–NM–087–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 12, 2010.

Affected ADs

(b) This AD supersedes AD 2007–15–08, Amendment 39–15137.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model ATP airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new and revised inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (q) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Subject

(d) Air Transport Association (ATA) of America Code: 51: Standard Practices/ Procedures.

Reason

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

A review of the results of the final fuselage fatigue test identified the need for additional and revised safety-related fatigue- and environmental inspections for the fuselage. These additional tasks were introduced by Service Bulletin (SB) ATP–51–002, which supplemented and in some cases revised those previously published in the Aircraft Maintenance Manual (AMM) Chapter 05–10–17 and the Maintenance Review Board Report (MRBR).

As it was determined that these inspections were necessary to maintain the structural integrity of the aeroplane, EASA AD 2006–0090 [which corresponds to FAA AD 2007–15–08] was issued to require the inspections and, depending on findings, corrective actions as defined in BAE Systems (Operations) Limited SB ATP–51–002 (the SB) at original issue.

Since the original Issue of the SB, three revisions have been published. Revision 1 of the SB included only editorial changes. Revision 2 of the SB corrected the fuselage frame designations in Parts 50 and 50A and extended the allowable time before initial inspection. In addition, the repeat inspection interval in Part 43 of the SB was reduced. In the latest Revision 3 of the SB, the grace period for the initial inspection in Part 50 has been clarified.

Fatigue tasks in Parts 1 through 50 of the SB, i.e. those without an "A" suffix, have now been replicated in AMM Chapter 05–10–17 and MRBR Section 6. In addition, environmental tasks, those identified with an "A" suffix, have now been replicated in MRBR Section 6.

For the reasons described above, this AD retains the requirements of EASA AD 2006–0090, which is superseded, and requires the accomplishment of the inspections and, depending on findings, corrective actions as defined in BAE Systems (Operations) Limited SB ATP–51–002 at Revision 3.

The unsafe condition is fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane and consequent rapid decompression of the airplane. The corrective actions include repairing cracking and corrosion, and depending on findings, repairing or replacing damaged components.

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.

Restatement of Requirements of AD 2006–18–09, With Revised Compliance Method

Airworthiness Limitations Revision Specified in AD 2000–26–10

(g) Within 30 days after February 7, 2001 (the effective date of AD 2000–26–10, Amendment 39–12060, which was superseded by AD 2005–19–03, which was superseded by AD 2007–15–08), revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness according to a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Doing the revision specified in paragraph (h) of this AD replaces Chapters 27, 32, 53, and 54 listed in Section 05–10–11 and Chapters 52, 53, 54, 55, and 57 listed in Section 05–10–17 that are in effect on February 7, 2001, with Chapters 27, 32, 53, and 54 listed in Section 05–10–11, "Mandatory Life Limitations (Airframe)"; and Chapters 52, 53, 54, 55, and 57 listed in Section 05–10–17, "Structurally Significant Items (SSIs)"; both dated July 15, 2004; of the British Aerospace ATP Aircraft Maintenance Manual (AMM). Doing the revision specified in paragraph (l) of this AD replaces Sections 05–10–12, 05–10–15, and 05–10–17 with the corresponding sections specified in paragraph (l) of this AD.

Note 2: Guidance on revising the ALS can be found in Section 05–00–00, dated August 15, 1997, of the British Aerospace ATP AMM, dated October 15, 1999. This section references other chapters of the AMM. The applicable revision level of the referenced chapters is that in effect on February 7, 2001.

Airworthiness Limitations Specified in AD 2005–19–03

(h) Within 30 days after September 28, 2005 (the effective date of AD 2005–19–03, Amendment 39–14268, which was superseded by AD 2006–18–09), revise the ALS of the Instructions for Continued Airworthiness according to a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Doing the revision specified in paragraph (i) of this AD replaces certain Chapter 52 and 53 tasks listed in Section 05–10–17, "Structurally Significant Items (SSIs)," dated July 15, 2004, of the British Aerospace ATP AMM, with the corresponding Chapter 52 and 53 tasks listed in BAE SYSTEMS (Operations) Limited Service Bulletin ATP–51–002, dated December 20, 2005. Doing the revision specified in paragraph (l) of this AD replaces Chapters 52, 53, 54, 55, and 57 listed in Section 05–10–17 with the corresponding Section 05–10–17 specified in paragraph (l) of this AD.

Note 3: Guidance on revising the ALS can be found in Chapters 27, 32, 53, and 54 listed in Section 05–10–11, "Mandatory Life Limitations (Airframe)"; and the tasks for Chapters 52, 53, 54, 55, and 57 listed in Section 05–10–17, "Structurally Significant Items (SSIs)"; both dated July 15, 2004; of the British Aerospace ATP AMM. These chapters replace the corresponding chapters in Section 05–00–00, dated August 15, 1997, of the British Aerospace ATP AMM as specified in paragraph (g) of this AD.

New and Revised Airworthiness Limitations in AD 2006–18–09

(i) Within 30 days after September 21, 2006 (the effective date of AD 2006–18–09), revise the ALS of the Instructions for Continued Airworthiness by incorporating the new and revised tasks for Chapters 52 and 53 as specified in BAE SYSTEMS (Operations) Limited Service Bulletin ATP–51–002, dated December 20, 2005, into the ALS. The revised Chapter 52 and 53 tasks replace the corresponding Chapter 52 and 53 tasks in Section 05–10–17, "Structurally Significant Items (SSIs)," dated July 15, 2004, of the British Aerospace ATP AMM, as specified in paragraph (h) of this AD.

(j) Except as provided by paragraph (q) of this AD: After the actions specified in paragraphs (g), (h), and (i) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraphs (g), (h), and (i) of this AD.

No Reporting Required

(k) Although BAE SYSTEMS (Operations) Limited Service Bulletin ATP–51–002, dated December 20, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Restatement of Requirements of AD 2007–15–08, With Revised Compliance Method

Revised Limitations

(l) Within 30 days after August 8, 2007 (the effective date of AD 2007–15–08), revise the

ALS of the Instructions for Continued Airworthiness according to a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

Note 4: Guidance on revising the ALS can be found in Section 05–10–12, "Mandatory Life Limitations (Airframe—Structures)," dated January 15, 2007; Section 05–10–15, "Mandatory Life Limitations (Powerplant/Engine/APU—Structures)," dated January 15, 2007; and Section 05–10–17, "Structurally Significant Items (SSIs)," dated January 15, 2007; of the BAE Systems (Operations) Limited ATP AMM. The revised sections replace the corresponding sections specified in paragraphs (g) and (h) of this AD.

(m) Except as provided by paragraph (q) of this AD: After the action specified in paragraph (l) of this AD has been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (l) of this AD.

New Requirements of This AD

Actions

(n) Within 30 days after the effective date of this AD: Revise the ALS of the Instructions for Continued Airworthiness by incorporating the inspections specified in BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ATP–51–002, Revision 3, dated April 3, 2008. Doing this revision terminates the requirements of paragraph (i) of this AD. The revised Chapter 52 and 53 tasks replace the corresponding Chapter 52 and 53 tasks in Section 05–10–17, "Structurally Significant Items (SSIs)," dated July 15, 2004, of the British Aerospace ATP AMM, as specified in paragraph (h) of this AD. Do the initial inspection for fatigue cracking at the applicable time in Part N., "Approval," of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ATP–51–002, Revision 3, dated April 3, 2008.

(o) Except as provided by paragraph (q) of this AD: After the action specified in paragraph (n) of this AD has been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (n) of this AD.

(p) Submit a report of the findings (both positive and negative) of all of the inspections required by paragraph (n) of this AD to Customer Engineering Liaison, BAE SYSTEMS Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: +44 (0) 1292 675289; fax: +44 (0) 1292 675432; at the applicable time specified in paragraph (p)(1) or (p)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 5: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, 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: Todd Thompson, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; 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. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(r) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2009–0074, dated March 31, 2009; and BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ATP–51–002, Revision 3, dated April 3, 2008; for related information.

Material Incorporated by Reference

(s) You must use the service information contained in Table 1 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 1—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
BAE SYSTEMS (Operations) Limited Service Bulletin ATP–51–002	3	April 3, 2008.
BAE SYSTEMS (Operations) Limited Service Bulletin ATP–51–002	Original	December 20, 2005.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 2 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2—NEW MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
BAE SYSTEMS (Operations) Limited Service Bulletin ATP–51–002	3	April 3, 2008.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 3 of this AD on September 21, 2006 (71 FR 52418, September 6, 2006).

TABLE 3—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Document	Revision	Date
BAE SYSTEMS (Operations) Limited Service Bulletin ATP–51–002	Original	December 20, 2005.

(3) For service information identified in this AD, contact BAE SYSTEMS Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

(4) 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.

(5) 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 February 16, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3470 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0131; Directorate Identifier 2009–NM–132–AD; Amendment 39–16216; AD 2010–05–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–200 and A340–300 Series Airplanes

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

ACTION: Final rule; request for comments.

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:

A review of A340 missions has demonstrated that CFM56–5C forward engine mount thrust links fitted with oversized bearing[s] will not reach the updated link fatigue life limit of 15500 Flight Cycles (FC) due to an increase in bore diameter.

* * * The consequent potential failure of the affected thrust link would reduce the forward engine mounts' structural integrity and could eventually lead to engine separation, constituting an unsafe condition.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective March 12, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 12, 2010.

We must receive comments on this AD by April 12, 2010.

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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0108, dated May 5, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

A review of A340 missions has demonstrated that CFM56–5C forward engine mount thrust links fitted with oversized bearing[s] will not reach the updated link fatigue life limit of 15,500 Flight Cycles (FC) due to an increase in bore diameter.

Oversized bearing repairs have been possible through the accomplishment of CMM 71–21–12 Repair 1. The consequent potential failure of the affected thrust link would reduce the forward engine mounts' structural integrity and could eventually lead to engine separation, constituting an unsafe condition.

Consequently, this AD requires:

—The [detailed] inspection of the link assembly to identify a possible oversized bearing repair and, in case of finding, the application of the associated corrective actions, or

—The repetitive [detailed] inspection [for cracking, damage (*e.g.,* dents), and missing fasteners] of the forward engine mounts until accomplishment of the inspection of the link assembly for the identification of a possible oversized bearing repair.

The corrective actions for finding oversized bearings in the forward engine mount thrust link assembly include contacting Goodrich for instructions and doing the repair. The corrective actions for finding cracking, damage (*e.g.,* dents), and missing fasteners in the forward engine mounts include, depending on the findings, replacing cracked parts and missing fasteners, and polishing damaged areas. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–71–4007, including Appendix 1, dated April 1, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the 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 FAA policies. Any such differences are highlighted in a Note within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0131; Directorate Identifier 2009–NM–132–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

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.

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:

2010–05–07 Airbus: Amendment 39–16216. Docket No. FAA–2010–0131; Directorate Identifier 2009–NM–132–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 12, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 series airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 71: Powerplant.

Reason

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

A review of A340 missions has demonstrated that CFM56–5C forward engine mount thrust links fitted with oversized bearing[s] will not reach the updated link fatigue life limit of 15500 Flight Cycles (FC) due to an increase in bore diameter.

Oversized bearing repairs have been possible through the accomplishment of CMM 71–21–12 Repair 1. The consequent potential failure of the affected thrust link would reduce the forward engine mounts structural integrity and could eventually lead to engine separation, constituting an unsafe condition.

Consequently, this AD requires:

—The [detailed] inspection of the link assembly to identify a possible oversized bearing repair and, in case of finding, the application of the associated corrective actions, or

—The repetitive [detailed] inspection [for cracking, damage (*e.g.,* dents), and missing fasteners] of the forward engine mounts until accomplishment of the inspection of the link assembly for the identification of a possible oversized bearing repair.

The corrective actions for finding oversized bearings in the forward engine mount thrust link assembly include contacting Goodrich for instructions and doing the repair. The corrective actions for finding cracking, damage (*e.g.,* dents), and missing fasteners in the forward engine mounts include, depending on the findings, replacing cracked parts and missing fasteners, and polishing damaged areas.

Actions and Compliance

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

(1) Within 1,700 flight cycles or 24 months from the effective date of this AD, whichever occurs first: Do the actions required by paragraph (f)(1)(i) or (f)(1)(ii) of this AD.

(i) Perform a detailed inspection for oversized bearing repair of the forward engine mount thrust link assembly, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–71–4007, dated April 1, 2009. If oversized bearings are found, before further flight, contact Goodrich for instructions, and do the repair.

(ii) Perform a detailed inspection of the forward engine mounts for cracking, damage (*e.g.,* dents), and missing fasteners, in accordance with Task 71–21–11–210–801–0 of the Airbus A340 Aircraft Maintenance Manual, Revision 68, dated October 1, 2009. Do all applicable corrective actions before further flight in accordance with Task 71–21–11–210–801–0 of the Airbus A340 Aircraft Maintenance Manual, Revision 68, dated October 1, 2009. Repeat the inspection thereafter at intervals not to exceed 1,700 flight cycles or 24 months, whichever occurs

first, until the inspection required by paragraph (f)(2) of this AD is done.

(2) For airplanes on which the inspection specified in paragraph (f)(1)(ii) of this AD is done: Within 4,500 flight cycles from the effective date of this AD, do the inspection and applicable corrective actions required by paragraph (f)(1)(i) of this AD. Doing the inspection and applicable corrective actions required by paragraph (f)(1)(i) of this AD terminates the repetitive inspections required by paragraph (f)(1)(ii) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

Airbus Mandatory Service Bulletin A340–71–4007, dated April 1, 2009; does not contain corrective actions if damage is found during the inspection of the forward engine mounts. The corrective actions are specified in Task 71–21–11–210–801–0 of the Airbus A340 Aircraft Maintenance Manual, Revision 68, dated October 1, 2009. Therefore, this AD refers to Task 71–21–11–210–801–0 of the Airbus A340 Aircraft Maintenance Manual, Revision 68, dated October 1, 2009, for the inspection and corrective actions.

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, Transport Airplane Directorate, 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0108, dated May 5, 2009; Airbus Mandatory Service Bulletin A340–71–4007, dated April 1, 2009; and Task 71–21–11–210–801–0 of the Airbus A340 Aircraft Maintenance Manual, Revision 68, dated October 1, 2009; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A340–71–4007, including Appendix 1, dated April 1, 2009; and Task 71–21–11–210–801–0 of the Airbus A340 Aircraft Maintenance Manual, Revision 68, dated October 1, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. The Airbus aircraft maintenance manual contains the following effective pages:

LIST OF EFFECTIVE PAGES

Page title/description	Page Nos.	Revision No.	Date shown on page(s)
AMM Title Page	None shown	68	October 1, 2009.
AMM Introduction—Description and Operation	1–6	None shown*	None shown.*
Chapter 71—Table of Contents	1, 3, 5	None shown*	January 1, 2009.
Chapter 71—Effective Pages	2, 4, 6–11	None shown*	January 1, 2008.
Task 71–21–11–210–801–0	1–5	None shown*	None shown.*

*The revision level and date is indicated only on the title page of this 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 Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.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 February 16, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3472 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1158; Directorate Identifier 2009–CE–063–AD; Amendment 39–16211; AD 2010–05–02]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Model PC–12/47E Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued 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:

Field reports have indicated that the possibility exists that both Primary Flight Displays (PFDs) could indicate a roll attitude offset of up to 10 degrees in the same direction if an accelerated turn onto the active runway is performed immediately followed by take-off. In addition, annunciated heading splits have been reported. This condition has been reported to correct itself after several minutes.

Additionally, if the aeroplane is operating in geographical latitudes with low horizontal magnetic field strength, incorrect heading may be displayed if the ADAHRS switches from GPS track to magnetometer heading while the aeroplane is on the ground.

This situation, if not corrected, could result in an undesired bank angle, heading splits and/or incorrect heading, which would constitute an unsafe condition.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 1, 2010.

On April 1, 2010, the Director of the Federal Register approved the incorporation by reference of Honeywell International Inc. Service Bulletin KSG 7200–34–09, Revision 0, dated September 24, 2009; and Pilatus Aircraft Ltd. Pilatus PC–12 Service Bulletin No.: 34–022, dated October 5, 2009, listed in this AD.

As of April 20, 2009 (74 FR 17384, April 15, 2009), the Director of the Federal Register approved the incorporation by reference of Pilatus Aircraft Ltd. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 2009, listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket 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: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, ACE–112, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

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 December 10, 2009 (74 FR 65493), and proposed to supersede AD 2009–08–10, Amendment 39–15883 (74 FR 17384, April 15, 2009). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Field reports have indicated that the possibility exists that both Primary Flight Displays (PFDs) could indicate a roll attitude offset of up to 10 degrees in the same direction if an accelerated turn onto the active runway is performed immediately followed by take-off. In addition, annunciated heading splits have been reported. This condition has been reported to correct itself after several minutes.

Additionally, if the aeroplane is operating in geographical latitudes with low horizontal magnetic field strength, incorrect heading may be displayed if the ADAHRS switches from GPS track to magnetometer heading while the aeroplane is on the ground.

This situation, if not corrected, could result in an undesired bank angle, heading splits and/or incorrect heading, which would constitute an unsafe condition.

As a short-term interim measure, AD 2009–0028–E has been released in February 2009 to limit at 30° the bank angle during climb. Afterwards, as a result of the ongoing investigation, the problem has been temporarily addressed with some limitations in the take-off procedure. These limitations have been mandated by AD 2009–0080–E which superseded AD 2009–0028–E.

In order to terminate the operational limitations, an updated ADAHRS version with improved software was developed.

For the reasons described above, this AD supersedes AD 2009–0080–E and mandates as a terminating action either an update of the ADAHRS software or the replacement of the ADAHRS unit.

From MSN 1181 and subsequent an improved ADAHRS unit was implemented during production.

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 have considered the comments received.

Comment Issue No. 1: Limit the Applicability to Manufacturer Serial Numbers (MSN) 545, and 1001 Through 1180

Mr. Scott Lania, Alpha Flying, Inc., requests limiting the applicability to MSN 545, and 1001 through 1180, which have the affected air data, attitude, and heading reference system (ADAHRS) unit installed. Paragraph (f)(4) of the proposed AD addresses the issue of installing one of the affected ADAHRS units on other Pilatus Model PC–12/47E airplanes.

Mr. Lania requests this change in the applicability since Pilatus is installing a new version of the ADAHARS at production on MSN 1181 and subsequent.

The FAA partially agrees with the commenter. We agree that Pilatus is installing a new version of the ADAHRS in production. However, we disagree with changing the applicability of this AD. To prevent future installation of the defective ADAHARS unit on airplanes, the applicability must be for all airplanes, thus preventing the introduction of the unsafe condition on these airplanes. Paragraph (f)(4), which prohibits installation of the affected ADAHRS on other Pilatus Model PC–12/47E airplanes, would not apply unless the applicability was for all airplanes.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 2: Use "Serviceable" or "Modified" in Describing the ADAHRS Unit

Mr. Lania also requests that the word "new" in paragraph (f)(2)(ii) of the Actions and Compliance section of the proposed AD be replaced with the word "serviceable" or "modified."

Mr. Lania states that when accomplishing the Pilatus service bulletin to comply with this AD, the ADAHRS unit is not being replaced with a new unit; instead, it is being modified with upgraded software and the data plate of the ADAHRS unit is being changed to the new part number (P/N). Mr. Lania concludes that in the accomplishment of this AD on all the affected airplanes, relatively few, if any, of the ADAHRS units will be replaced with new units.

We disagree with the commenter. The word "new" refers to a new Honeywell unit from the manufacturer, so the word "serviceable" is not an appropriate substitution here. We believe the commenter's intent is to use modified components instead of getting a new ADAHRS unit. The use of modified components is addressed in paragraph (f)(2)(i) of the proposed AD. In paragraph (f)(2)(i) of the proposed AD, the operator may accomplish the Honeywell service bulletin, which changes the P/N after the unit gets new software uploaded.

We are not changing the final rule AD action based on this comment.

Conclusion

We reviewed the available data, including the comments received, 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 FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 50 products of U.S. registry. We also estimate that it will take about 6 work-

hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $25,500 or $510 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 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 Management Facility 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 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 removing Amendment 39–15883 (74 FR 17384, April 15, 2009) and adding the following new AD:

2010–05–02 Pilatus Aircraft Ltd.: Amendment 39–16211; Docket No. FAA–2009–1158; Directorate Identifier 2009–CE–063–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 1, 2010.

Affected ADs

(b) This AD supersedes AD 2009–08–10, Amendment 39–15883.

Applicability

(c) This AD applies to Model PC–12/47E airplanes, all manufacturer serial numbers (MSN), certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 34: Navigation.

Reason

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

Field reports have indicated that the possibility exists that both Primary Flight Displays (PFDs) could indicate a roll attitude offset of up to 10 degrees in the same direction if an accelerated turn onto the active runway is performed immediately followed by take-off. In addition, annunciated heading splits have been reported. This condition has been reported to correct itself after several minutes.

Additionally, if the aeroplane is operating in geographical latitudes with low horizontal magnetic field strength, incorrect heading may be displayed if the ADAHRS switches from GPS track to magnetometer heading while the aeroplane is on the ground.

This situation, if not corrected, could result in an undesired bank angle, heading splits and/or incorrect heading, which would constitute an unsafe condition.

As a short-term interim measure, AD 2009–0028–E has been released in February 2009 to limit at 30° the bank angle during climb. Afterwards, as a result of the ongoing investigation, the problem has been temporarily addressed with some limitations in the take-off procedure. These limitations have been mandated by AD 2009–0080–E which superseded AD 2009–0028–E.

In order to terminate the operational limitations, an updated ADAHRS version with improved software was developed.

For the reasons described above, this AD supersedes AD 2009–0080–E and mandates as a terminating action either an update of the ADAHRS software or the replacement of the ADAHRS unit.

From MSN 1181 and subsequent an improved ADAHRS unit was implemented during production.

Actions and Compliance

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

(1) For MSN 545 and MSN 1001 through MSN 1180, before further flight after April 20, 2009 (the effective date of AD 2009–08–10), incorporate Pilatus Aircraft Ltd. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook (POH), Report No. 02277, dated March 18, 2009, into the Pilatus PC–12/47E POH. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations 14 CFR 43.7 may do this action. Make an entry in the aircraft records showing compliance with this portion of the AD following 14 CFR 43.9.

(2) For MSN 545 and MSN 1001 through MSN 1180, within 180 days after April 1, 2010 (the effective date of this AD):

(i) Update the air data, attitude, and heading reference system (ADAHRS) software following the accomplishment instructions of Honeywell International Inc. Service Bulletin KSG 7200–34–09, Revision 0, dated September 24, 2009; or

(ii) Replace ADAHRS unit KSG 7200 Honeywell Part Number (P/N) 065–00188–5102, Software Version MOD 02/02 (Pilatus P/N 985.99.12.192) with a new ADAHRS unit with Honeywell P/N 065–00188–5103 (Pilatus P/N 985.99.12.205) following the accomplishment instructions of Pilatus Aircraft Ltd. Pilatus PC–12 Service Bulletin No. 34–022, dated October 5, 2009.

(3) For MSN 545 and 1001 through 1180, before further flight after the actions required by paragraph (f)(2) of this AD, remove Pilatus Aircraft Ltd. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 2009.

(4) Do not install an ADAHRS unit with Honeywell P/N 065–00188–5102 (Pilatus

P/N 985.99.12.192) on any affected Model PC–12/47E airplane, as follows:

(i) For MSN 545 and 1001 through 1180 airplanes, as of 180 days after April 1, 2010 (the effective date of this AD); and

(ii) For all other MSNs, as of April 1, 2010 (the effective date of this AD).

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2009–0249, dated November 20, 2009, Pilatus Aircraft Ltd. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 2009; Honeywell International Inc. Service Bulletin KSG 7200–34–09, Revision 0, dated September 24, 2009; and Pilatus Aircraft Ltd. Pilatus PC–12 Service Bulletin No: 34–022, dated October 5, 2009, for related information.

Material Incorporated by Reference

(i) You must use Pilatus Aircraft Ltd. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 2009; Honeywell International Inc. Service Bulletin KSG 7200–34–09, Revision 0, dated September 24, 2009; and Pilatus Aircraft Ltd. Pilatus PC–12 Service Bulletin No: 34–022, dated October 5, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Honeywell International Inc. Service Bulletin KSG 7200–34–09, Revision 0, dated September 24, 2009; and Pilatus Aircraft Ltd. Pilatus PC–12 Service Bulletin No: 34–022, dated October 5, 2009, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On April 20, 2009 (74 FR 17384, April 15, 2009), the Director of the Federal Register previously approved the incorporation by reference of Pilatus Aircraft Ltd. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 2009.

(3) For service information identified in this AD:

(i) *Pilatus service information:* contact Pilatus Aircraft Ltd., Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0)41 619 62 08; fax: +41 (0)41 619 73 11; Internet: *http://www.pilatus-aircraft.com*, or e-mail: *SupportPC12@pilatus-aircraft.com*. You may get Pilatus Aircraft Ltd. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 2009, from the Web site of the Swiss Federal Office of Civil Aviation (FOCA): *http://www.bazl.admin.ch/fachleute/lufttechnik/entwicklung/00677/index.html?lang=en*.

(ii) *Honeywell service information:* contact Honeywell International Inc., 23500 West 105th Street, Olathe, Kansas 66061–8425, U.S.A., CAGE: 22373; telephone: (800) 601–3099 (toll free U.S.A./Canada); telephone: (602) 365–3099 (international direct); telephone: 00–800–601–30999 (EMEA Toll Free); telephone: 420–234–625–500 (EMEA Direct); Internet: *http://www.bendixking.com*; e-mail: *Karen.Attebery@honeywell.com*; telephone: (913) 712–2301; fax: (913) 712–2301.

(4) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(5) You may also review copies of the service information incorporated by reference for this AD 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 Kansas City, Missouri, on February 16, 2010.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3521 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0155; Directorate Identifier 2010–NM–026–AD; Amendment 39–16210; AD 2010–05–01]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Model ATR42 and ATR72 Airplanes

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

ACTION: Final rule; request for comments.

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:

The Civil Aviation Authority of the United Kingdom (UK) has informed EASA [European Aviation Safety Agency] that significant quantities of Halon 1211 gas, determined to be outside the required specification, have been supplied to the aviation industry for use in fire extinguishing equipment. * * *

* * * * *

* * * This Halon 1211 has subsequently been used to fill certain * * * portable fire extinguishers that are now likely to be installed in or carried on board ATR aeroplanes.

The contaminated nature of this gas, when used against a fire, may provide reduced fire suppression, endangering the safety of the aeroplane and its occupants. In addition, extinguisher activation may lead to the release of toxic fumes, possibly causing injury to aeroplane occupants.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective March 12, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 12, 2010.

We must receive comments on this AD by April 12, 2010.

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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0276R1, dated February 5, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> The Civil Aviation Authority of the United Kingdom (UK) has informed EASA that significant quantities of Halon 1211 gas, determined to be outside the required specification, have been supplied to the aviation industry for use in fire extinguishing equipment. Halon 1211 (BCF) is used in lavatory waste bin fire extinguishers and portable fire extinguishers, usually fitted or stowed in aircraft passenger cabins and flight decks.
>
> EASA published Safety Information Bulletin (SIB) 2009–39 on 23 October 2009 to make the aviation community aware of this safety concern.
>
> The results of the ongoing investigation have now established that LyonTech Engineering Ltd, a UK-based company, has supplied further consignments of Halon 1211 (BCF) to L'Hotellier that do not meet the required specification. This Halon 1211 has subsequently been used to fill certain P/N 863521–01 portable fire extinguishers that are now likely to be installed in or carried on board ATR aeroplanes.
>
> The contaminated nature of this gas, when used against a fire, may provide reduced fire suppression, endangering the safety of the aeroplane and its occupants. In addition, extinguisher activation may lead to the release of toxic fumes, possibly causing injury to aeroplane occupants.
>
> For the reasons described above, this EASA AD requires the identification and removal from service of certain batches of fire extinguishers and replacement with serviceable units.
>
> This [EASA] AD has been revised to extend the compliance time.
>
> You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

L'Hotellier has issued Service Bulletins 863521–26–001, Revision 1, dated January 28, 2010; and Revision 2, dated February 4, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Other Relevant Rulemaking

We issued AD 2010–01–03, amendment 39–16159 (75 FR 221, January 5, 2010), on December 28, 2009. That AD applies to certain portable fire extinguishers manufactured by Fire Fighting Enterprises Limited that contain suspect Halon gas and that are installed on (or carried or stowed on board) a broad range of airplanes and rotorcraft including but not limited to those listed in Table 1 of that AD. Although ATR–GIE Avions de Transport Régional airplanes are not listed in Table 1 of the applicability of AD 2010–01–03, they are affected by that AD.

This AD affects only ATR–GIE Avions de Transport Régional airplanes that have certain portable fire extinguishers manufactured by L'Hotellier that contain suspect Halon gas. We are able to be specific in this AD because L'Hotellier fire extinguishers are installed on Model ATR42 and ATR72 airplanes as part of their type design, and these fire extinguishers do not hold an FAA-approval independent of their installation. Therefore, this AD addresses the identified unsafe condition for those airplanes that have L'Hotellier fire extinguishers having the part number and serial numbers specified in this AD.

FAA's Determination and Requirements of This AD

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

Differences Between the 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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because contaminated Halon 1211 gas has been used to fill certain portable fire extinguishers installed on Model ATR42 and ATR72 airplanes. Contaminated Halon 1211 gas, when used against a fire, may have reduced fire suppression capabilities, endangering the safety of the aircraft and its occupants. In addition, extinguisher activation may release toxic fumes that could possibly cause injury to aircraft occupants. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0155; Directorate Identifier 2010–NM–026–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments

received by the closing date and may amend this 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 AD.

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.

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:

2010–05–01 ATR–GIE Avions de Transport Régional: Amendment 39–16210. Docket No. FAA–2010–0155; Directorate Identifier 2010–NM–026–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 12, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to ATR–GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes; and Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes; certificated in any category, all serial numbers, equipped with L'Hotellier Halon 1211 (BCF) fire extinguishers, having part number (P/N) 863521–01 and having any serial number identified in paragraph 1.A. of L'Hotellier Service Bulletin 863521–26–001, Revision 2, dated February 4, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 26: Fire Protection.

Reason

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

The Civil Aviation Authority of the United Kingdom (UK) has informed EASA [European Aviation Safety Agency] that significant quantities of Halon 1211 gas, determined to be outside the required specification, have been supplied to the aviation industry for use in fire extinguishing equipment. Halon 1211 (BCF) is used in lavatory waste bin fire extinguishers and portable fire extinguishers, usually fitted or stowed in aircraft passenger cabins and flight decks.

EASA published Safety Information Bulletin (SIB) 2009–39 on 23 October 2009 to make the aviation community aware of this safety concern.

The results of the ongoing investigation have now established that LyonTech Engineering Ltd, a UK-based company, has supplied further consignments of Halon 1211 (BCF) to L'Hotellier that do not meet the required specification. This Halon 1211 has subsequently been used to fill certain P/N 863521–01 portable fire extinguishers that are now likely to be installed in or carried on board ATR aeroplanes.

The contaminated nature of this gas, when used against a fire, may provide reduced fire suppression, endangering the safety of the aeroplane and its occupants. In addition, extinguisher activation may lead to the release of toxic fumes, possibly causing injury to aeroplane occupants.

For the reasons described above, this EASA AD requires the identification and removal from service of certain batches of fire extinguishers and replacement with serviceable units.

This [EASA] AD has been revised to extend the compliance time.

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.

Actions

(g) Within 90 days after the effective date of this AD, replace all L'Hotellier fire extinguishers having P/N 863521–01 and having any serial number identified in paragraph 1.A. of L'Hotellier Service Bulletin 863521–26–001, Revision 2, dated February 4, 2010, with serviceable fire extinguishers.

(h) As of the effective date of this AD, do not install any L'Hotellier fire extinguisher having P/N 863521–01 and having any serial number identified in paragraph 1.A. of L'Hotellier Service Bulletin 863521–26–001, Revision 2, dated February 4, 2010, on any airplane, unless it has been reconditioned with compliant Halon 1211 (BCF) and re-identified, in accordance with the Accomplishment Instructions of L'Hotellier Service Bulletin 863521–26–001, Revision 1, dated January 28, 2010; or Revision 2, dated February 4, 2010.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) EASA AD 2009–0276R1, dated February 5, 2010, specifies a time of 4 months to do the actions. This AD requires that the actions be done within 90 days. We have determined that a 90-day compliance time will ensure an acceptable level of safety.

(2) EASA AD 2009–0276R1, dated February 5, 2010, includes fire extinguishers having certain serial numbers in its applicability. The EASA AD also includes a requirement to inspect to determine if the fire extinguishers have those serial numbers and replacement if necessary. Since the affected fire extinguishers are part of the applicability, it is not necessary to also require inspecting for them. Therefore, this AD includes fire extinguishers having certain serial numbers in its applicability and does not include an additional requirement to inspect for serial numbers; this AD requires replacement of all affected fire extinguishers.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane

Directorate, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(j) Refer to MCAI EASA Airworthiness Directive 2009–0276R1, dated February 5, 2010; and L'Hotellier Service Bulletins 863521–26–001, Revision 1, dated January 28, 2010, and Revision 2, dated February 4, 2010; for related information.

Material Incorporated by Reference

(k) You must use L'Hotellier Service Bulletin 863521–26–001, Revision 1, dated January 28, 2010; or L'Hotellier Service Bulletin 863521–26–001, Revision 2, dated February 4, 2010; to do the actions required by this AD, unless the AD specifies otherwise.

(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 L'Hotellier Repair Station, 4 rue Henri Poincaré, 92167 ANTONY Cedex, France, Attn: Product Support; telephone +33 (0)1 55 59 09 65; fax +33 (0)1 46 66 66 71; e-mail *Sylvie.LaRuffa@hs.utc.com* or *Alain.Dorneau@hs.utc.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 February 11, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3558 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0128; Directorate Identifier 2009–NM–136–AD; Amendment 39–16215; AD 2010–05–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–541 and –642 Airplanes

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

ACTION: Final rule; request for comments.

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:

During the A340–600 full scale fatigue test, cracks were found on left and right sides of the rear spar vertical cruciform at Frame 47.

This situation, if not corrected, can affect the aircraft structural integrity.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective March 12, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 12, 2010.

We must receive comments on this AD by April 12, 2010.

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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0207R1, dated November 7, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During the A340–600 full scale fatigue test, cracks were found on left and right sides of the rear spar vertical cruciform at Frame 47.

This situation, if not corrected, can affect the aircraft structural integrity.

Further to this full scale fatigue test completion, it has been determined that the current inspections values (thresholds and intervals) as specified in the ALI [Airworthiness Limitation Items] tasks 57.18.16 have to be reviewed in order to comply with certification requirements. Consequently AIRBUS Service Bulletin (SB) A340–57–5011 has been issued to supersede the ALI tasks 57.18.16.

This AD mandates a repetitive inspection program in order to detect any crack by means of two Non-Destructive Test (NDT) inspection methods (High Frequency Eddy Current and Ultra Sonic).

This AD has been revised in order to exclude from the applicability section, A340–642 aircraft on which a terminating action modification 56026 or SB A340–57–5010 has been embodied and which consists of a large cut-out of the vertical cruciform flange in order to reduce the stress level in this critical area.

The compliance times for the initial and repetitive inspections depend on the airplane configuration and weight

variant. For the initial inspections, the earliest compliance time is 2,600 total flight cycles or 17,100 total flight hours, whichever occurs first, and the latest compliance time is 8,300 total flight cycles or 67,100 total flight hours, whichever occurs first. For the repetitive intervals, the shortest interval is 1,200 flight cycles or 8,600 flight hours, whichever occurs first, and the longest interval is 2,600 flight cycles or 17,200 flight hours, whichever occurs first. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–57–5011, including Appendix 01, dated June 27, 2007; and Service Bulletin A340–57–5010, Revision 01, dated April 2, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the 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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0128; Directorate Identifier 2009–NM–136–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

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.

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:

2010–05–06 Airbus: Amendment 39–16215. Docket No. FAA–2010–0128; Directorate Identifier 2009–NM–136–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 12, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A340–541 and –642 airplanes, certificated in any category; all serial numbers, except those on which Airbus Modification 56026 has been accomplished in production, or Airbus Service Bulletin A340–57–5010 has been accomplished in service.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

During the A340–600 full scale fatigue test, cracks were found on left and right sides of the rear spar vertical cruciform at Frame 47.

This situation, if not corrected, can affect the aircraft structural integrity.

Further to this full scale fatigue test completion, it has been determined that the current inspections values (thresholds and

intervals) as specified in the ALI (Airworthiness Limitation Items) tasks 57.18.16 have to be reviewed in order to comply with certification requirements. Consequently AIRBUS Service Bulletin (SB) A340–57–5011 has been issued to supersede the ALI tasks 57.18.16.

This AD mandates a repetitive inspection program in order to detect any crack by means of two Non-Destructive Test (NDT) inspection methods (High Frequency Eddy Current and Ultra Sonic).

This AD has been revised in order to exclude from the applicability section, A340–642 aircraft on which a terminating action modification 56026 or SB A340–57–5010 has been embodied and which consists of a large cut-out of the vertical cruciform flange in order to reduce the stress level in this critical area.

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.

Actions

(g) Do the following actions.

(1) At the applicable time specified in the table titled, "THRESHOLDS" in paragraph 1.E.(2) of Airbus Mandatory Service Bulletin A340–57–5011, dated June 27, 2007, or within 3 months after the effective date of this AD, whichever occurs later; except that where the table expresses times in terms of "flight cycles" and "flight hours," those terms mean "total flight cycles" and "total flight hours" for purposes of this AD: Perform the NDT inspections of the cruciform fitting radius at Frame 47 on the right-hand and left-hand sides, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–57–5011, dated June 27, 2007.

(2) Submit a report of the findings of the inspection required by paragraph (g)(1) of this AD using Appendix 01 of Airbus Mandatory Service Bulletin A340–57–5011, dated June 27, 2007, to Airbus, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France, Attn: SDC32 Technical Data and Documentation Services; fax (+33) 5 61 93 28 06; e-mail *sb.reporting@airbus.com*; at the applicable time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(3) If no crack is detected during an inspection required by paragraph (g)(1) of this AD, apply sealant before further flight, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–57–5011, dated June 27, 2007. Repeat the inspection required by paragraph (g)(1) of this AD thereafter at the applicable interval specified in paragraph 1.E.(2) of Airbus Mandatory Service Bulletin A340–57–5011, dated June 27, 2007.

(4) If any crack is found during any inspection required by paragraph (g)(1) of this AD, contact Airbus to get repair instructions and repair before further flight.

(5) Modifying the rear spar vertical cruciform at frame 47 in accordance with Airbus Service Bulletin A340–57–5010, Revision 01, dated April 2, 2008, terminates the inspection requirements of paragraphs (g)(1) and (g)(3) of this AD.

(6) After accomplishing the initial inspections required by paragraph (g)(1) of this AD or after the modification specified in paragraph (g)(5) of this AD is done, the limitation Tasks 57.18.16 (10 different tasks) of Airbus A340–500/600 Airworthiness Limitation Items need not be done.

(7) Modifying the rear spar vertical cruciform at frame 47 is also acceptable for compliance with the requirements of paragraph (g)(5) of this AD if done before the effective date of this AD in accordance with Airbus Service Bulletin A340–57–5010, dated September 28, 2007.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(i) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0207R1, dated November 7, 2007; Airbus Service Bulletin A340–57–5010, Revision 01, dated April 2, 2008; and Airbus Mandatory Service Bulletin A340–57–5011, dated June 27, 2007; for related information.

Material Incorporated by Reference

(j) You must use Airbus Mandatory Service Bulletin A340–57–5011, including Appendix 01, dated June 27, 2007, as applicable, to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional actions specified by this AD, you must use Airbus Service Bulletin A340–57–5010, Revision 01, dated April 2, 2008, to perform those actions, unless the AD specifies otherwise.

(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 Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 45 80; e-mail *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com*.

(3) You may review copies of the service information that is incorporated by reference 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 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 February 16, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3485 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0876; Airspace Docket No. 09–ASW–24]

Amendment of Class E Airspace; Stamford, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Stamford, TX, adding additional controlled airspace to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Arledge Field Airport, Stamford, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, June 3, 2010. 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: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 24, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Stamford, TX, reconfiguring controlled airspace at Arledge Field Airport (74 FR 61289) Docket No. FAA–2009–0876. 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 6005 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 the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace for the Stamford, TX area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Arledge Field Airport. This action is necessary for the safety and management of IFR operations at the airport.

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. 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, 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 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 amends controlled airspace at Arledge Field Airport, Stamford, TX.

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 Part 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ASW TX E5 Stamford, TX [Amended]

Arledge Field Airport, TX
(Lat. 32°54′33″ N., long. 99°44′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Arledge Field Airport, and within 2 miles each side of the 180° bearing from the airport extending from the 6.4-mile radius to 11.5 miles south of the airport.

Issued in Fort Worth, Texas, on February 4, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–3716 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0929; Airspace Docket No. 09–AGL–32]

Amendment of Class E Airspace; Lima, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Lima, OH, to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Lima Allen County Airport, Lima, OH. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, June 3, 2010. 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: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 9, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Lima Allen County Airport, Lima, OH (74 FR 57618) Docket No. FAA–2009–0929. 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 6005 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 the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Lima Allen County Airport, Lima, OH. This action is necessary for the safety and management of IFR operations at the airport.

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. 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, 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 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 amends controlled airspace at Lima Allen County Airport, Lima, OH.

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 Part 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL OH E5 Lima, OH [Amended]

Lima Allen County Airport, OH
(Lat. 40°42′25″ N., long. 84°01′36″ W.)
Allen County VOR
(Lat. 40°42′26″ N., long. 83°58′05″ W.)
Saint Rita's Medical Center, OH
Point in Space Coordinates
(Lat. 40°43′58″; N., long. 84°06′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Lima Allen County Airport and within 3 miles each side of the Allen County VOR 090° radial extending from the 6.6-mile radius to 7.4 miles east of the VOR, and within a 6-mile radius of the Point in Space serving Saint Rita's Medical Center, excluding the airspace within the Findlay, OH Class E airspace area.

* * * * *

Issued in Fort Worth, Texas, on February 4, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–3727 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0858; Airspace Docket No. 09–ASW–22]

Amendment of Class E Airspace; Llano, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Llano, TX, adding additional controlled airspace to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Llano Municipal Airport, Llano, TX, and updates the airport's geographic coordinates. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, June 3, 2010. 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: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On October 14, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Llano, TX, reconfiguring controlled airspace at Llano Municipal Airport, Llano, TX (74 FR 52702) Docket No. FAA–2009–0858. 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 6005 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 the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace for the Llano, TX area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Llano Municipal Airport, Llano, TX. This action also updates the geographic coordinates of Llano Municipal Airport to coincide with the FAA's National Aeronautical Charting Office. This action is necessary for the safety and management of IFR operations at the airport.

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. 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, 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 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 amends controlled airspace at Llano Municipal Airport, Llano, TX.

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 Part 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ASW TX E5 Llano, TX [Amended]

Llano Municipal Airport, TX
(Lat. 30°47′01″ N., long. 98°39′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Llano Municipal Airport and within 4 miles each side of the 359° bearing from the airport extending from the 6.5-mile radius to 13.5 miles north of the airport.

* * * * *

Issued in Fort Worth, Texas, on February 4, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–3738 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0535; Airspace Docket No. 09–AGL–11]

Establishment of Class E Airspace; Langdon, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace for Langdon, ND to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Robertson Field Airport, Langdon, ND. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, June 3, 2010. 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: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 4, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace for Langdon, ND, creating controlled airspace at Robertson Field Airport (74 FR 63684) Docket No. FAA–2009–0535. 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 6005 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 the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Robertson Field Airport, Langdon, ND. This action is necessary for the safety and management of IFR operations at the airport.

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. 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, 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 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 Robertson Field Airport, Langdon, ND.

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 Part 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL ND E5 Langdon, ND [New]

Robertson Field Airport, ND
(Lat. 48°45′11″ N., long. 98°23′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Robertson Field Airport.

Issued in Fort Worth, Texas, on February 4, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–3708 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0981; Airspace Docket No. 09–ANE–105]

Revocation of Class D and E Airspace; Brunswick, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class D and E Airspace at Brunswick NAS Airport, Brunswick, ME, as the airport has closed and the associated Standard Instrument Approach Procedures (SIAPs) removed, eliminating the need for controlled airspace.

DATES: Effective 0901 UTC, April 8, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

The Brunswick NAS Airport in Brunswick, ME has closed in compliance with the 2005 Base Realignment and Closure Act. In March 2009, The Department of the Navy requested that the associated SIAPs and controlled airspace be removed. As a result, this action will remove the Class D, and E4 airspace for the Brunswick NAS Airport, Brunswick, ME. This rule will become effective on the date specified in the **DATES** section. Since this action eliminates the impact of controlled airspace on users of the National Airspace System in the vicinity of the Brunswick NAS Airport, Brunswick, ME, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class D and Class E airspace designations are published in paragraphs 5000 and 6004 respectively of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 removes the Class D and E4 airspace at Brunswick NAS Airport, Brunswick, ME. Controlled airspace is no longer needed as the airport has closed.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. 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 United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 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 removes controlled airspace at Brunswick NAS Airport, Brunswick, ME.

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 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, effective September 15, 2009, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ANE ME D Brunswick, ME [Removed]

Brunswick NAS Airport, ME
(Lat. 43°53′32″ N., long. 69°56′19″ W.)

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

ANE ME E4 Brunswick, ME [Removed]

Brunswick NAS Airport, ME
(Lat. 43°53′32″ N., long. 69°56′19″ W.)

* * * * *

Issued in College Park, Georgia, on January 21, 2010.

Barry A. Knight,

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

[FR Doc. 2010–3741 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0089]

Drawbridge Operation Regulation; Inner Harbor Navigational Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 46 (Judge Seeber/Claiborne Avenue) Vertical Lift Bridge across the Inner Harbor Navigational Canal, mile 0.9, (GIWW mile 6.7 EHL), at New Orleans, LA. The deviation is necessary to replace the counterweight wire ropes on the bridge. This deviation allows the bridge to remain closed for two (2) 120-hour time periods within a three week period.

DATES: This deviation is effective from 6 a.m. on Monday, March 15, 2010 until 6 a.m. on Monday, April 5, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0089 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–1129 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David Frank, Bridge Administration Branch; telephone 504–671–2128, e-mail *David.m.frank@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Claiborne Avenue bridge has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position and 156 feet above mean high water in the open-to-navigation position. Currently, according to 33 CFR 117.458(a), the draw of the bridge shall open on signal; except that, from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:45 p.m. Monday through Friday, the draw need not be open for the passage of vessels. This deviation allows the draw span of the bridge to remain closed to navigation for two (2) 120-hour periods within a three week time frame between March 15, 2010 and April 4, 2010. The exact dates of the closures will be determined at a later date to allow for deep draft vessel movements either just prior or between the closure periods. Exact times and dates of the closures will be published in the Local Notice to Mariners and broadcast via the Coast Guard Broad Notice to Mariners system.

Navigation on the waterway consists mainly of tugs with tows and ships. As a result of coordination between the Coast Guard and the waterway users, it has been determined that this closure has been coordinated to minimize the possibility of any significant effects on these vessels. There are no alternate routes available to vessel traffic; however, vessels that can pass under the bridge in the closed-to-navigation position can do so at any time. The bridge will not be able to open for emergencies.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 10, 2010.

David M. Frank,

Bridge Administrator.

[FR Doc. 2010–3813 Filed 2–24–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0009]

RIN 1625–AA11

Regulated Navigation Area; Hudson River south of the Troy Locks, New York

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area on the navigable waters of the Hudson River south of the Troy Locks. This regulated navigation area is necessary to promote maritime safety, and protect mariners and the environment from the hazards associated with ice conditions. The regulated navigation area is intended to restrict vessels with less than 3000 horsepower while engaged in towing operations, from operating on the navigable waters of the Hudson River south of the Troy locks when ice conditions are 8 inches or greater unless authorized by the Captain of the Port New York or a designated representative.

DATES: *Effective Date:* this rule is effective in the CFR on February 25, 2010 until March 31, 2010. This rule is effective with actual notice for purposes of enforcement on February 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0009 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0009 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant William George, Coast Guard Sector New York, Waterways Management Division; telephone 718–354–4114, e-mail *William.J.George@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM)

with respect to this rule because publishing an NPRM and delaying its effective date would be contrary to public interest, since immediate action is needed to protect mariners and to ensure the safety of the environment against potential hazards associated with ice build-up on the navigable waters of the Hudson River.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule promotes the public interest by ensuring the safety of mariners and protecting the environment against the dangers associated with vessel traffic when there are hazardous ice conditions on the navigable waters of the Hudson River.

Background and Purpose

Historically ice has been an impediment to navigation on the navigable waters of the Hudson River south of the Troy Locks. West Point, Storm King Mountain, Danskammer Point, Crum Elbow, and Esopus Meadows are all natural choke points on the Hudson River where ice buildups have the potential to severely restrict vessel traffic.

There are several situations faced by vessels during severe winter conditions that can place the vessels, passengers, and crew in great danger including being beset in the ice, and ice accretion, where ice forms on the superstructure and decks of transiting vessels. Also, ice may also cause significant damage to propellers, rudders, and hull plating.

Vessels with less than 3000 horsepower, while engaged in towing operations, have significant difficulty transiting the Hudson River in locations where ice thickness is eight inches or greater. This difficulty in transiting the Hudson River during ice buildup poses a safety threat to the environment and a potential hazard to navigation.

When ice thickness is reported to be eight inches or greater on the Hudson River, vessels engaged in towing operations with less than 3000 horsepower usually request break-out assistance from the Coast Guard. A vessel's inability to independently transit the waterway may become a hazard to navigation and the environment.

The formation of ice on the Hudson River contains many variables and is not consistent from year to year. During a moderate or severe winter, the frozen waterways may impede a vessel's ability to maneuver. Once ice build-up begins it can affect the transit of vessels on the navigable waterways. In addition a vessel's watertight integrity may also be compromised by ice abrasion and ice pressure on the vessel's hull.

Ice floes on the navigable waterways may also cause visual aids to navigation to become submerged, destroyed, or moved off station. Ice conditions on the navigable waterways may create hazardous conditions in which the operations of certain vessels become unsafe.

It becomes necessary to impose operating restrictions to ensure the safe navigation of vessels. This Regulated Navigation Area (RNA) allows the Coast Guard to restrict and manage vessel movement when hazardous ice conditions exist within a specified area of the Hudson River.

The Coast Guard is establishing a regulated navigation area on the navigable waters of the Hudson River south of the Troy Locks. The regulated navigation area is intended to restrict vessels with less than 3000 horsepower while engaged in towing operations when ice conditions are 8 inches or greater, from operating on the Hudson River south of the Troy Locks unless authorized by the Captain of the Port New York or a designated representative.

Discussion of Rule

This rule establishes a regulated navigation area encompassing all navigable waters of the Hudson River south of the Troy Locks. Vessels with less than 3000 horsepower while engaged in towing operations are not authorized to transit the Hudson River south of the Troy Locks when ice thickness is greater than eight inches.

The COTP New York will notify the maritime community, of the location and thickness of the ice as well as any restrictions via marine broadcast.

Regulatory Analyses

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

Regulatory Planning and Review

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

The Coast Guard's implementation of this temporary regulated navigational area will only be enforced at the location on the navigable waters of the Hudson River south of the Troy Locks where ice conditions are 8 inches or greater, and only restrict vessels that are less than 3,000 horsepower while engaged in towing operations.

Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the navigable waters of the Hudson River. Furthermore, vessels affected by this restriction may be authorized to transit the zone with permission of the Captain of the Port New York.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of tug vessels with less than 3000 horsepower while engaged in towing operations and are intending to transit an area of the Hudson River that has a specified ice condition of eight inches or greater.

This regulated navigation area will not have a significant economic impact on a substantial number of small entities for the following reasons: The ice conditions remain very dynamic for the duration of the winter due to the ebb and flood of the current and varying wind directions. Ice is driven by wind and current and can change location on an hourly basis. This rule will only be enforced in the location where the reported ice thickness is eight inches or greater and for the amount of time the specified ice condition is deemed a threat to safe navigation.

The regulated navigation area will apply to the navigable waters of the Hudson River south of the Troy Locks only during the Ice Season which ends on March 31st. Vessels that are restricted from operating in an affected area due to the thickness of the ice will be allowed to transit despite the restriction with the permission of the COTP New York.

Before any restriction is in place, Coast Guard Sector New York will issue maritime advisories widely available to

users of the navigable waters of the Hudson River.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T01–0009 to read as follows:

§ 165.T01–009 Regulated Navigation Area, Hudson River south of the Troy Locks, New York.

(a) *Regulated navigation area.* All navigable waters of the Hudson River south of the Troy Locks.

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

(1) Designated representative means any Coast Guard commissioned, warrant, or petty officer, or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port New York.

(c) *Applicability.* This section applies to tugs with less than 3,000 horsepower when engaged in towing operations.

(d) *Regulations.* (1) Except as provided in paragraph (c) (3) of this

section, vessels less than 3,000 horsepower while engaged in towing operations are not authorized to transit that portion of the Hudson River south of the Troy Locks when ice thickness reaches eight inches or greater.

(2) All Coast Guard assets enforcing this regulated navigation area can be contacted on VHF marine band radio, channel 13 or 16. The captain of the Port can be contacted at telephone number (718) 354–4356.

(3) All persons desiring to transit through a portion of the regulated area that has operating restriction in effect must contact the COTP at telephone number (718) 354–4356 or on VHF channel 13 or 16 to seek permission prior to transiting the affected regulated area.

(5) The COTP will notify the public of any changes in the status of this regulated navigation area by Marine Safety Information Broadcast on VHF–FM marine band radio, channel 22A (157.1 MHZ).

Dated: February 5, 2010.

Joseph L. Nimmich,

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

[FR Doc. 2010–3471 Filed 2–24–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0125]

RIN 1625–AA87

Security Zone; Freeport Channel Entrance, Freeport, TX

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has established moving security zones for certain vessels, for which the Captain of the Port, Houston-Galveston deems enhanced security measures necessary on a case-by-case basis. These moving security zones extend 1,000 yards ahead and astern and 500 yards on each side of certain vessels. The moving security zone may commence at any point after certain vessels bound for the Port of Freeport enter the U.S. territorial waters (12 nautical miles) in the Captain of the Port Houston-Galveston zone. These security zones are needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature. Unless exempted under this rule, entry into or movement within these security zones would be prohibited without permission from the COTP Houston-Galveston.

DATES: This rule is effective March 29, 2010.

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–2008–0125 and are available online by going to *http://www.regulations.gov,* inserting USCG–2008–0125 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander Kevin Ivey, Marine Safety Unit Galveston, Coast Guard; telephone 409–978–2704, e-mail *Kevin.L.Ivey@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 30, 2009, we published a notice of proposed rulemaking (NPRM) entitled Security Zone; Freeport Channel Entrance, Freeport, TX in the **Federal Register** (33 FR 19923). We received two comments on the proposed rule. No parties requested public meetings and none were held.

Background and Purpose

Heightened awareness of potential terrorist acts requires enhanced security of our ports, harbors, and vessels; to enhance security, the Captain of the Port Houston-Galveston has established moving security zones around escorted vessels.

This rule establishes distinct moving security zones that may commence at any point after certain vessels bound for the Port of Freeport enter the 12-nautical-mile U.S. territorial waters in the Captain of the Port Houston-Galveston zone. These zones are established to protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Vessels operating within the Captain of the Port Houston-Galveston Zone are potential targets of terrorist attacks, or potential launch platforms for terrorist attacks on other vessels, waterfront facilities, and adjacent population centers.

Due to the potential for terrorist attacks, this rule would allow the Captain of the Port to create moving security zones around certain vessels as deemed necessary, on a case-by-case basis. By limiting access to these areas, the Coast Guard is reducing potential methods of attack on vessels, waterfront facilities, and adjacent population centers located within these security zones. Vessels having a need to enter these zones must obtain express permission from the Captain of the Port Houston-Galveston or his designated representative prior to entry.

Discussion of Comments and Changes

The Coast Guard received two comments on the proposed rule. One comment was in regard to clarification of whether the security zone pertained to all ships or just LNG ships. The security zone is not established solely for LNG ships. The second comment made was in regard to clarification of whether the security zones pertain to the land as well as the water. The security zone covers only the water, and not the land.

We made no changes to the rule based on these comments. The Coast Guard is implementing the rule as it was proposed in the notice of proposed rulemaking (33 FR 19923).

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The basis of this finding is that the duration of the security zones is limited in nature and would not create undue delay to vessel traffic in and around the Port of Freeport.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities.

The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would not have a significant economic impact on a substantial number of small entities for the following reason: The duration of the security zones is limited in nature and would not create undue delay to vessel traffic in and around the Port of Freeport.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Added new § 165.818 to read as follows:

§ 165.818 Moving Security Zones, for Certain Vessels in Freeport Entrance Channel, Freeport, Texas.

(a) *Location.* The following areas are security zones: All waters within the Captain of the Port Houston-Galveston Zone commencing at U.S. territorial waters through the Freeport Entrance Channel, from surface to bottom, one thousand (1000) yards ahead and astern and five hundred (500) yards on each side of any vessel that has a moving security zone established around it.

(b) *Regulations.* Entry into or remaining in the zones described in

paragraph (a) of this section is prohibited unless authorized as follows:

(1) Moored vessels or vessels anchored in a designated anchorage area are permitted to remain moored or anchored if they come within a security zone described in paragraph (a) of this section. A moored or an anchored vessel in a security zone must remain moored or anchored unless it obtains permission from the Captain of the Port to do otherwise.

(2) Commercial vessels operating at the waterfront facilities within these zones.

(3) Commercial vessel transiting directly to or from waterfront facilities within these zones.

(4) Vessels providing direct operational/logistic support to commercial vessels within these zones.

(5) Vessels operated by the port authority or by facilities located within these zones.

(6) Vessels operated by Federal, State, county, or municipal agencies.

(7) All persons and vessels within the moving security zone must comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(8) To request permission as required by these regulations, contact the Sector Houston-Galveston Command Center by telephone at (713) 671–5113. In Freeport, vessels should contact the Captain of the Port's designated on-scene representative for the moving security zone on VHF Channel 16, or by telephone at (979) 233–7551.

(c) *Certain vessel definition.* For the purposes of this section, certain vessel means any vessel within the 12 nautical mile U.S. Territorial Waters and bound for the Port of Freeport that is deemed to be in need of a moving security zone by the Captain of the Port, Houston-Galveston for security reasons. In making this determination, the Captain of the Port considers all relevant security factors, including but not limited to the presence of unusually harmful or hazardous substances and the risk to population or infrastructure.

(d) *Informational broadcasts.* The Captain of the Port Houston-Galveston will inform the public when moving security zones have been established around certain vessels via Broadcast Notice to Mariners on VHF channel 16 and 13. Vessels that have a moving security zone in place around them will display the international signal flag or pennant number five.

(e) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: December 28, 2009.

M.E. Woodring,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 2010–3832 Filed 2–24–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0501]

RIN 1625–AA87

Security Zones; Brazos River, Freeport, TX

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has established four permanent security zones in the Brazos River in Freeport, Texas. These security zones are being put in place to protect vessels, waterfront facilities, and surrounding areas from destruction, loss, or injury caused by terrorism, sabotage, subversive acts, accidents, or incidents of a similar nature. Entry into these zones is prohibited except by permission of the Captain of the Port Houston-Galveston.

DATES: This rule is effective March 29, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0501 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0501 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant junior grade Margaret Brown, Coast Guard Sector Houston-Galveston; telephone (713) 678–9001, e-mail *margaret.a.brown@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 24, 2009 we published a notice of proposed rulemaking (NPRM) entitled Security Zones; Brazos River, Freeport, TX in the **Federal Register** (74 FR 61305). We received no comments on the proposed rule.

Background and Purpose

Heightened awareness of potential terrorist acts requires enhanced security of our ports, harbors, and vessels. To enhance security, the Captain of the Port Houston-Galveston has established four permanent security zones within the port of Freeport, TX.

These zones protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Vessels operating within the Captain of the Port Houston-Galveston Zone are potential targets of terrorist attacks, or potential launch platforms for terrorist attacks on other vessels, waterfront facilities, and adjacent population centers. The zones are in areas with a high concentration of commercial facilities that are considered critical to national security.

All vessels not exempted under 33 CFR 165.814(c) desiring to enter this zone are required to obtain express permission from the Captain of the Port Houston-Galveston or his designated representative prior to entry. This rule is not designed to restrict access to vessels engaged, or assisting in commerce with waterfront facilities within the security zones, vessels operated by port authorities, vessels operated by waterfront facilities within the security zones, and vessels operated by Federal, State, county or municipal agencies. By limiting access to this area the Coast Guard reduces potential methods of attack on vessels, waterfront facilities, and adjacent population centers located within the zones.

Discussion of Comments and Changes

We received no comments on the proposed rule, published November 24, 2009. No public meeting was requested and none was held. The Coast Guard is implementing the rule as proposed, without change.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The economic impact of this rule is so minimal that a full Regulatory Evaluation was unnecessary. The basis of this finding is that the security zones are not part of the Federal Channel. The zones do not impede commercial traffic to, from, or within the Port of Freeport. Recreational and commercial fishing vessels are to transit the Brazos River within the Federal Channel.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not have a significant economic impact on a substantial number of small entities for the following reason: This rule does not interfere with any commercial vessel traffic within the Old Brazos River.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.814(a)(5) to read as follows: § 165.814 Security Zones; Captain of the Port Houston-Galveston Zone.

(a) * * *

(5) *Freeport, Texas.* (i) The Dow Barge Canal, containing all waters of the Dow Barge Canal north of a line drawn between 28°56.81′ N/095°18.33′ W and 28°56.63′ N/095°18.54′ W (NAD 1983).

(ii) The Brazos Harbor, containing all waters west of a line drawn between 28°56.45′ N, 095°20.00′ W, and 28°56.15′ N, 095°20.00′ W (NAD 1983) at its junction with the Old Brazos River.

(iii) The Dow Chemical plant, containing all waters of the Brazos Point Turning Basin within 100′ of the north shore and bounded on the east by the longitude line drawn through 28°56.58′ N/095°18.64′ W and on the west by the longitude line drawn through 28°56.64′ N/095°19.13′ W (NAD 1983).

(iv) The Seaway Teppco Facility, containing all waters of the Brazos Port Turning Basin bounded on the south by the shore, the north by the Federal Channel, on the east by the longitude line running through 28°56.44′ N, 095°18.83′ W and 28°56.48′ N 095°18.83′ W and on the West by the longitude line running through 28°56.12′ N, 095°19.27′ W and 28°56.11′ N, 095°19.34′ W (NAD 1983).

(v) The Conoco Phillips Facility docks, containing all waters within 100′ of a line drawn from a point on shore at Latitude 28°55.96′ N, Longitude 095°19.77′ W, extending west to a point on shore at Latitude 28°56.19′ N, Longitude 095°20.07′ W (NAD 1983).

* * * * *

Dated: January 7, 2010.

M.E. Woodring,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 2010–3814 Filed 2–24–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0871; FRL–9116–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to the Definition of Volatile Organic Compound and Other Terms

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revisions amend the wording of 22 definitions, including the definition of Volatile Organic Compound (VOC). EPA is approving these revisions to Virginia's definitions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on April 26, 2010 without further notice, unless EPA receives adverse written comment by March 29, 2010. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0871 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: *frankford.harold@epa.gov*.

C. Mail: EPA–R03–OAR–2009–0871, Harold A. Frankford, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0871. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On October 6, 2009, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of amendments to 22 definitions listed in 9VAC5 Chapter 10 (General Definitions), Regulation 5–10–20 (Terms defined). The amended terms are:

Ambient air quality standard, Criteria pollutant, Dispersion technique, Emission limitation, Emission standard, Excessive concentration, Federal Clean Air Act, Federally enforceable, Good engineering practice, Initial emission test, Initial performance test, Public hearing, Reference method, Regulations for the Control and Abatement of Air Pollution, Reid vapor pressure, Run, Standard of performance, State enforceable, These regulations, True vapor pressure, Vapor pressure, and Volatile organic compound.

II. Summary of SIP Revision

Virginia amended the definition of "Volatile organic compound" to add the organic compound (1)1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE–7300) to

the list of excluded compounds. The exclusion of this compound is consistent with the list of excluded compounds found in EPA's definition of "Volatile organic compounds (VOC)" at 40 CFR 51.100(s)(1).

Virginia amended the 21 additional terms to be consistent with the format of Commonwealth regulations as prescribed by the Commonwealth's Registrar of Regulations. The amendments are administrative in nature and do not alter the meaning or intent of these defined terms.

III. General Information Pertaining to Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the amendments to Virginia Regulation 9VAC5–10–20 (Terms defined) as a revision to the Virginia State Implementation Plan. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment.

However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 26, 2010 without further notice unless EPA receives adverse comment by March 29, 2010. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 April 26, 2010. 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 to approve 22 amended terms in Virginia's General Definitions regulation as a revision to the Virginia SIP 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 1, 2010.

William C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the sixth entry for 5–10–20 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
9 VAC 5, Chapter 10.	General Definitions			[Part I]
*	* *	*	*	* * *
5–10–20	Terms Defined	4/2/09	2/25/10 [*Insert page number where the document begins*].	Revised definitions of Ambient air quality standard, Criteria pollutant, Dispersion technique, Emission limitation, Emission standard, Excessive concentration, Federal Clean Air Act, Federally enforceable, Good engineering practice, Initial emission test, Initial performance test, Public hearing, Reference method, Regulations for the Control and Abatement of Air Pollution, Reid vapor pressure, Run, Standard of performance, State enforceable, These regulations, True vapor pressure, Vapor pressure, and Volatile organic compound.
*	* *	*	*	* * *

* * * * *

[FR Doc. 2010–3509 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–OH–0004; FRL–9107–4]

Approval and Promulgation of Implementation Plans; Ohio New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the prevention of significant deterioration (PSD) and nonattainment new source review (NSR) construction permit programs to the Ohio State Implementation Plan (SIP) based on the State's November 15, 2005, letter. The Ohio Environmental Protection Agency (OEPA) is seeking approval of its rules to implement the NSR Reform provisions that were not vacated by the United States Court of Appeals for the District of Columbia (DC Circuit) in *New York* v. *EPA.* EPA proposed approval of these rules on May 11, 2005 and received adverse comments. In this action, EPA responds to these comments and announces EPA's final rulemaking action. This action affects major stationary sources in Ohio that are subject to or potentially subject to the PSD and NSR construction permit programs.

DATES: This final rule is effective on March 29, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2004–OH–0004. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Genevieve Damico, Environmental Engineer, at (312) 353–4761 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, Air Permit Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4761, *damico.genevieve@epa.gov.*

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

I. What Is Being Addressed by This Document?

We are partially approving revisions to the PSD and nonattainment NSR construction permit programs of the State of Ohio. EPA fully approved Ohio's nonattainment NSR program on January 10, 2003 (68 FR 1366). EPA fully approved Ohio's PSD program on January 22, 2003 (68 FR 2909).

On December 31, 2002, EPA published revisions to the Federal PSD and NSR regulations in 40 CFR Parts 51 and 52 (67 FR 80186). These revisions are commonly referred to as "NSR Reform" regulations and became effective on March 3, 2003. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future actual methodology, plantwide applicability limits (PALs), clean units, and pollution control projects (PCPs). As stated in the December 31, 2002, EPA rulemaking, State and local permitting agencies must adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements of that rulemaking no later than January 2, 2006 (67 FR 80240). OEPA submitted these regulatory revisions for parallel processing on September 14, 2004, which was prior to final adoption of the State rules. Ohio adopted the final rules on October 28, 2004. EPA proposed conditional approval of these rules on May 11, 2005 (70 FR 24734). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its ruling on challenges to the December 2002 NSR reform revisions. *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). Although the court did uphold most of EPA's rules, it vacated both the clean unit and the PCP provisions. As a result of this court ruling, OEPA submitted a letter to EPA on November 15, 2005, amending its request for approval of Ohio's rule. Specifically, Ohio withdrew its request for approval of the clean units and PCP portions of the Ohio rules.

II. What Sections of Ohio's Rules Are We Approving in Today's Action?

Ohio Administrative Code (OAC) 3745–31–01 Definitions

Definitions Unchanged From Proposal

In accordance with the May 11, 2005 proposal, EPA is approving the definitions for actual emissions, actuals PAL, baseline actual emissions, baseline concentration, best available control technology, continuous emission monitoring system, continuous emissions rate monitoring system, continuous parameter monitoring system, emission unit, lowest achievable emission rate, major source baseline date, major stationary source, minor source baseline, new source review project, nonattainment or nonattaiment area, nonattainment new source review permit, PAL allowable emissions, PAL effective date, PAL effective period, PAL major emissions unit, PAL major modification, PAL permit, PAL pollutant, PAL significant emissions unit, PAL small emissions unit, particulate matter, particulate matter emissions, plantwide applicability limit, PM10, PM10 emissions, total suspended particulate, pollution prevention, predictive emissions monitoring system, prevention of significant deterioration increment, prevention of significant deterioration permit, projected actual emission, regulated NSR pollutant, replacement unit, representative actual annual emissions, significant emissions increase, and stationary source in OAC 3745–31–01(C), (D), (O), (Q), (S), (EE), (FF), (GG), (MM), (FFF), (JJJ), (KKK), (NNN), (UUU), (VVV), (WWW), (CCCC), (DDDD), (EEEE), (FFFF), (GGGG), (HHHH), (IIII), (JJJJ), (KKKK), (LLLL), (MMMM), (OOOO), (PPPP), (QQQQ), (UUUUU), (SSSS), (VVVV), (WWWW), (XXXX), (ZZZZ), (DDDDD), (EEEEE), (KKKKK), (LLLLL), and (PPPPP) respectively. EPA is also approving the definitions in OAC 3745–31–01, the non-40 CFR 51.166 and 51.165 definitions in OAC 3745–31–01 (E), (J), (M), (X), (JJ), (QQ), (DDD), (EEE), (XXX), (HHHHH), and (XXXXX) and the minor revisions to the definitions for "available information", "baseline area", "baseline concentration", "best available

technology", "Clean Air Act", "Clean Coal Technology", "Clean Coal Technology Demonstration Project", "Construction", "facility", "non-methane organic compound", "Non-road engine", and "Temporary clean coal demonstration project", in accordance with the May 11, 2005 proposal.

In a November 15, 2005 letter, OEPA withdrew its request for approval of the definitions for "clean unit" and "PCP" found in OAC 3745–31–01(Y) and OAC 3745–31–01(RRRR) respectively. EPA does not approve these definitions into the SIP.

Definition of Major Modification

In the November 15, 2005 letter, OEPA withdrew its request for approval into the SIP of the emission test for NSR projects that involve clean units and exclusion of a PCP from a physical change or change in the method of operation from the definition of major modification found in OAC 3745–31–01(III)(4)(c) and (5)(h) respectively. OEPA also withdrew the phrase "3745–31–31 and" from the comment in OAC 3745–31–01(III)(2) and the sentence "For example, if a NSR project involves both an existing emissions unit and a clean unit, the projected increase is determined by summing the values determined using the method specified in paragraph (III)(4)(a) of this rule for the existing unit and using the method specified in paragraph (III)(4)(c) of this rule for the clean unit." from OAC 3745–31–01(III)(4)(d). EPA is approving the definition of "major modification" in OAC 3745–31–01(III) with the exception of the portions withdrawn by OEPA in the November 15, 2005 letter.

Definition of Net Emissions Increase

In the November 15, 2005 letter, OEPA withdrew its request for approval of the exemption of increases or decreases in clean units from the determination of a net emissions increase and the requirements for credibility of decreases in emissions from clean units and PCPs when determining a net emissions increase found in OAC 3745–31–01(SSS)(3)(d) and OAC 3745–31–01(SSS)(3)(f)(iv) respectively. EPA is approving into the SIP the definition of "net emissions increase" in OAC 3745–31–01(SSS) with the exception of the portions withdrawn by OEPA in the November 15, 2005 letter.

Incorporation by Reference

In the November 15, 2005 letter, OEPA withdrew its request for approval into the SIP the reference to 68 FR 61276, October 27, 2003 in OAC 3745–31–01(ZZZZZ)(2)(h). This is a reference to the vacated equipment replacement provisions (ERP). Ohio's rules do not contain any implementing language for the ERP. OEPA committed in its November 15, 2005 letter to remove the reference to the ERP by June 2006. EPA is approving OAC 3745–31–01(ZZZZZ) with the exception of the reference to 68 FR 61276, October 27, 2003 in OAC 3745–31–01(ZZZZZ)(2)(h).

OAC 3745–31–09: Air Permit To Install Completeness Determinations, Public Participation and Public Notice

EPA is approving OAC 3745–31–09 as proposed on May 11, 2005.

OAC 3745–31–10 Air Stationary Source Obligations

In the November 15, 2005 letter, OEPA withdrew its request for approval of the phrase "3745–31–30 to" from OAC 3745–31–10(B) and the phrase "at a clean unit or" from OAC 3745–31–10(C). EPA is approving OAC 3745–31–10 into the SIP with the exceptions of these two phrases.

OAC 3745–31–10(C) specifies record keeping and reporting requirements for sources that elect to use the actual-to-projected-actual emission test and where there is a reasonable possibility that a project may result in a significant net emissions increase. In 2005, in *New York* v. *EPA,* the DC Circuit Court remanded to EPA this provision of the Federal rule (40 CFR 52.21(r)(6)) because "EPA has failed to explain how it can ensure NSR compliance without the relevant data" in the circumstances where a facility concludes that a significant emissions increase is not a reasonably possible. 413 F.3d at 35–36. As stated in the November 15, 2005 letter, OEPA believes its rules addressed the court's decision remanding the record keeping and reporting requirements when there is not "reasonable possibility" of a significant emissions increase. Ohio incorporated a requirement that all facilities "where the sum of the Federally enforceable potential to emit of the new or modified emissions units associated with the NSR project prior to the issuance of the NSR project's [minor NSR] permit-to-install is greater than any one of the significant levels found in the significant definition of rule 3745–31–01 of the Administrative Code" must record and submit the documents required under the original rule regardless of a reasonable possibility determination.

EPA promulgated regulations to clarify the "reasonable possibility" record keeping and reporting standard of the 2002 NSR reform rules on December 21, 2007 (72 FR 72607). EPA's rules allow permitting authorities three years to incorporate these changes. Ohio has three years to change OAC 3745–31–10 to meet the requirements of the December 21, 2007 rulemaking.

OAC 3745–31–13 Attainment Provisions—Review of Major Stationary Sources and Major Modifications, Stationary Source Applicability and Exemptions

EPA is approving OAC 3745–31–13 as proposed on May 11, 2005.

OAC 3745–31–15 Attainment Provisions—Control Technology Review

EPA is approving OAC 3745–31–15 as proposed on May 11, 2005.

OAC 3745–31–21 Nonattainment Provisions

EPA is approving OAC 3745–31–21 as proposed on May 11, 2005.

OAC 3745–31–22 Nonattainment Provisions—Conditions for Approval

In the November 15, 2005 letter, OEPA withdrew its request for approval for the exclusion of clean unit or PCP emission reductions from use in determining emissions offsets found in OAC 3745–31–22(A)(3)(e) and (A)(3)(f). EPA is approving OAC 3745–31–22 with the exception of OAC 3745–31–22(A)(3)(e) and (A)(3)(f).

OAC 3745–31–24 Nonattainment Provisions—Baseline for Determining Credit for Emission and Air Quality Offsets

EPA is approving OAC 3745–31–24 as proposed on May 11, 2005.

OAC 3745–31–26 Nonattainment Provisions—Offset Ratio Requirements

EPA is approving OAC 3745–31–26 as proposed on May 11, 2005.

OAC 3745–31–30 Clean Units

In the November 15, 2005 letter, OEPA withdrew its request for approval for OAC 3745–31–30 in its entirety. By removing OAC 3745–31–30 from the request for approval and its rules, the portions of OAC 3745–31 which were the basis for proposing conditional approval in the May 11, 2005 **Federal Register** are no longer under consideration by EPA. EPA is not approving OAC 3745–31–30 into the SIP.

OAC 3745–31–31 Pollution Control Project

In the November 15, 2005 letter, OEPA withdrew its request for approval for OAC 3745–31–31 in its entirety. EPA is not approving OAC 3745–31–31 into the SIP.

OAC 3745–31–32 Plantwide Applicability Limit (PAL)

EPA is approving OAC 3745–31–32 as proposed on May 11, 2005.

III. How Has This Rulemaking Been Affected by the June 24, 2005 DC Circuit Court of Appeals?

On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its ruling on challenges to the December 2002 NSR reform revisions. *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). Although the Court did uphold most of EPA's rules, it vacated both the clean unit and the PCP provisions. As a result of this court ruling, OEPA submitted a letter to EPA on November 15, 2005, amending its request for approval of Ohio's rule. Specifically, Ohio withdrew its request for approval of the clean unit and PCP portions of the Ohio rules. By removing the clean unit provisions from the request for approval and its rules, the portions of OAC 3745–31 which were the basis for proposing conditional approval in the May 11, 2005 **Federal Register** are no longer under consideration by EPA. Therefore, the basis for proposing conditional approval instead of approval is no longer present. EPA is instead partially approving Ohio's rules in this action with no conditions.

IV. What Are EPA's Responses to Adverse Comments?

EPA received comments in support of Ohio's rules, as well as adverse comments. Several commenters provided comments on the May 11, 2005 proposal prior to the June 24, 2005 court ruling. Therefore, the comments do not reflect the DC Circuit Court decision. This final action takes into consideration the court's ruling on the Federal NSR reform regulations. Therefore, Ohio's approved SIP is consistent with the Federal NSR reform regulations. This action discusses three significant adverse comments. However, EPA responds to all adverse comments in three documents that can be found in the docket for this action. These documents are: Response to Comments of the National Resources Defense Council to EPA's Proposed Rule to Conditionally Approve Ohio's Changes to Its New Source Review Rules, Response to the State of Vermont's Comments, and Response to Comments of the Ohio Environmental Council to EPA's Proposed Rule to Conditionally Approve Ohio's Changes to its New Source Review Rules.

A. Provisions in Ohio's Submission Cause the State's Revised Plan To Interfere With Applicable Requirements Concerning Attainment and Reasonable Further Progress

Commenters express concern that the EPA has never made, or even proposed to make, a finding that revising Ohio's permit provisions so that they track the non-vacated provisions of the 2002 rules "would not interfere with attainment or other applicable requirements." Commenters state that neither Ohio nor EPA has analyzed the particular impact of each part of the rule, much less the particular impact that each part's adoption by Ohio would have on that State's compliance with the requirements that it provide for attainment, prohibit emissions that interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), and require reasonable further progress toward expeditious attainment. Therefore, commenters believe that finalizing the EPA rulemaking proposal at issue here would violate section 110(1) of the Clean Air Act (CAA).

EPA responds that Section 110(l) of the CAA states that "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this chapter." 42 U.S.C. 7410(l).

In "Approval and Promulgation of Implementation Plans; NSR; State of Nevada, Clark County Department of Air Quality and Environmental Management", 69 FR 54006 (Sept. 7, 2004), EPA stated that section 110(l) does not preclude SIP relaxations. EPA stated that Section 110(l) only requires that the "relaxations not interfere with specified requirements of the CAA including requirements for attainment and reasonable further progress", and that therefore, a State can relax its SIP provisions if it is able to show that it can "attain or maintain the NAAQS and meet any applicable reasonable further progress goals or other specific requirements." 69 FR 54011–12.

The Ohio Proposed NSR Reform Rules track the Federal NSR Reform Rules, and EPA previously determined that the implementation of the Federal NSR Reform Rules will be environmentally beneficial. (*See* 68 FR 44620 and 63021). EPA's Supplemental Analysis for the Federal NSR Reform Rules estimated that there are likely to be reductions in emissions of volatile organic compounds (VOC) due to the use of PALs. Using the same methodology used in the Supplemental Analysis to assess the emissions benefits of the Ohio's NSR Reform Rules in Ohio as EPA used to assess the benefits nationally, we conclude that the PAL option would result in a net reduction of VOC emissions.

It is more difficult to assess the environmental impacts of the actual-to-projected-actual test and the "2 in 10" baseline provisions. The Supplemental Analysis determined that there is a slight national environmental benefit brought about by these NSR reform provisions. However, in Ohio, sources undergoing construction which are not subject to the best available control technology or lowest achievable emission reduction NSR requirements will need to comply with Ohio's best available technology provisions under OAC 3745–31–05(A)(3).

Overall, we expect changes in air quality as a result of implementing PALs, the actual-to-projected-actual test, and the "2 in 10" baseline provisions in Ohio to be somewhere between neutral and providing modest contribution to reasonable further progress. Accordingly, EPA determines that these changes will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

B. Provisions in Ohio's Submission Cause the State's Revised Plan To Interfere With Applicable Requirements Concerning Backsliding in Nonattainment Areas.

Commenters expressed concern that EPA's approval will allow sources in Ohio's nonattainment areas to "backslide" on more stringent pollution control requirements contrary to section 193 of the CAA. Section 193 of the CAA provides in part that: "No control requirement in effect * * * before November 15, 1990, in any area which is a non-attainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant." 42 U.S.C. 7515. According to commenters, Ohio has made no demonstration, and EPA has proposed no finding, that the modifications to Ohio's NSR rules ensure "equivalent or greater emissions reductions." Moreover, commenters state, Ohio cannot make a demonstration of equivalency, and EPA cannot make such a finding. Because, far from ensuring "equivalent or greater emission reductions" than Ohio's preexisting permit provisions, the modifications ensure that emissions will

not be reduced as much as under the preexisting rules. In fact, commenters believe, the modifications allow emissions to increase in Ohio's nonattainment areas.

EPA responds that assuming that section 193 applies to NSR, section 193 does not require additional emission reductions before this SIP revision is approved. As of November 15, 1990, the approved SIP did not contain a major source NSR program consistent with the requirements of the CAA, which requires offsets for construction of major sources or major modifications in nonattainment areas. The SIP in effect on November 15, 1990 did include a preconstruction permitting program, but that program did not require offsets for any sources. Under Ohio's new rules, major sources are subject to permitting requirements that are consistent with current CAA requirements (while minor sources remain subject to the 1990 permitting program). This SIP revision affects only the major source permitting program.

Thus, assuming that section 193 applies in some fashion to the permitting program in the SIP as of November 15, 1990 as it applied to major sources, that program did not achieve any "emission reductions" from major sources because it did not require offsets for any sources. It follows that if there were no emission reductions generated by the 1990 permitting program, then the section 193 requirement to provide "equivalent or greater emission reductions" of any air pollutant as part of this SIP revision would be satisfied with no additional reductions. Furthermore, for the reasons discussed above with respect to Section 110(l), EPA has found that the net effect of these changes will be neutral or environmentally beneficial.

C. Ohio's Incorporation of EPA's 2003 New Source Review Rule by Reference

Commenters express concern that EPA's May 11, 2005, action appears to propose to approve Ohio provisions that incorporate by reference an EPA rule that has been stayed by order of the DC Circuit, as well as a second EPA rule—a related Federal implementation plan rule—that the agency has acknowledged to be stayed by virtue of the same DC Circuit order. If EPA approves those provisions, the action will be a violation of the DC Circuit's order. Additionally, the action will exceed EPA's authority under section 110(k)(3) of the CAA while violating sections 110(l) and 193.

EPA responds that in a November 15, 2005 letter, OEPA withdrew its request for approval of the phrase "68 FR 61276, Oct. 27, 2003:" in OAC 3745–31–01 (ZZZZZ)(2)(h). EPA is not approving this section into the SIP. Furthermore, in the November 15, 2005 letter, OEPA commits to strike this phrase during its next five-year review which is expected to be completed by June 2006.

V. What Action Is EPA Taking Today?

EPA is partially approving revisions to Ohio's permit to install provisions, which were submitted by Ohio to EPA on September 14, 2004. These revisions meet the minimum program requirements of the December 31, 2002 EPA NSR Reform rulemaking. As requested by OEPA's November 15, 2005 letter, EPA is not taking action on the provisions of Ohio's rule relating to clean units, PCP, and ERP. Furthermore, OEPA has removed the respective clean unit, PCP and ERP provisions from its rules.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 April 26, 2010. 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. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 21, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart K—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(145) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(145) On September 14, 2004, Ohio submitted modifications to its Prevention of Significant Deterioration and nonattainment New Source Review rules as a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–31–01, Definitions: (C), (D), (E), (J), (M), (N), (O), (P), (Q), (S), (T), (U), (V), (W), (X), (DD), (EE), (FF), (GG), (JJ), (MM), (NN), (QQ), (DDD), (EEE), (FFF), (JJJ), (KKK), (NNN), (UUU), (VVV), (WWW), (XXX), (YYY), (ZZZ), (CCCC), (DDDD), (EEEE), (FFFF), (GGGG), (HHHH), (IIII), (JJJJ), (KKKK), (LLLL), (MMMM), (OOOO), (PPPP), (QQQQ), (SSSS), (VVVV), (WWWW), (XXXX), (ZZZZ), (DDDDD), (EEEEE), (HHHHH), (KKKKK), (LLLLL), (PPPPP), (QQQQQ), (UUUUU), and (XXXXX), adopted on October 18, 2004, effective October 28, 2004.

(B) Ohio Administrative Code Rules 3745–31–01, Definitions: (III) and (SSS), 3745–31–10 "Air Stationary Source Obligations.", and 3745–31–22 "Nonattainment Provisions—Conditions for Approval", adopted on October 18, 2004, effective October 28, 2004 and revised by the November 15, 2005 letter from Joseph P. Koncelik to Thomas Skinner. This letter, included as Additional material in paragraph (145)(ii)(B) below, removes references to the Pollution Control Project (PCP) and Clean Unit provisions vacated by a June 24, 2005 DC Circuit Court of Appeals decision.

(C) Ohio Administrative Code Rules 3745–31–09 "Air permit to install completeness determinations, public participation and public notice.", 3745–31–13 "Attainment provisions—review of major stationary sources and major modifications, stationary source applicability and exemptions.", 3745–31–15 "Attainment provisions—Control Technology Review.", 3745–31–21 "Nonattainment provisions—review of major stationary sources and major modifications—stationary source applicability and exemptions.", 3745–31–24 "Non-attainment Provisions—Baseline for Determining Credit for Emission and Air Quality Offsets.", 3745–31–26 "Nonattainment Provisions—Offset Ratio Requirements.", and 3745–31–32 "Plantwide applicability limit (PAL).", adopted on October 18, 2004, effective October 28, 2004.

(D) October 18, 2004, "Director's Final Findings and Orders", signed by Christopher Jones, Director, Ohio Environmental Protection Agency, adopting rules 3745–31–01, 3745–31–09, 3745–31–10, 3745–31–13, 3745–31–15, 3745–31–21, 3745–31–22, 3745–31–24, 3745–31–26, 3745–31–30, 3745–31–31, and 3745–31–32.

(ii) Additional material.

(A) Ohio Administrative Code Rule 3745–31–01, Definitions: (ZZZZZ) adopted on October 18, 2004, effective October 28, 2004.

(B) Letter dated November 15, 2005, from Ohio EPA Director Joseph P. Koncelik to Regional Administrator Thomas Skinner, titled Request for Approval of Ohio Administrative Code ("OAC") Chapter 3745–31 NSR Reform Rule Changes into the State Implementation Plan ("SIP").

* * * * *

[FR Doc. 2010–3831 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0213; FRL–8813–8]

1,2,3-Propanetriol, Homopolymer Diisooctadecanoate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 1,2,3-propanetriol, homopolymer diisooctadecanoate, herein referred to as triglycerol diisostearate, when used as an inert ingredient (emulsifier) when applied to animals. Valent Biosciences Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of triglycerol diisostearate.

DATES: This regulation is effective February 25, 2010. Objections and requests for hearings must be received on or before April 26, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0213. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8560; e-mail address: *fertich.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be

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

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0213 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 26, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0213, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of May 6, 2009 (74 FR 20947) (FRL–8412–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 8E7354) by Valent Biosciences Corporation, 870 Technology Way, Libertyville, IL 60048. The petition requested that 40 CFR 180.930 be amended by establishing an exemption from the requirement of a tolerance for residues of 1,2,3-propanetriol, homopolymer diisooctadecanoate, herein referred to as triglycerol diisostearate. That notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by triglycerol diisostearate are discussed in this unit.

The Agency has determined that triglycerol diisostearate is represented by the group of chemicals known as polyglycerol esters of fatty acids. Where specific information on triglycerol diisostearate is not available, information on polyglycerol esters of fatty acids is used to assess toxicity.

The polyglycerol esters of fatty acids represent a large group of closely related compounds with complex compositions. The individual components are found as normal constituents of the human diet, i.e. glycerol, glycerol mono-, di- and tri-fatty acid esters and individual fatty acids. Hydrolysis by enzymes or gastric juices to form esters and carbon dioxide is the main pathway for metabolic degradation for polyglycerol esters of fatty acids.

Acute toxicity studies conducted with polyglycerol esters of fatty acids in rats and rabbits show no adverse effects at doses up to 29 grams/kilogram (g/kg) body weight. Repeated dose testing in rats over 5 days did not result in any deaths at doses up to 10 g/kg body weight..

In a short-term study, rats were maintained on 9% polyglycerol ester (equivalent to 4,500 milligrams/kilogram/day (mg/kg/day)) and 1% ground-nut oil for 17 weeks. No

systemic toxicity was observed in the study. There were also no adverse effects noted in a study where rats were maintained on a diet of 10% polyglycerol ester (equivalent to 5,000 mg/kg/day) for 90 days. In a third study, rats were fed a diet containing 15% polyglycerol ester (equivalent to 7,500 mg/kg/day) of fatty acids for 5 weeks. No adverse effects were reported during this study.

In a long-term study, mice were fed a diet of either 5% polyglycerol ester (equivalent to 2,500 mg/kg/day) or ground-nut oil for 80 weeks. All animals survived the study and no adverse effects were reported on body weight, food consumption or peripheral blood picture. Microscopic examination of all major organs showed nothing remarkable. Similar results were exhibited in a study with rats fed the same diet for 2 years. In a third study, mice were maintained on a diet of 1% polyglycerol ester (equivalent to 500 mg/kg/day) for 15.5 months. There were no adverse effects noted in this study.

In a reproductive study, rats were fed a diet containing 1.5% polyglycerol ester (equivalent to 750 mg/kg/day) for three generations. There were no significant effects on fertility or reproductive performance during the first year. There were also no consistent, compound-related abnormalities noted after gross and histological examination of the third generation.

No carcinogenicity studies are available on triglycerol diisostearate, however, there was no systemic toxicity observed in mice and rats at doses up to 2,500 mg/kg/day for 80 weeks and 2 years, respectively.

No neurotoxicity studies are available in the database; however, there was no systemic toxicity in mice and rats at doses up to 2,500 mg/kg/day during prolonged exposure.

No mutagenicity studies are available, however, polyglycerol esters of fatty acids are normal constituents in the diet. Therefore, there is no concern for mutagenic effects.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

The primary route of exposure to triglycerol diisostearate from its use as an inert ingredient in pesticide products would most likely be through consumption of food to which pesticide products containing it have been applied, and possibly through drinking water (from runoff).

In addition to pesticide use, triglycerol diisostearate has reported uses in personal care products, such as lipstick, lip gloss, sunscreen, makeup, skin cream and cleanser. There is a potential exposure via dermal and inhalation routes based on its use pattern in personal care products.

No hazard was identified for the acute and chronic dietary assessment (food and drinking water), or for the short-, intermediate-, and long-term residential assessments, and therefore no aggregate risk assessments were performed.

VI. Cumulative Effects

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

Unlike other pesticide ingredients for which EPA has followed as cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to triglycerol diisostearate and any other substances and, triglycerol diisostearate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that triglycerol diisostearate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

VII. Safety Factor for Infants and Children

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

The Agency has determined that triglycerol diisostearate is represented by the group of chemicals known as polyglycerol esters of fatty acids. Where specific information on triglycerol diisostearate is not available, information on polyglycerol esters of fatty acids is used to assess toxicity. The toxicity database is sufficient for polyglycerol esters of fatty acids and potential exposure is adequately characterized given the low toxicity of the chemical. In terms of hazard, there are low concerns and no residual uncertainties regarding prenatal and/or postnatal toxicity. Polyglycerol esters of fatty acids have low subchronic and chronic toxicity. There was no systemic toxicity in mice and rats at very high doses for 80 weeks and 2 years respectively. In a reproductive study with rats, there were no significant effects on fertility or reproductive performance for three generations. There were also no consistent, compound-related abnormalities noted after gross and histological examination of the third generation. No neurotoxicity studies are available, but there were no signs of neurological effects observed in the database at high doses. Therefore, the Agency concluded that the developmental neurotoxicity study is not required. No immunotoxicity study is available, however, no systemic toxicity was observed in mice and rats at high doses. In addition, no hazard has been identified following exposure to

triglycerol diisostearate. Based on this information, there is no concern at this time for increased sensitivity to infants and children to triglycerol diisostearate when used as an inert ingredient in pesticide formulations and a safety factor analysis has not been used to assess risk. For the same reason, EPA has determined that an additional safety factor is not needed to protect the safety of infants and children.

VIII. Determination of Safety

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Residues of concern are not anticipated from dietary exposure (food and drinking water) or for residential exposure from the use of triglycerol diisostearate for the proposed use pattern as an inert ingredient (emulsifier) in pesticide formulations applied to animals. A quantitative dietary risk or residential risk assessment was not performed since no endpoint of concern was identified in the database.

Taking into consideration all available information on triglycerol diisostearate, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to triglycerol diisostearate. Therefore, the establishment of an exemption from the requirement of a tolerance under 40 CFR 180.930 for residues of triglycerol diisostearate when used as an inert ingredient (emulsifier) in pesticide formulations applied to animals can be considered safe under section 408 of the FFDCA.

IX. Other Considerations

A. Endocrine Disruptors

EPA is required under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate." Following recommendations of its Endocrine Disruptor and Testing Advisory Committee (EDSTAC), EPA determined that there was a scientific basis for including, as part of the program, the androgen and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

When additional appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, triglycerol diisostearate may be subjected to further screening and/or testing to better characterize effects related to endocrine disruption.

B. Analytical Method

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for triglycerol diisostearate nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of triglycerol diisostearate. Accordingly, EPA finds that exempting triglycerol diisostearate from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

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

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

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

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section

12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 19, 2010.

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In §180.930, the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* *	* * *	
1,2,3-Propanetriol, homopolymer diisooctadecanoate (CAS Reg. No. 63705–03–3)		Emulsifier
* *	* * *	

[FR Doc. 2010–3859 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0749; FRL–8799–4]

Trichoderma gamsii strain ICC 080; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Trichoderma gamsii* strain ICC 080 on all food/feed commodities when applied preharvest in accordance with good agricultural practices. Isagro, S.p.A. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Trichoderma gamsii* strain ICC 080.

DATES: This regulation is effective February 25, 2010. Objections and requests for hearings must be received on or before April 26, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0749. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; e-mail address: *cerrelli.susanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural

regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0749 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 26, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0749, by one of the following methods.

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• Mail: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• Delivery: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 12, 2008 (73 FR 66897) (FRL–8368–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 8F7327) by Isagro, S.p.A., Via Caldera 21, fabbricato D, la 3, 20153 Milano, Italy. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Trichoderma gamsii* strain ICC 080 (originally classified as *Trichoderma viride).*

The docket (EPA–HQ–OPP–2008–0749) included a summary of the petition prepared by the petitioner Isagro, S.p.A.. An anonymous American citizen commented that only zero residue should be allowed and expressed concern about toxic chemicals found in the bodies of Americans. Pursuant to its authority under Federal Insecticide Fungicide, and Rodenticide Act (FIFRA), the Agency conducted a rigorous assessment of *Trichoderma gamsii* strain ICC 080 and concluded that it is not expected to cause any unreasonable adverse effects to human health or the environment. The Agency is establishing an exemption from the requirement of a tolerance for this active ingredient, as neither toxicity nor pathogenicity were observed for this active ingredient in submitted laboratory studies.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . " Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Trichoderma gamsii strain ICC 080 was isolated from a suppressive soil in Sardinia, Italy. *Trichoderma gamsii* strain ICC 080 is used for control of many soil borne fungal plant pathogens [i.e., *Pythium* species (spp.), *Phytophthora* spp., *Sclerotinia* spp., *Sclerotium* spp., *Thielaviopsis basicola*, *Rhizoctonia* spp., *Verticillium* spp]. *Trichoderma gamsii* strain ICC 080 acts as a pathogen antagonist, colonizing in soil and roots to compete with plant pathogenic fungi for space and nutrients. Moreover, *Trichoderma gamsii* strain ICC 080 also attacks the cell walls of pathogens with enzymes.

The Agency has reviewed toxicological data on *Trichoderma gamsii* strain ICC 080 that was submitted by the manufacturer, Isagro, S.p.A. in support of its petition for an exemption from the requirement of a tolerance for residues of *Trichoderma gamsii* strain ICC 080.

EPA review of these studies indicated that the active ingredient was not toxic to test animals when administered via the oral, intraperitoneal or pulmonary routes of exposure. The active ingredient was not infective or pathogenic to test animals when administered via the pulmonary route. This pulmonary clearance is enough evidence to demonstrate no infectivity. No reports of hypersensitivity have been recorded from personnel working with this organism. Based on these data, the Agency has concluded that there is a reasonable certainty that no harm will result from aggregate exposure to residues of *Trichoderma gamsii* strain ICC 080, including all anticipated dietary exposures and all other exposures for which there is reliable information. Thus, under the standard in FFDCA section 408(c)(2), an exemption from the requirement for a tolerance is appropriate.

Studies on the active ingredient include the following.

An acceptable acute oral toxicity study (MRID #47345801) was performed on rats given a single oral dose of *Trichoderma gamsii* (formerly known as *Trichoderma viride)* strain ICC 080 of (7.5×10^8 CFU/g) in 0.9% NaCl solution at a dose of 2,000 milligrams/kilogram (mg/kg) of body weight in a limit test. The animals were observed for a period

of up to 14 days. The oral LD_{50} for males, females, and the combined test animals were: Males >2,000 mg/kg of body weight, females >2,000 mg/kg of body weight, combined >2,000 mg/kg of body weight. No mortalities occurred during the study. Based on the results of this study, *Trichoderma gamsii* strain ICC 080 was found to be of low acute oral toxicity. There were no treatment related clinical signs, changes in body weight or pathological findings at necropsy.

An acceptable acute intraperitoneal injection toxicity (MRID #47345802) was submitted, in which groups of fasted, 41–48 days old rats (3/sex) were injected with *Trichoderma gamsii* strain ICC 080 (at 7.5 x 10^8 CFU/g) in 0.9% NaCl solution at a dose of 1 x 10^7 CFU/g. Animals were then observed for up to 21 days. Control animals (2/sex) were injected with 0.9% NaCl solution only. *Trichoderma gamsii* strain ICC 080 is not toxic based on the results of this study. There were no treatment - related necropsy findings or changes in body weight. All of the animals treated with the test material experienced slightly reduced mobility, slight ataxia, slightly reduced muscle tone, slight dyspnea, mydriasis, and writhing, observed 60 minutes after administration. All of these clinical signs were completely resolved within 24 hours.

Acceptable acute pulmonary toxicity/pathogenicity studies (MRID #47345803, 47345804) were submitted, in which groups of fasted 43–56 days old rats (31/sex) were exposed by the intratracheal route to *Trichoderma gamsii* strain ICC 080 at a dose of 2.5 x 10^6 CFU/animal. Animals were observed for up to 22 days. Rats in the control group were administered the vehicle, 0.1% solution of Tween 20 in *aqua ad iniectabilia* (water for injection) only. Rats in the reference groups were administered inactivated test item. Samples of feces, lungs, lymph nodes, kidneys, brain, liver, spleen, and blood were taken for microbial enumeration in those tissues. None of the administered *Trichoderma gamsii* conidia from lung tissue of the animals appeared in other organ tissue. Conidia could not be detected in blood samples at any time during the study. Conidia were detected in the feces up to 21 days post administration. Conidia density in the lung tissue decreased to 0 within 21 days post administration. This shows a pattern of clearance and lack of infectivity of *Trichoderma gamsii* strain ICC 080. The recorded pulmonary LD_{50} was greater than 2.5 x 10^6 CFU/animal in males, females and in the combined group of test animals. No mortality occurred. Based upon these results, *Trichoderma gamsii* strain ICC 080 is of low toxicity, and *Trichoderma gamsii* was not infective or pathogenic in the rat. There were no treatment related clinical signs, changes in body weight, or pathological changes observed at necropsy.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Dietary exposure to the microbial pesticide is likely to occur. However the lack of acute oral toxicity, infectivity, and pathogenicity support the establishment of an exemption from the requirement of a tolerance for *Trichoderma gamsii* strain ICC 080.

1. *Food*. Dietary exposure to the microbe is expected to be minimal. The product is typically applied to soil and sometimes may be applied when the crops are growing in the field, resulting in residues on the crops. The Agency expects residues on food to be minimal because of the typical way in which this pesticide will be applied to soils. Moreover, *Trichoderma* lives in soils and is unlikely to live on the plants because any spores that do end up on the plant due to application will likely decrease over time due to weathering, desiccation and ultraviolet radiation which can kill even quiescent forms of the fungus. In the remote likelihood that the applied fungus can grow on edible portions of the treated crop, there is no hazard present in these residues due to the results of testing which show no toxicity or pathogenicity in treated animals when dosed with the fungus at orders of magnitude above any expected exposure to the microbial pesticide.

2. *Drinking water exposure*. Drinking water exposure is expected to be negligible because this *Trichoderma gamsii* is not applied to water, nor is it expected to proliferate in aquatic environments because *Trichoderma gamsii* lives in soil. Moreover, the Agency believes that *Trichoderma* within the soil will not likely percolate into water because of the large size of the fungal spores and the fact that they adhere to soil particles. Even if oral exposure should occur through drinking water, the Agency concludes that there is a reasonable certainty that no harm will result from the exposure to the residues of *Trichoderma gamsii* in all the anticipated drinking water exposures because of the lack of acute oral toxicity/pathogenicity to mammals as previously described.

B. Other Non-Occupational Exposure

Trichoderma gamsii strain ICC 080 is a naturally occurring microbe and is ubiquitous in the environment. *Trichoderma gamsii* strain ICC 080 will be applied to substrate mixes, ornamental plants, agricultural fields, turf, and various plants grown in greenhouses. Although some applications to turf or ornamental plants may be in residential areas, non-dietary exposure would be expected to be below the Agency's level of concern because of its low toxicity classification, and because the lab results indicate *Trichoderma gamsii* strain ICC 080 is not pathogenic to mammals.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires the Agency to consider the cumulative effect of exposure to *Trichoderma gamsii* strain ICC 080 and to other substances that have a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. Based on tests in mammalian systems, *Trichoderma gamsii* strain ICC 080 does not appear to be toxic to humans via dietary and pulmonary exposure. Therefore, the requirement to consider cumulative effects does not apply.

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) as amended by the FQPA of 1996, provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children.

Based on the acute toxicity information discussed in this Unit, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to the United States population, including infants and

children, to residues of *Trichoderma gamsii* strain ICC 080. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because the data available on *Trichoderma gamsii* strain ICC 080 demonstrate a low toxicity/pathogenicity potential. *Trichoderma gamsii* strain ICC 080 is not a human pathogen and has not been implicated in human disease. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply.

VII. Other Considerations

A. Endocrine Disruptors

The Agency has no information to suggest that *Trichoderma gamsii* strain ICC 080 has an effect on the endocrine system. The submitted acute pulmonary toxicity/pathogenicity study in rodents indicated that following pulmonary exposure, the immune system is still intact and able to process and clear the active ingredient. *Trichoderma gamsii* strain ICC 080 is a ubiquitous organism in the environment and there have been no reports of the organism affecting endocrine systems. Therefore, it is unlikely that this organism would have estrogenic or endocrine effects and it is practically non-toxic to mammals.

B. Analytical Methods

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation. Because of the lack of toxicity, pathogenicity, and infectivity of this organism and the fact that its use as a pesticide is indistinguishable from what naturally occurs in the environment, the Agency has concluded that an analytical method is not required for enforcement purposes for *Trichoderma gamsii* strain ICC 080.

C. Codex Maximum Residue Level

No Codex maximum residue level exists for *Trichoderma gamsii*.

VIII. Conclusions

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of the *Trichoderma gamsii* strain ICC 080 in or on all food and feed commodities. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed in Unit III., no toxicity or pathogenicity to mammals has been observed in test animals.

IX. Statutory and Executive Order Reviews

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

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

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

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

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 4, 2010.

Steven Bradbury,

Acting Director, Office of Pesticide Program.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.1293 is added to subpart D to read as follows:

§ 180.1293 Trichoderma gamsii strain ICC 080; exemption from the requirement of a tolerance.

Trichoderma gamsii strain ICC 080 is exempted from the requirement of a tolerance in or on all food and feed commodities when applied preharvest and used in accordance with good agricultural practices.

[FR Doc. 2010–3732 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 309 and 310

RIN 0970–AC32

Computerized Tribal IV–D Systems and Office Automation

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This rule enables Tribes and Tribal organizations currently operating comprehensive Tribal Child Support Enforcement programs under Title IV–D of the Social Security Act (the Act) to apply for and receive direct Federal funding for the costs of automated data processing. This rule addresses the Secretary's commitment to provide instructions and guidance to Tribes and Tribal organizations on requirements for applying for, and upon approval, securing Federal Financial Participation (FFP) in the costs of installing, operating, maintaining, and enhancing automated data processing systems.

DATES: *Effective Date:* This rule is effective February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Paige Hausburg, OCSE Division of Policy, (202) 401–5635. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This final regulation is published under the authority granted to the Secretary (the Secretary) of the Department of Health and Human Services (the Department) by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, which may be necessary for the efficient administration of the Title IV–D program.

This rule also is published in accordance with section 455(f) of the Act (42 U.S.C. 655(f)). Section 455(f) of the Act authorizes the Secretary to issue regulations governing grants to Tribes and Tribal organizations operating child support enforcement programs.

Background

On March 30, 2004 the Tribal Child Support Enforcement Program final rule was published in the **Federal Register** (69 FR 16638). We stated in our response to comments to the final rule (69 FR at 16652) that we had begun consideration with stakeholders of appropriate minimum Tribal systems automation specifications in anticipation of Tribal IV–D programs moving toward high-speed automated data processing. A Federal/Tribal workgroup was convened and considered such automation issues as compatibility, scale, functionality and costs, with a goal of developing a Model Tribal IV–D System, designed by the Office of Child Support Enforcement (OCSE) to allow comprehensive Tribal IV–D agencies to effectively and efficiently automate Tribal child support enforcement operations.

This regulation sets forth requirements for comprehensive Tribal IV–D programs that must be met in order for Tribes and Tribal organizations to receive direct funding under section 455(f) of the Act for automated data processing systems. This final regulation responds to public comments on the Notice of Proposed Rulemaking (NPRM) issued on June 11, 2008 (73 FR 33048).

Consultations/Public Comment Period on the Regulation

To facilitate the communication and consultation process between the Federal government and Tribal governments, OCSE held one public informational meeting and three consultation sessions regarding the proposed rule on Computerized Tribal IV–D Systems and Office Automation. The informational meeting was held on June 11, 2008, when the NRPM was published, and the consultation sessions were held on June 27, July 8, and July 9 of 2008. OCSE provided notice of open consultation regarding the proposed rule on Computerized Tribal IV–D Systems and Office Automation through informal and formal means. These included sending letters such as a Tribal Dear Colleague Letter (TDCL–08–01: *http://www.acf.hhs.gov/programs/cse/pol/TDCL/2008/tdcl-08-01.htm*) to all Tribal IV–D Directors dated May 7, 2008, and a second letter addressing all Tribal leaders dated June 4, 2008 as well as publication of a notice of open consultation in the **Federal Register** on June 10, 2008 (73 FR 32668). The informational meeting and consultations were successful in eliciting questions and concerns.

The government-to-government consultations were very useful in identifying key issues of Tribal concern including the Tribal consultation process, piloting the Model Tribal IV–D System, access to Federal resources for support enforcement, increased Federal funding of Tribal automation and Federal access to Tribal systems. These issues are discussed in the Response to Comments section of this rule.

Changes Made in Response to Comments

We received 14 letters from 13 Tribal programs and one State, in addition to 12 comments from the participants in the three Tribal consultations on the NPRM. We made the following changes to the proposed regulation in response. We agreed with commenters' suggestion to increase FFP in the costs of installing the Model Tribal IV–D System to 90 percent matching of the pre-approved cost of installation by revising § 309.130(c)(3). We also agreed with commenters that a Tribal IV–D agency seeking FFP in the operation and maintenance costs of a Tribally-funded system as described in § 309.145(h)(5) should not be subject to all the license requirements in § 310.25(c). Accordingly, we revised § 309.145(h)(5) by narrowing the Software and Ownership Rights reference from § 310.25(c) as stated in the NPRM to § 310.25(c)(1) in this final rule. Under § 310.25(c)(1), a Tribal IV–D agency seeking FFP in operation and maintenance costs must ensure that all procurement and contract instruments include a clause that provides that the comprehensive Tribal IV–D agency will have all ownership rights to the Computerized Tribal IV–D System software or enhancements. The final rule does not require a Tribal IV–D agency to follow the licensing requirements in § 310.25(c)(2) as a condition of receiving FFP in the costs of operation and maintenance of a Tribally-funded system. In addition, a technical change was made to § 310.15(a) to clarify which safeguarding requirements a Tribal IV–D agency must include in written policies and procedures. These changes are discussed in more detail under the Response to Comments section of this preamble.

Provisions of the Regulation

Part 309—Tribal Child Support Enforcement (IV–D) Program

Section 309.130 How will Tribal IV–D programs be funded and what forms are required?

This regulation revises paragraph (c) of § 309.130 by referencing the Federal share of pre-approved installation costs for the Model Tribal IV–D System. As indicated earlier, in response to comments suggesting that FFP in the

costs of Tribal automation be increased from the applicable matching rate as defined in § 309.130(c), we have added subparagraphs (i) and (ii) to § 309.130(c)(3) of the final rule. Section 309.130(c)(3)(i) provides that for all periods following the three-year period (a timeframe under which a Tribal IV–D agency may receive 90 percent Federal funding as specified in paragraph (c)(2)), a Tribe or Tribal organization will receive Federal grant funds equal to 80 percent of the total amount of approved and allowable expenditures made for the administration of the Tribal child support enforcement program, except as provided in paragraph (ii). Under § 309.130(c)(3)(ii), a Tribe or Tribal organization will receive Federal grant funds equal to 90 percent of pre-approved costs of installing the Model Tribal IV–D System. The comments requesting increased Federal funding for Tribal automation and changes to the applicable matching rate are discussed in more detail in the Response to Comments section.

Section 309.145 What costs are allowable for Tribal IV–D programs carried out under § 309.65(a) of this part?

Under § 309.145, Federal funds are available for the costs of operating a Tribal IV–D program under an approved Tribal IV–D application carried out under § 309.65(a), provided that such costs are determined by the Secretary to be reasonable, necessary, and allocable to the program. Allowable activities and costs for Tribal automated data processing computer systems, addressed in paragraph (h) of this section, include planning efforts in the identification, evaluation, and selection of an automated data processing computer system solution meeting the program requirements defined in a Tribal IV–D plan and the automated systems requirements in part 310; installation, operation, maintenance and enhancement of a Model Tribal IV–D System as defined in and meeting the requirements of part 310; procurement, installation, operation and maintenance of essential Office Automation capability; establishment of Intergovernmental Service Agreements with a State and another comprehensive Tribal IV–D agency for access to the State or other Tribe's existing automated data processing computer system to support Tribal IV–D program operations, and reasonable costs associated with use of such a system; operation and maintenance of a Tribal automated data processing system funded entirely with Tribal funds if the software ownership rights and license requirements in § 310.25(c)(1) are met; and other automation and automated data processing computer system costs in accordance with instructions and guidance issued by the Secretary.

Part 310—Computerized Tribal IV–D Systems and Office Automation

Section 310.0 What does this part cover?

This section addresses the conditions for Federal funding and requirements governing Computerized Tribal IV–D Systems and Office Automation. These include the automated systems options for comprehensive Tribal IV–D programs; the functional requirements for the Model Tribal IV–D System; the security and privacy requirements for Computerized Tribal IV–D Systems and Office Automation; the conditions for funding the installation, operation, maintenance, and enhancement of Computerized Tribal IV–D Systems and Office Automation; the conditions that apply to acquisitions of Computerized Tribal IV–D Systems; and the accountability and monitoring of Computerized Tribal IV–D Systems.

Section 310.1 What definitions apply to this part?

Section 310.1(a) defines the following terms used in Part 310: Automated Data Processing Services (ADP Services); Comprehensive Tribal IV–D Agency; Computerized Tribal IV–D System; Installation; Maintenance; Model Tribal IV–D System; Office Automation; Reasonable Cost; Service Agreement; and Simplified Acquisition Threshold.

Section 310.1(b) references the following terms defined in 45 CFR 95.605, *General Administration—Grant Programs,* and applies these terms to Part 310: Acquisition; Advance Planning Document (APD); Automated Data Processing (ADP); Design or System Design; Development; Enhancement; Federal Financial Participation (FFP); Operation; Project; Software; and Total Acquisition Cost. These terms are the terms in Part 95 that are appropriately applicable to Tribal IV–D programs and will ensure that a reasonably consistent approach will be maintained among State, Local and Tribal grantees with regard to ADP systems acquisitions, while still maintaining flexibility for Tribes and Tribal organizations to determine their own best solution to automating their comprehensive Tribal IV–D programs.

Section § 310.1(c) cross-references all definitions of terms that apply to Tribal IV–D programs in § 309.05 because these terms are also applicable in Part 310. Similarly, the definitions in this rule should apply to Part 309.

Subpart B—Requirements for Computerized Tribal IV–D Systems

Section 310.5 What options are available for Computerized Tribal IV–D Systems and Office Automation?

This section of the rule sets forth options available to comprehensive Tribal IV–D agencies for the purpose of automating Tribal IV–D activities. We recognize the importance and benefits of integrating automation in the daily operations of comprehensive Tribal IV–D programs. To that end, § 310.5(a) allows a comprehensive Tribal IV–D agency to have in effect an operational computerized support enforcement system that meets Federal requirements under Part 310.

Section 310.5(b) requires that a Computerized Tribal IV–D System must be one of the design options discussed in paragraphs (b)(1) and (b)(2). This provision would not preclude a Tribe from proposing a hybrid solution as long as the functional components are not duplicative or unreasonable in cost. In addition, OCSE recognizes that there may be situations wherein multiple systems may be in use during a reasonable transition period from one automated system to another. Under paragraph (b)(1), a comprehensive Tribal IV–D program may automate its case processing and record-keeping processes through installation, operation, maintenance, or enhancement of the Model Tribal IV–D System designed by OCSE to address the program requirements defined in a Tribal IV–D plan in accordance with § 309.65(a) and the functional requirements in proposed § 310.10.

Under § 310.5(b)(2), a comprehensive Tribal IV–D program may elect to automate its case processing and record-keeping processes through the establishment of Intergovernmental Service Agreements with a State or another comprehensive Tribal IV–D agency for access to that agency's existing automated data processing computer system to support comprehensive Tribal IV–D program operations.

In § 310.5(c), a comprehensive Tribal IV–D agency may opt to conduct automated data processing and record-keeping activities through Office Automation. Allowable activities under this paragraph include procurement, installation, operation and maintenance of essential Office Automation capability as defined in § 310.1.

In full recognition of Tribal sovereignty, § 310.5(d) affirms that a

comprehensive Tribal IV–D agency may design, develop, procure, or enhance an automated data processing system funded entirely with Tribal funds. An automated data processing system funded entirely with Tribal funds would not be obligated to meet the requirements detailed in this rule, although a comprehensive Tribal IV–D agency may adopt all or some of the system specifications laid-out in this rule in order to facilitate as much consistency in State and comprehensive Tribal IV–D automated data processing systems as possible.

Section 310.10 What are the functional requirements for the Model Tribal IV–D System?

Section 310.10 identifies the minimum functional requirements which a comprehensive Tribal IV–D agency must meet in the operation of a Model Tribal IV–D System. Comprehensive Tribal IV–D agencies that have elected to automate case processing and recordkeeping activities through a manner other than the Model Tribal IV–D System, as defined in § 310.1, will not be subject to the requirements presented in this section of the rule. All comprehensive Tribal IV–D agencies, regardless of automation choice, will continue to be responsible for meeting the programmatic requirements found in Part 309 titled *Tribal Child Support Enforcement (IV–D) Program.*

The system requirements discussed in this section are based on the functional requirements for computerized support enforcement systems regulated in §§ 307.10 and 307.11 for State IV–D programs. Determination of which functional requirements are mandatory in a Model Tribal IV–D System was based on careful examination of State automated systems, Tribal IV–D program regulations, and cost-effectiveness analyses, as well as strong consideration of which comprehensive Tribal IV–D activities would benefit most from automation, given the varying sizes of eligible Tribes and Tribal organizations.

Under § 310.10(a), a Model Tribal IV–D System must accept, maintain and process the actions in the child support collection and paternity determination processes under the Tribal IV–D plan, including identifying information; verifying information; maintaining information; and maintaining data. These are essential elements of automated case processing which are necessary to meet the fundamental objectives of the Tribal Child Support Enforcement program, including establishing paternity, establishing and enforcing support orders, and collecting child support payments.

Under paragraph (b), a Model Tribal IV–D System must update, maintain and manage all IV–D cases under the Tribal IV–D plan from initial application or referral through collection and enforcement including any events, transactions, or actions taken therein. This requirement is especially critical in relation to Subpart D, § 310.40 which addresses accountability and monitoring procedures for Computerized Tribal IV–D Systems.

Section 310.10(c) requires a Model Tribal IV–D System to record and report any fees collected, either directly or by interfacing with State or Tribal financial management and expenditure information. The Model Tribal IV–D System must have the capacity to record and report costs of any fees collected to help ensure accurate and complete accounting of expenditures under a Tribal IV–D program that are funded in part with Federal funds.

Paragraph (d) requires that a Model Tribal IV–D System must have minimum system specifications which allow for the distribution of current support and arrearage collections in accordance with Federal regulations at § 309.115 and Tribal laws. We consider distribution of collected child support payments to be one of the comprehensive Tribal IV–D activities that would benefit most from automation. Automated distribution of collections would ensure families receive the support owed to them and minimize the need for manual processing of child support payments, which can be a time-consuming and burdensome task for comprehensive Tribal IV–D programs. Additionally, automated distribution of collections would facilitate more efficient and cost-effective communications in intra-tribal and intergovernmental case processing.

Under paragraph (e)(1), the Model Tribal IV–D System must maintain, process and monitor accounts receivable on all amounts owed, collected, and distributed with regard to detailed payment histories that include the amount of each payment, date of each collection, method of payment, distribution of payments and date of each disbursement. Under paragraph (e)(2), the Model Tribal IV–D System must have the capacity to perform automated income withholding activities including recording and maintaining information on payment default, generating the Standard Federal Income Withholding Form and allocating amounts received by income withholding according to §§ 309.110 and 309.115, which respectively cover procedures governing income withholding and distribution of child support collections as specified in each Tribal IV–D plan.

Section § 310.10(f) requires that a Model Tribal IV–D System maintain and automatically generate data necessary to meet Federal reporting requirements on a timely basis as prescribed by OCSE. At a minimum this includes (1) yearly notices on support collected, which are itemized by month of collection and provided to families receiving services under the comprehensive Tribal IV–D program as required in § 309.75(c), to all case participants regarding support collections; and (2) reports submitted to OCSE for program monitoring and program performance as required in § 309.170. Without the proposed Model Tribal IV–D System, comprehensive Tribal IV–D agencies would rely on manual systems or Office Automation to manage the Federal reporting requirements and payment records which require meticulous attention to detail.

Under paragraph (g), a Model Tribal IV–D System will be required to provide automated processes to enable OCSE to monitor Tribal IV–D program operations and to assess program performance through the audit of financial and statistical data maintained by the system. This requirement is especially critical in relation to Subpart D, § 310.40 which addresses accountability and monitoring procedures for Computerized Tribal IV–D Systems.

In paragraph (h), the Model Tribal IV–D System must provide security to prevent unauthorized access to, or use of, the data in the system as detailed in § 310.15 discussed below. This requirement is necessary because comprehensive Tribal IV–D agencies may receive sensitive, personal information from Federal, State, or Tribal locate sources in inter-governmental cases or from parents seeking the Tribal IV–D program's assistance in securing support for children. This requirement compliments existing safeguarding requirements in § 309.80, *What safeguarding procedures must a Tribe or Tribal organization include in a Tribal IV–D plan*? which applies to all comprehensive Tribal IV–D agencies. Federal, State and Tribal programs are entrusted with personal information critical to accomplish program goals and it is imperative that personal data be safeguarded to ensure privacy and maintain the public trust. We also would emphasize that no Federal Tribal IV–D program requirement obligates comprehensive Tribal IV–D agencies to disclose, or otherwise make accessible, their Tribal

enrollment records for the purposes of providing child support enforcement services or automating child support enforcement activities.

Section 310.15 What are the safeguards and processes that comprehensive Tribal IV–D agencies must have in place to ensure the security and privacy of Computerized Tribal IV–D Systems and Office Automation?

This section details the safeguarding requirements that a comprehensive Tribal IV–D agency, which is using a Computerized Tribal IV–D System or Office Automation, must have in place to ensure the security and confidentiality of information accessible through Federal, State, and Tribal sources. This section is taken from § 307.13 which addresses security and confidentiality for State computerized support enforcement systems and is revised to apply to automation for comprehensive Tribal IV–D programs. A comprehensive Tribal IV–D agency must also follow the safeguarding requirements under the Tribal Child Support Enforcement (IV–D) program rule found in § 309.80.

Under paragraph (a) of this section, the comprehensive Tribal IV–D agency must safeguard the integrity, accuracy, completeness, access to, and use of data in the Computerized Tribal IV–D System and Office Automation. The Tribal IV–D agency should ensure that the Computerized Tribal IV–D Systems and Office Automation comply with the requirements of the Federal Information Security Management Act and the Privacy Act. These safeguards must include written policies and procedures concerning: (1) Periodic evaluations of the system for risk of security and privacy breaches; (2) procedures to allow Tribal IV–D personnel controlled access and use of IV–D data including (i) specifying the data which may be used for particular IV–D program purposes and the personnel permitted access to such data and (ii) permitting access to and use of data for the purpose of exchanging information with State and Tribal agencies administering programs under titles IV–A, IV–E and XIX of the Act to the extent necessary to carry out the comprehensive Tribal IV–D agency's responsibilities with respect to such programs; (3) maintenance and control of application software program data; (4) mechanisms to back-up and otherwise protect hardware, software, documents, and other communications; and (5) mechanisms to report breaches or suspected breaches of personally identifiable information to the Department of Homeland Security and respond. We added the phrase "or suspected breaches" to the regulatory language in paragraph (a)(5) of this section for clarification and consistency with the preamble language. We also note that in response to comments that the introductory language in § 310.15(a) needed clarification as to which safeguarding requirements must be included in written policies and procedures, we replaced 'some of the required safeguards' with 'the required safeguards' for clarity.

Paragraph (b) requires that the comprehensive Tribal IV–D agency monitor routine access to and use of the Computerized Tribal IV–D System and Office Automation through methods such as audit trails and feedback mechanisms to guard against, and promptly identify, unauthorized access or use. This safeguard is consistent with the security and privacy measures required in the State computerized support enforcement systems found in § 307.13 and is an appropriate aspect of information security.

Section 310.15(c) requires a comprehensive Tribal IV–D agency to have procedures to ensure that all personnel, including Tribal IV–D staff and contractors, who may have access to or be required to use confidential program data in the Computerized Tribal IV–D System and Office Automation are adequately trained in security procedures. This safeguarding requirement is consistent with the security and privacy measures required in the State computerized support enforcement systems in § 307.13 and is equally critical to Tribal automated systems. Staff members and contractors of comprehensive Tribal IV–D agencies using the Computerized Tribal IV–D System or Office Automation should demonstrate knowledge of strategies that would ensure the security and privacy of sensitive information.

In paragraph (d) of this section, the comprehensive Tribal IV–D agency must have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure or use of confidential information. This aspect of the security and privacy safeguarding requirements reflects our position that security and privacy of child support enforcement-related information is paramount to the integrity of the system.

Subpart C—Funding for Computerized Tribal IV–D Systems and Office Automation

Section 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV–D Systems and Office Automation?

This section of the rule establishes conditions that must be met in order for a comprehensive Tribal IV–D agency to obtain Federal funding in the costs of installation, operation, maintenance and enhancement of Computerized Tribal IV–D Systems and Office Automation. This section is derived from §§ 307.15 and 307.20, governing State automated systems, and is appropriately revised to specifically apply to the needs of comprehensive Tribal IV–D programs. Sections 307.15 and 307.20, respectively, address conditions for approval of Advance Planning Documents (APD) and submittal of APDs for State computerized support enforcement systems. Section 310.20 addresses procedures for submittal of an APD to the Department. OCSE uses the APD process to help meet its fiduciary responsibility to ensure that the costs associated with all automated data processing systems acquisitions, including Computerized Tribal IV–D Systems, are reasonable and necessary. Just as OCSE requires States to request funding in an APD for acquisition of a computerized child support enforcement system, documenting such factors as project cost, risk, resources, and schedule, those same factors equally apply to OCSE's review and approval of the installation, operation, maintenance and enhancement of Computerized Tribal IV–D Systems. For this reason, the APD process is incorporated into this rule as applicable and necessary to acquisitions of such systems in comprehensive Tribal IV–D programs.

Section 310.20(a) lays out conditions that must be met for 90 percent FFP in the costs of installation of the Model Tribal IV–D System and 80 or 90 percent FFP (referred to as the applicable matching rate), as appropriate, in the costs of operation, maintenance, and enhancement of a Computerized Tribal IV–D System. The applicable matching rate as defined in § 309.130(c) refers to the total amount of approved and allowable expenditures for which a comprehensive Tribal IV–D program would be eligible to receive Federal grant funds in the costs of administering the Tribal IV–D program, including Computerized Tribal IV–D Systems and Office Automation. Except for the costs of installation of the Model

Tribal IV–D System described below, the applicable matching rate would be 90 percent for comprehensive Tribal IV–D programs that are operating within the first three-year period of Federal funding, and the applicable matching rate would be 80 percent for comprehensive Tribal IV–D programs operating in all periods following the first three-year period. As previously mentioned, paragraph § 310.20(a) was revised in response to comments to reference 90 percent FFP for the pre-approved costs of installation of the Model Tribal IV–D System under § 309.130(c). This change is discussed in more detail under the Response to Comments section of the preamble.

Paragraph (a)(1) states that a comprehensive Tribal IV–D agency must have submitted, and OCSE must have approved, an APD for the installation and enhancement of a Computerized Tribal IV–D System. Under paragraph (a)(2), an APD for installation of a Computerized Tribal IV–D System must: (i) Represent the sole systems effort being undertaken by the comprehensive Tribal IV–D agency under part 310; (ii) describe the projected resource requirements for staff, hardware, software, network connections and other needs and the resources available or expected to be available to meet the requirements; (iii) contain a proposed schedule of project milestones with detail sufficient to describe the tasks, activities, and complexity of the initial implementation project; (iv) contain a proposed budget including a description of expenditures by category and amount for items related to installing, operating, maintaining, and enhancing the Computerized Tribal IV–D System; and (v) contain a statement that the comprehensive Tribal IV–D agency agrees in writing to use the Computerized Tribal IV–D System for a minimum period of time. This last requirement, to agree in writing to use the Computerized Tribal IV–D System for a minimum period of time, is derived from 45 CFR 95.619. Under § 95.619, automated data processing systems designed, developed, or installed with FFP shall be used for a period of time specified in the APD, unless the Department determines that a shorter period is justified. The requirement for the APD to contain an agreement by a Tribal IV–D program to use the Computerized Tribal IV–D System for a minimum period of time assures both the Federal and Tribal governments of a reasonable return on investment relative to the Total Acquisition Cost of the Computerized Tribal IV–D System.

In addition to the above requirements, paragraph (a)(3) includes the following conditions which must be met to obtain FFP in the installation costs of access to a State or another comprehensive Tribal IV–D program's ADP system established under an Intergovernmental Service Agreement. The comprehensive Tribal IV–D agency must, under paragraph (i), maintain a copy of each intergovernmental cooperative agreement and Service Agreement in its files for Federal review. Under paragraph (ii), the comprehensive Tribal IV–D agency must ensure that: (A) The Service Agreement for which FFP is being sought meets the definition of a Service Agreement as defined in § 310.1; (B) claims for FFP conform to the timely claim provisions of 45 CFR Part 95, Subpart A; and (C) the Service Agreement was not previously disapproved by the Department. In deriving from 45 CFR Part 95, Subpart A, the requirements to be met to obtain FFP in the cost of access to another State or Tribal IV–D program's ADP system, we are ensuring a common understanding and consistency of approach to securing, documenting and maintaining FFP approval of such intergovernmental cooperative agreements.

Under paragraph (a)(4), the following conditions must be met in order for a comprehensive Tribal IV–D agency to obtain FFP in the costs of enhancements to its Computerized Tribal IV–D System: (i) the project's Total Acquisition Cost cannot exceed the comprehensive Tribal IV–D agency's total Tribal IV–D program grant award for the year in which the acquisition request is made; and (ii) the APD budget, schedule and commitment to use the Computerized Tribal IV–D System for a specified minimum period of time must be updated to reflect the enhancement project. These additional APD requirements to obtain FFP in the cost of enhancements to an existing Computerized Tribal IV–D System reflect the need to ensure both continued cost reasonableness and ongoing return on investment given a Computerized Tribal IV–D System's increased Total Acquisition Cost.

Paragraph (a)(5) requires that to receive FFP in the costs of the operation and maintenance of a Computerized Tribal IV–D System installed under § 310.20 or developed under § 309.145(h)(5), which refers to a Tribal automated data processing system that is funded entirely with Tribal funds, the comprehensive Tribal IV–D agency must include operation and maintenance costs in its annual Title IV–D program budget submission in accordance with § 309.15(c) wherein requirements for annual budget submissions are detailed.

In addition, paragraph (a)(6) requires that in order to receive FFP in the costs of the installation, operation, and maintenance of essential Office Automation capabilities, the comprehensive Tribal IV–D agency must include such costs in its annual Title IV–D program budget submission in accordance with § 309.15(c). Currently, States maintaining their computerized IV–D systems in an operation and maintenance-only mode may close their APD and thereafter request FFP for their operation and maintenance costs through specific line-item submissions in their "Quarterly Report of Expenditures and Estimates," (OCSE Form 396A). Given the efficacy of this existing procedure used with States, and the predictability and general reasonableness of such costs, a similar process for Tribes to request FFP for operation and maintenance cost reimbursement is appropriate. Therefore, this rule allows Tribes to request FFP in the costs of installation, operation, and maintenance of essential Office Automation capabilities, an inherently operational activity, through a comprehensive Tribal IV–D agency's Title IV–D program budget submission, "Budget Information—Non-Construction Programs," (OCSE Form SF 424A) in accordance with requirements listed at § 309.15(c).

The gradated variation in conditions that must be met in order to obtain FFP in the costs of the activities under paragraph (a) are designed to reflect the varying automation levels of comprehensive Tribal IV–D agencies. For example, the conditions that a comprehensive Tribal IV–D agency will be required to meet in order to obtain FFP in the costs of installing Office Automation would be less involved than the conditions required for a comprehensive Tribal IV–D agency that is requesting FFP in the installation costs of accessing a State or another comprehensive Tribal IV–D program's ADP system. Section § 310.20 provides comprehensive Tribal IV–D agencies with the flexibility to determine which automation approaches and application procedures best suit the program-specific needs of that Tribe or Tribal organization. The provisions in § 310.20 are consistent with Tribal IV–D program staff input to reduce the burden of the APD application process.

Provisions under § 310.20(b) describe the required procedures for submittal of an APD. Paragraph (b) states that the comprehensive Tribal IV–D agency must submit an APD for a Computerized Tribal IV–D System to the

Commissioner of OCSE, Attention: Division of State and Tribal Systems. The APD submitted by the comprehensive Tribal IV–D agency must be approved and signed by the comprehensive Tribal IV–D agency Director and the appropriate Tribal officials prior to submission to OCSE for approval. The above procedures for submitting an APD would ensure that the proper authorities representing the Tribe or Tribal organization agree with the details in the APD application documents and that the Program Director and appropriate Tribal officials are aware of the responsibilities in acquiring automation for the Tribal IV–D program.

Section 310.25 What conditions apply to acquisitions of Computerized Tribal IV–D Systems?

This section details specific conditions that must be met in the acquisition process of Computerized Tribal IV–D Systems. This section is derived from and comparable to § 307.31 and 45 CFR 95.617 which are respectively titled *FFP at the 80 Percent Rate for Computerized [State] Support Enforcement Systems and Software and Ownership Rights.* This section applies to Comprehensive Tribal IV–D agencies that have elected to automate program activities through the Model Tribal IV–D System or Intergovernmental Service Agreements. It does not apply to Comprehensive Tribal IV–D agencies that have elected to automate program activities through Office Automation or another alternative to Computerized Tribal IV–D Systems as discussed in § 310.5.

In paragraph (a), *APD Approval,* a comprehensive Tribal IV–D agency must have an approved APD in accordance with the applicable requirements of § 310.20 prior to initiating acquisition of a Computerized Tribal IV–D System. This requirement safeguards all parties involved by ensuring that authorities from the Tribe or Tribal organization and the Department are in agreement about the use, funding, and parameters of each comprehensive Tribal IV–D agency's specific plan for automating case-processing and record-keeping program activities.

Under § 310.25(b), *Procurements,* Requests for Proposals (RFP) and similar procurement documents, contracts, and contract amendments involving costs eligible for FFP, must be submitted to OCSE for approval prior to release of the procurement document, and prior to the execution of the resultant contract when a procurement is anticipated to or will exceed the Simplified Acquisition Threshold. The Simplified Acquisition Threshold for ADP systems, equipment, and service acquisitions is defined in § 310.1(a)(10) as a Tribe or Tribal organization's monetary threshold for determining whether competitive acquisition rules are required for a given procurement or $100,000, whichever is less. The Simplified Acquisition Threshold represents the maximum amount of monies that a comprehensive Tribal IV–D agency may expend without submitting the subject solicitation document (RFP, etc.) and resultant contract to OCSE for review and written approval prior to its execution. As previously stated in this rule, the Simplified Acquisition Threshold is derived from 45 CFR 92.36(d)(1), which references *small purchase procedures* as a procurement method for securing items of cost not exceeding the Simplified Acquisition Threshold fixed at 41 U.S.C. 403(11) (currently $100,000). This is appropriately adapted for this rule because of the need to ensure full and open competition in acquisitions in accordance with 45 CFR 92.36(c), and to ensure consistency with regulations at 45 CFR 95.611(b) governing State ADP acquisitions funded at enhanced FFP rates of reimbursement.

Section 310.25(c) is titled *Software and Ownership Rights.* Under paragraph (c)(1) all procurement and contract instruments must include a clause that provides that the comprehensive Tribal IV–D agency will have all ownership rights to Computerized Tribal IV–D System software or enhancements thereof and all associated documentation designed, developed, or installed with FFP. Intergovernmental Service Agreements are not subject to this requirement. The exception for Intergovernmental Service Agreements ensures consistent application of current policy among all grantees, State and Tribal, and is derived from current Federal regulations at 45 CFR 95.613(b) that exempt Service Agreements from the procurement standards applicable to State acquisitions of ADP equipment and services. Paragraph (c)(2) states that OCSE reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications and documentation developed under this part. Under paragraph (c)(3) FFP is not available for the costs of rental or purchase of proprietary application software developed specifically for a Computerized Tribal IV–D System. Commercial-off-the-shelf (COTS) software packages that are sold or leased to the general public at established catalog or market prices are not subject to the ownership and license provisions of this requirement. These requirements are not unique to Child Support Enforcement regulations. Rather, these requirements are a restatement of current Departmental regulations that apply to all automated systems acquisitions. Federal policy in this area, as stated in Federal regulations at 45 CFR 92.34 and 95.617, and as restated in child support automation regulations for State IV–D programs at 45 CFR 307.30 and 45 CFR 307.31, best protects Federal interest in IV–D and other Federal systems development efforts.

Under paragraph (d) of this section, R*equirements for acquisitions under the threshold amount,* a comprehensive Tribal IV–D agency is not required to submit procurement documents, contracts, and contract amendments for acquisitions under the Simplified Acquisition Threshold, unless specifically requested to do so in writing by OCSE.

Section 310.30 Under what circumstances would FFP be suspended or disallowed in the costs of Computerized Tribal IV–D Systems?

This section of the rule identifies circumstances under which OCSE would suspend or disallow FFP in the costs of Computerized Tribal IV–D Systems. The content of this section is derived from § 307.40, which is titled *Suspension of Approval of Advance Planning Documents for Computerized Support Enforcement Systems,* and addresses suspension and disallowance of FFP in the costs of State computerized child support enforcement systems. This section applies to comprehensive Tribal IV–D agencies that have elected to automate program activities through the Model Tribal IV–D System or Intergovernmental Service Agreements. It does not apply to Office Automation enhancements or another alternative to Computerized Tribal IV–D Systems as discussed in § 310.5.

Paragraph (a) of this section, *Suspension of APD approval,* states that OCSE will suspend approval of the APD for a Computerized Tribal IV–D System approved under Part 310 as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions of the APD. OCSE will notify a Tribal IV–D agency in writing of a notice of suspension, with such suspension effective as of the date on which there is no longer substantial compliance. The intent of OCSE is to minimize the likelihood of suspension of a

comprehensive Tribal IV–D agency's APD by engaging in supportive efforts such as technical assistance, policy guidance, and on-going communication and collaboration between the comprehensive Tribal IV–D agency and OCSE. Such preventive efforts will likely facilitate early identification of difficulties associated with a Computerized Tribal IV–D System and the corresponding APD and thereby assist OCSE and the comprehensive Tribal IV–D agency in taking appropriate corrective action, before more serious measures, such as suspension of funding, become necessary.

Paragraph (b), *Suspension of FFP,* states that if OCSE suspends approval of an APD in accordance with Part 310 during the installation, operation, or enhancement of a Computerized Tribal IV–D System, FFP will not be available in any expenditure incurred under the APD after the date of the suspension until the date OCSE determines that the comprehensive Tribal IV–D agency has taken the actions specified in the notice of suspension described in paragraph (a). OCSE will notify the comprehensive Tribal IV–D agency in writing upon making such a determination. This provision ensures that Federal funding is managed and distributed in the most productive, efficient and cost-effective manner possible, and that OCSE has the means necessary to enforce its fiduciary responsibilities.

Section 310.35 Under what circumstances would emergency FFP be available for Computerized Tribal IV–D Systems?

Under this section, emergency FFP in the costs of Computerized Tribal IV–D Systems and Office Automation would be available for qualifying circumstances. This section is similar to 45 CFR 95.624, which is titled *Consideration for FFP in Emergency Situations* and which lays out procedures that must be followed in applying for emergency FFP.

Under § 310.35(a), *Conditions that must be met for emergency FFP,* OCSE will consider waiving the approval requirements for acquisitions in emergency situations, such as natural or man-made disasters, upon receipt of a written request from the comprehensive Tribal IV–D agency. In order for OCSE to consider waiving the approval requirements in § 310.25 the comprehensive Tribal IV–D agency must submit a written request to OCSE prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and include: (i) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs; (ii) a brief description of the circumstances which resulted in the comprehensive Tribal IV–D agency's need to proceed prior to obtaining approval from OCSE; and (iii) a description of the harm that will be caused if the comprehensive Tribal IV–D agency does not acquire immediately the ADP equipment and services.

Under paragraph (a)(2), upon receipt of the information, OCSE will, within 14 working days of receipt, take one of the following actions: (i) Inform the comprehensive Tribal IV–D agency in writing that the request has been disapproved and the reason for disapproval; or (ii) inform the comprehensive Tribal IV–D agency in writing that OCSE recognizes that an emergency exists and that within 90 calendar days from the date of the initial written request under paragraph (a)(1) the comprehensive Tribal IV–D agency must submit a formal request for approval which includes the information specified at § 310.25 in order for the ADP equipment or services acquisition to be considered for OCSE's approval.

Paragraph (b) of this section, *Effective date of emergency FFP,* states that if OCSE approves the request submitted under paragraph (a)(2), FFP will be available from the date the comprehensive Tribal IV–D agency acquires the ADP equipment and services.

Subpart D—Accountability and Monitoring Procedures for Computerized Tribal IV–D Systems

Section 310.40 What requirements apply for accessing systems and records for monitoring Computerized Tribal IV–D Systems and Office Automation?

Section 310.40 identifies requirements that would facilitate accountability and monitoring procedures of Computerized Tribal IV–D Systems and Office Automation, including accessing systems and records. This section of the rule is derived from 45 CFR 95.615, *Access to Systems and Records,* and addresses the Department's right to access State computerized support enforcement systems for the purposes of monitoring the conditions for approval, as well as the efficiency, economy and effectiveness of the State's automated system.

Under § 310.40 a comprehensive Tribal IV–D agency must allow OCSE access to the system in all of its aspects, including installation, operation, and cost records of contractors and subcontractors, and of Service Agreements at such intervals as are deemed necessary by OCSE to determine whether the conditions for FFP approval are being met and to determine the efficiency, effectiveness, reasonableness of the system and its cost.

Response to Comments

Comments were received from 13 Tribes and Tribal organizations, 1 State and the participants of three consultation sessions. A discussion of the comments received and our responses follows:

General Comments

1. *Comment:* Three Tribal commenters stated that delaying this rule and release of the Model Tribal IV–D System would harm Tribes' progress.

Response: We recognized from the initial consultations on the Tribal IV–D program that for Comprehensive Tribal IV–D programs, automation would eventually become necessary to accurately and efficiently process child support collections. However, Tribes would need adequate time to develop their IV–D programs and to determine appropriate approaches, levels of automation, and processes for delivering services before adequate information would be available to design a state-of-the art, culturally-appropriate automated system. We convened a Joint Federal/Tribal Workgroup (the Workgroup) and conducted market research, a feasibility study and the development of the Model Tribal IV–D System. We believe, based on our extensive consultation and work with Tribes over the past eight years, that publication of this final rule and making the Model Tribal IV–D System available to comprehensive Tribal IV–D programs is appropriate and timely.

2. *Comment:* Five Tribal commenters requested that this rule be withdrawn because they believe OCSE did not comply with HHS Tribal consultation policy and offered to assist OCSE in better implementing Tribal consultation. Another seven commenters asserted that OCSE should better adhere to its own Tribal consultation policy, but did not request that this rule be withdrawn. One Tribal commenter stated that the consultation process was circumvented and should be addressed for future regulations and stressed that it is important to expedite release of the Model Tribal IV–D System.

Response: OCSE followed Departmental policy on Tribal consultation. Three consultation sessions were held on June 27, July 8, and July 9 of 2008 as well as an

informational meeting at the National Tribal Child Support Association conference on June 11, 2008. The input we received from the consultation sessions and other collaborative efforts helped to shape the final rule.

3. *Comment:* Five Tribal commenters suggested that OCSE should proceed with pilot testing of the Model Tribal IV–D System so that Tribes will be able to assess whether it meets Tribal program needs. Six other Tribal commenters suggested that OCSE should proceed with the Model Tribal IV–D System pilot regardless of whether this final rule is published. Five Tribal commenters recommended that OCSE select at least three pilot sites and consult Tribes in the criteria for selection.

Response: In response to comments, OCSE issued a Dear Colleague Letter (DCL–08–47: *http://www.acf.hhs.gov/programs/cse/pol/DCL/2008/dcl-08-47.htm*) to solicit interest in piloting the Model Tribal IV–D System from comprehensive Tribal IV–D programs. Based on the selection criteria outlined in the Dear Colleague Letter, OCSE selected Forest County Potawatomi as the pilot site. The pilot phase, once initiated, is expected to last two to three months. OCSE will provide training, technical assistance, operational oversight, and support during this critical testing process. Due to limited resources, additional pilots were not possible.

Subpart A—General Provisions

Section 310.0 What does this Part cover?

1. *Comment:* Six Tribal commenters and one State requested that the scope of the regulation be expanded to include Tribes and Tribal organizations funded under start-up funding as specified in § 309.65(b) of this chapter, *What must a Tribe or Tribal organization include in a Tribal IV–D plan in order to demonstrate capacity to operate a Tribal IV–D program?*

Response: We do not agree that it is appropriate to expand the scope of this regulation to include Tribal IV–D programs in the start-up phase. Automated data processing is intended for comprehensive Tribal IV–D programs performing actions in the child support collection and paternity determination processes under the Tribal IV–D plan. Tribes receiving start-up funding are in the planning phase of developing an operational Tribal IV–D program and do not have adequate operational experience dealing with actual caseloads or case activities to determine the appropriate level or type of automation required for their specific comprehensive Tribal IV–D program. In addition, a start-up Tribe's focus toward the end of its two-year development phase must be on preparing for and requesting approval to operate a comprehensive Tribal IV–D program. It would be premature for a start-up Tribe to anticipate approval of its application and divert the resources and time necessary to complete the automated system application process. However, once funding for a comprehensive Tribal IV–D program is approved, technical assistance is available to Tribal programs for developing and assessing the program's automation needs based on its caseload and developing the appropriate request for such automation funding.

2. *Comment:* Three Tribal commenters stated that access to Federal Tax Refund Offset (FTRO), Multi-State Financial Institution Data Match (MSFIDM) and data from the Federal Parent Locator Service (FPLS) would enhance Tribal automation and should be addressed in this regulation.

Response: We are aware that Tribal IV–D programs are interested in having access to FTRO, MSFIDM and the FPLS. However, Title IV–D of the Act does not currently authorize direct Tribal access to these enforcement tools, so expanding access to these systems cannot be addressed in this regulation.

3. *Comment:* Six Tribal commenters criticized the proposed regulations as infringing on Tribal sovereignty and exceeding the Department's statutory authority under section 455(f) of the Act stating that the rule "purports to regulate existing email, tribal computer networks and other office automation processes used in a Tribe's child support program."

Response: We do not believe this regulation, enabling Tribes to apply for and receive Federal funding for the costs of automated data processing, infringes on Tribal sovereignty. Office Automation is currently governed by existing regulations found in § 309.145(h). This rule builds on the existing regulation to expand allowable activities and costs for Tribal IV–D program automation. Section 455(f) of the Act clearly states that the Secretary shall "promulgate regulations establishing requirements which must be met by an Indian Tribe or Tribal organization to be eligible for a direct grant under title IV–D." The resulting regulation reflects the Federal government's determination of the minimum regulatory requirements necessary for the successful administration and operation of automated Tribal systems.

Section 310.1 What definitions apply to this Part?

1. *Comment:* Five Tribal commenters stated that the terms Reasonable Cost, Essential Office Automation, Federal Financial Participation (FFP), Simplified Acquisition Threshold and the reference to Part 95 titled *General Administration—Grant Programs,* should not be used in this regulation because they are inapplicable to Tribes.

Response: The terms specified above are applicable to Tribes and Tribal organizations applying for Federal funding for Computerized Tribal IV–D Systems and Office Automation. Many of the terms such as Reasonable Cost, Essential Office Automation and FFP are familiar terms to the Tribal IV–D program and have been used in existing regulations and policy documents issued by OCSE. For example, § 309.155 lists unallowable costs, including "all other costs that are not reasonable, necessary, and allocable to Tribal IV–D programs under the costs principles of OMB Circular A–87." OMB Circular A–87 defines Reasonable Cost and applies to Tribes: "This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and Federally-recognized Indian tribal governments (governmental units)."

The term Essential Office Automation appears in § 309.145 titled, *What costs are allowable for Tribal IV–D programs carried out under § 309.65(a) of this part?* as an allowable cost. In the final rule for the Tribal Child Support Enforcement program (69 FR 16638), the term Federal funding is used rather than FFP. However, we consider the two terms interchangeable.

The term Simplified Acquisition Threshold is used in 45 CFR Part 92 titled *Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments* which clearly applies to Tribes and Tribal organizations. The scope of 45 CFR Part 92 states that "This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments." The definition of Simplified Acquisition Threshold in this rule means "a Tribe or Tribal organization's monetary threshold for determining whether competitive acquisition rules are required for a given procurement or $100,000, whichever is less." This provides flexibility in the definition of Simplified Acquisition

Threshold so that Tribes and Tribal organizations may apply their monetary threshold rather than the one defined in 41 U.S.C. (*Public Contracts—Office of Federal Procurement Policy—Definitions*), given that their threshold is the lesser of the two.

With regard to Part 95, *General Administration—Grant Programs,* OCSE solicited comments in the proposed rule for the Tribal Child Support Enforcement program (65 FR 50800, 50825) stating that "OCSE [the Office] is considering applying part 95 to Tribal child support systems efforts" and that "OCSE is, however, asking for comments on the appropriateness of applying 45 CFR part 95 to the Tribal child support program and on the modifications that might be necessary or desirable to adapt part 95 to the Tribal CSE program." In response to OCSE's request for feedback, one out of twenty-nine commenters opposed the application of 45 CFR Part 95 to Tribal IV–D programs. We took that commenter's suggestion into consideration in combination with comments from other stakeholders including members of the Federal/Tribal Workgroup. After careful deliberation, we determined that it would not be necessary to make all sections of Part 95 applicable to Tribal IV–D programs, but that certain terms identified in Subpart F of Part 95, *Automated Data Processing Equipment and Services—Conditions for Federal Financial Participation (FFP),* would be appropriately applied to this rule.

2. *Comment:* One Tribal commenter expressed concern that Reasonable Cost may be interpreted differently and requested assurance that there would be consistency in the treatment for each Tribal IV–D agency.

Response: This rule includes a very detailed definition of Reasonable Cost based on OMB Circular A–87, *Cost Principles for State, Local, and Indian Tribal Governments* which applies consistently to State, local and Federally-recognized Indian Tribal governments. A Tribal IV–D agency's systems or Office Automation expenditures will be assessed based on this measurable definition of Reasonable Cost.

3. *Comment:* One Tribal commenter suggested revising the definition of Reasonable Cost by deleting the terms 'ordinary', 'arms-length bargaining', 'market price' and 'established practices'.

Response: We did not revise the definition of Reasonable Cost under this regulation as each of the terms identified by the commenter is taken from the existing definition of Reasonable Cost under OMB Circular A–87, *Cost Principles for State, Local and Indian Tribal Governments,* which applies to Indian Tribal Governments.

4. *Comment:* One Tribal commenter objected to the definition of Service Agreement stating that the Federal government cannot dictate how a Tribe executes contracts with outside agencies.

Response: The definition recognizes the Federal government's fiduciary responsibility to ensure reasonable cost of services rendered, the effective and efficient use of Federally-funded resources, the safety and security of Federally-funded equipment, resources, and data, and the accurate accounting of the charges and expenditures under such a service agreement. Thus, we have not changed the definition in response to the comment.

Subpart B—Requirements for Computerized Tribal IV–D Systems and Office Automation

Section 310.5 What options are available for Computerized Tribal IV–D Systems and Office Automation?

1. *Comment:* Eight Tribal commenters and one State commenter requested expanding Federal funding for the development of an alternative system designed, developed, procured or enhanced entirely with Tribal funds. One commenter suggested that Federal funding should be available for a Tribally-developed system, if the cost for that system is equal to or less than the highest cost of a Computerized Tribal IV–D System or Office Automation.

Response: In our experience over many years with funding the development of automated systems in State IV–D programs, we are persuaded that the costs involved in the design and development of individual Tribal IV–D automated child support enforcement systems would be unreasonable relative to the size of the Tribal programs being served or compared to the costs of other automation options (*i.e.,* installation costs of the Model Tribal IV–D System, Intergovernmental Service Agreement or Office Automation). To allow Federal funding in the cost of an alternative system would, therefore, be contrary to the funding prerequisite for cost reasonableness cited in OMB Circular A–87.

2. *Comment:* Two Tribal commenters questioned whether the Model Tribal IV–D System would be available as an option for Tribal IV–D automation since it is currently in the testing phase and has not been released to Tribes for their review.

Response: OCSE completed development of the Model Tribal IV–D System in October 2008 and expects to complete the pilot phase in the fall of 2009. Many Tribes have reviewed the Model Tribal IV–D System by participating in one or more of the numerous live demonstrations of the system as it has been built. Additional demonstrations of the completed Model Tribal IV–D System are planned through 2009.

Section 310.10 What are the functional requirements for the Model Tribal IV–D System?

1. *Comment:* Two Tribal commenters requested that the language in this section be revised to clarify that Tribes will not be required to interface with any other system.

Response: This rule does not require Tribes to develop an automated interface with any other system. Section 310.10(c) refers to the Model Tribal IV–D System's capacity to add on an electronic interface with State or Tribal financial management and expenditure information at the Tribe's option versus manually reporting any fees. The requirement in § 310.10(c) is that the Model Tribal IV–D System must record and report any fees collected. We have not made any changes to the regulatory language.

2. *Comment:* Two Tribal commenters requested greater specificity as to the type of data OCSE would have access to based on § 310.10(g), which states that a Model Tribal IV–D System must "provide automated processes to enable the office to monitor Tribal IV–D program operations and to assess program performance through the audit of financial and statistical data maintained by the system."

Response: Section 310.10(g) requires access to any Tribal IV–D program's financial and statistical data maintained by the system.

3. *Comment:* One commenter asked that language be added to indicate that Federal funding will be available if any new data elements are added to those in § 310.10(a)(1) which requires that the Model Tribal IV–D System accept, maintain and process identifying information such as Social Security numbers, names, dates of birth and other data as required by OCSE.

Response: The regulation already addresses funding for new systems requirements, including data elements, in § 310.20(a)(4), governing the availability of Federal funding for enhancement of the Model Tribal IV–D System, should new data requirements be imposed by OCSE.

Section 310.15 What are the safeguards and processes that comprehensive Tribal IV–D agencies must have in place to ensure the security and privacy of Computerized Tribal IV–D Systems and Office Automation?

1. *Comment:* Six Tribal commenters questioned whether the safeguarding requirement in § 310.15(a) to ensure that the Computerized Tribal IV–D System and Office Automation complies with the requirements of the Federal Information Security Management Act and the Privacy Act apply to Tribal governments.

Response: The Federal Information Security Management Act (FISMA) and the Privacy Act are Federal laws that apply to Federal agencies. These laws require Federal agencies to ensure that information and information systems used by the agency or other sources on behalf of the agency are safeguarded. The FISMA applies to both information and information systems used by a Federal agency and its contractors and grantees, which would include State and local governments and Federally-recognized Tribes. Although Tribal IV–D programs do not currently have direct access to Federal information systems, they may have indirect access through agreements with State IV–D agencies.

Federal agencies must develop policies for information security oversight of contractors and other users with privileged access to Federal data. To that end, OCSE considers it imperative that Tribal IV–D programs are aware of the requirements in FISMA and the Privacy Act and that Tribal IV–D agencies should ensure that the Computerized Tribal IV–D Systems and Office Automation comply with such requirements.

2. *Comment:* Five Tribal commenters questioned the safeguarding requirement in § 310.15(a)(5) for a Tribal IV–D agency to include written policies and procedures concerning mechanisms to report (to the Department of Homeland Security) and respond to breaches of personally identifiable information and stated that reporting to the Department of Homeland Security should not apply to Indian Tribes.

Response: Federal agencies are required to report breaches or suspected breaches of Federal data to the U.S. Computer Emergency Readiness Team (US–CERT), which is part of the Department of Homeland Security (DHS) and is charged with the task of coordinating defense against and responses to cyber attacks across the nation.

A Tribal IV–D program, as part of the overall child support enforcement information system, must have written policies and procedures concerning mechanisms to report breaches or suspected breaches of Federal data. The Tribal IV–D agency has the discretion to determine the mechanism used to report the breach as a part of its written policies and procedures. The procedure for a State IV–D agency that suspects compromised Federal data is to report the suspected breach to OCSE. OCSE would then notify the ACF Chief Information Security Officer (CISO), who in turn would notify the HHS Computer Security Incident Response Center. The HHS Computer Security Incident Response Center then notifies the US–CERT of the Department of Homeland Security. A Tribal IV–D agency may establish a similar procedure.

3. *Comment:* One Tribal commenter encouraged that the preamble language stating "We also would emphasize that no Federal Tribal IV–D program requirement obligates comprehensive Tribal IV–D agencies to disclose, or otherwise make accessible, their Tribal enrollment records for the purposes of providing child support enforcement services or automating child support enforcement activities" be retained in the final rule.

Response: We agree and retained the language in this preamble.

4. *Comment:* One Tribal commenter referenced § 310.15(a), which requires written procedures to allow Tribal IV–D personnel controlled access and use of IV–D data including "permitting access to and use of data for the purpose of exchanging information with State and Tribal agencies administering programs under titles IV–A, IV–E and XIX of the Act" and suggested adding language stating that "no state or tribe can demand access to the information maintained in the tribal IV–D system without the express written consent of the Tribe."

Response: We agree that the section referenced by the commenter addresses procedures that must be put in place to safeguard access that Tribal IV–D personnel have to IV–D information and data from programs administered under titles IV–A, IV–E and XIX of the Act. This and other sections of this regulation do not imply that a State or Tribe could demand access to a Tribal IV–D agency's automated data processing system or Office Automation. For this reason, we do not find it necessary to revise or add language as suggested.

5. *Comment:* One Tribal commenter referenced § 310.15(a), which requires the comprehensive Tribal IV–D agency to have written policies and procedures to safeguard the access to and use of data in the Computerized Tribal IV–D System and Office Automation. The commenter suggested adding clarification as to which safeguards must be included in the Tribal IV–D agency's written policies and procedures.

Response: The proposed regulatory language in § 310.15(a) stating "Some of the required safeguards must include written polices and procedures * * *" has been revised deleting the words 'some of' for clarity so that the sentence reads: "The required safeguards must include written policies and procedures concerning the following:". A list of required safeguards appears after the introductory phrase.

Subpart C—Funding for Computerized Tribal IV–D Systems and Office Automation

Section 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV–D Systems and Office Automation?

1. *Comment:* One Tribal commenter recommended that a comprehensive Tribal IV–D agency be able to use more than one of the options for Computerized Tribal IV–D Systems and Office Automation as defined in § 310.5 at one point in time to allow for transitions such as from a State system to the Model Tribal IV–D System.

Response: The language in § 310.20(a)(2)(i) which states that "an APD for installation of a Computerized Tribal IV–D System must represent the sole systems effort being undertaken by the comprehensive Tribal IV–D agency" does not preclude situations wherein multiple systems may be in use during a reasonable transition period from one automated system solution to another. Clearly, any transition from one automated system to another includes tasks that will need to be performed concurrently, such as data conversion, training, testing, and installation. During the installation process, further guidance will be provided.

2. *Comment:* Ten Tribal commenters and one State commenter suggested that the FFP rate in the costs of Tribal automation be increased from the applicable matching rate as defined in § 309.130(c), *How will Tribal IV–D programs be funded and what forms are required*? (The applicable matching rate, as proposed, would have been 90 percent for comprehensive Tribal IV–D programs that are operating within the first three-year period of Federal

funding and 80 percent for comprehensive Tribal IV–D programs operating in all periods following the first three-year period.) A number of commenters and consultation participants suggested that FFP in the costs of Tribal automation be increased to 100 percent Federal funding. Five commenters stressed that the proposed funding scheme would penalize the more experienced Tribes. Two commenters suggested that Federal funding for Tribal automation should in no way penalize the more experienced Tribes.

Response: We are persuaded that Tribes with comprehensive Tribal IV–D programs that have been in operation for over three years and are receiving 80 percent Federal funding should not be disadvantaged when funding for installing the Model Tribal IV–D System is available. Therefore, the final rule extends 90 percent FFP in the pre-approved costs of installing the Model Tribal IV–D System for all comprehensive Tribal IV–D programs. FFP in the costs of all other allowable activities will remain at the applicable matching rate. This includes the cost of access to State automated systems or Office Automation, for which Federal funding has been available to comprehensive Tribal IV–D programs since the inception of the program.

3. *Comment:* One Tribal commenter asked if in-kind payments or services would be accepted towards the Tribal IV–D agency's share of automation costs.

Response: Current regulations at § 309.130(d)(3) allow in-kind payments and services as a Tribal IV–D agency's share of costs, including automation costs.

4. *Comment:* One Tribal commenter referenced § 310.20(a)(4), which sets forth conditions that must be met in order to obtain FFP in the costs of enhancements, and objected to the requirement that "The project's Total Acquisition Cost cannot exceed the comprehensive Tribal IV–D agency's total Tribal IV–D program grant award for the year in which the acquisition request is made." The commenter explained such a provision would limit smaller Tribal programs.

Response: Based on our experience with State automation efforts, this requirement is consistent with States' annual automation project expenditures and represents a sound, practical threshold to apply to ensure the cost reasonableness of Tribal automation efforts.

5. *Comment:* One Tribal commenter stated that the proposed rule does not allocate Federal funds to be used in the development of a Model Tribal IV–D System.

Response: This rule does not provide for Federal funds towards the development of a Model Tribal IV–D System because the Model Tribal IV–D System has already been designed and developed by OCSE for use by comprehensive Tribal IV–D programs electing to automate child support activities under this rule. There are no costs, including license fees or other charges, to Tribal IV–D programs to acquire a complete copy of the Model Tribal IV–D System from OCSE, and 90 percent Federal funding is available to Tribal IV–D programs for pre-approved costs of installing the Model Tribal IV–D System.

Section 310.25 What conditions apply to acquisitions of Computerized Tribal IV–D Systems?

1. *Comment:* Six Tribal commenters questioned whether the Model Tribal IV–D System was developed through competitive contracting in accordance with the Competition in Contracting Act.

Response: The Model Tribal IV–D System was developed under the direction of OCSE through the use of contractor resources from two competitively procured contracts. These two procurements adhered to all Federal acquisition regulations.

2. *Comment:* One Tribal commenter stated that its ability to ensure full and open competition would be hampered because there are only two specialists in the area who are capable of enhancing their Tribe's Computerized Tribal IV–D System.

Response: There are many ways to enable increased competition in procurements, including participating in consortia-based contracts with other Tribal IV–D programs, increasing the distance or range of the procurement search, and allowing successful offerors remote access to the Computerized Tribal IV–D System, thereby reducing contracted travel and similar costs. Remote access can increase interest in the vendor community to participate in a Tribe's procurement as it can have a leveling effect on the costs being proposed by all of the prospective offerors.

3. *Comment:* One Tribal commenter requested clarification of the procurement process and asked if Tribes would need to solicit bids from other States.

Response: There is no requirement that Tribal IV–D programs solicit bids from other States.

4. *Comment:* Seven Tribal commenters questioned the intent of § 310.25(c) titled *Software and Ownership Right*s, as it relates to Tribally-funded systems; they suggested that the provisions of this section may inappropriately result in the Federal government reserving a license on property acquired with the Tribal funds. One commenter stated that provisions in § 310.25(c)(2) that OCSE reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes would discourage Tribes or Tribal organizations from development of their own systems at their own expense.

Response: In the preamble language to § 310.25, we indicate that "Comprehensive Tribal IV–D agencies that have elected to automate program activities through Office Automation or another alternative to Computerized Tribal IV–D Systems [such as an automated system funded entirely by a Tribe] as discussed in proposed § 310.5, would not be subject to the requirements presented in proposed § 310.25." A Tribal IV–D program's alternative system, one that was designed and developed as a fully Tribally-funded system, would only become subject to the Software and Ownership Rights clauses in § 310.25(c) if the Tribal IV–D program later sought Federal funding in the costs to operate and maintain its alternative system. We agree with commenters that § 310.25(c)(2), which states that OCSE reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, should not apply to a Tribally-funded system. We have revised this rule to limit the Software and Ownership Rights clause for a Tribally-funded system to § 310.25(c)(1), which requires that all procurement and contract instruments must include a clause that provides that the comprehensive Tribal IV–D agency will have all ownership rights to Computerized Tribal IV–D System software or enhancements thereof and all associated documentation designed, developed or installed with FFP.

Subpart D—What requirements apply for accessing systems and records for monitoring Computerized Tribal IV–D Systems and Office Automation?

1. *Comment:* Six Tribal commenters questioned the language in § 310.40 which states that "In accordance with 45 CFR Part 95 of this title, under proposed § 310.40 a comprehensive Tribal IV–D agency must allow OCSE access to the system in all of its aspects." The

commenters proposed restricting OCSE's access to financial and procurement information in the Tribe's automated system.

Response: We do not agree that OCSE's access to information on the Tribe's automated system should be restricted. This requirement is critical for Federal oversight responsibility to ensure that Federal funds are expended appropriately and Federal grantees meet all requirements as a condition of receiving Federal funds.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule.

This final rule contains reporting requirements at 45 CFR Part 310. The Department has submitted these reporting requirements to OMB for review.

Part 310 contains a regulatory requirement that, in order to receive funding for a Computerized Tribal IV–D System, a Tribe or Tribal organization must submit an Advanced Planning Document (APD) which represents the sole systems effort being undertaken by the comprehensive Tribal IV–D agency; describes the projected resource requirements for staff, hardware, software, network connections and other needs and resources available and expected to be available; contains a proposed schedule of project milestones; contains a proposed budget; and contains a statement that the comprehensive Tribal IV–D agency agrees in writing to use the Computerized Tribal IV–D System for a minimum period of time. Tribes and Tribal organizations must respond if they wish to operate a Federally-funded Computerized Tribal IV–D System. The potential respondents to these information collection requirements are approximately 40 Federally-recognized Tribes, and Tribal organizations, during Year 1; 5 additional Federally-recognized Tribes and Tribal organizations during Year 2; and 5 additional Federally-recognized Tribes and Tribal organizations during Year 3; for a three-year total of 50 grantees. This information collection requirement will impose the estimated total annual burden on the Tribes and Tribal organizations described in the table below:

Information collection	Number of respondents	Response per respondent	Average burden per response	Total annual burden
Year 1				
APD	40	2	108	8,640
Acquisitions (RFPs, Contracts, etc.)	6	2	24	288
Total				8,928
Year 2				
APD	*11	2	108	2,376
Acquisitions (RFPs, Contracts, etc.)	6	2	24	288
Total				2,664
Year 3				
APD	*8	2	108	1,728
Acquisitions (RFPs, Contracts, etc.)	3	2	24	144
Total				1,872

*Figures reflect APDs from 5 additional Tribes in Year 2 and Year 3 as well as APD Updates from Tribes included in Year 1 and 2 respectively.

Total Burden for 3 Years: 13,464.

Total Annual Burden Averaged over 3 Years: 4,488 per year.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not result in a significant impact on a substantial number of small entities because the primary impact of these regulations is on Tribal governments. Tribal governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this final rule is consistent with these priorities and principles. Moreover, we have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

We have determined that this final rule, including setting the FFP rate in the costs of installing the Model Tribal IV–D System at 90 percent for all comprehensive Tribal IV–D agencies, is not an economically significant rule under Executive Order 12866 and will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year, adjusted for inflation from 1995 to 2008 using the GDP Price Deflator. The current threshold is $133 million. Therefore, we have not prepared a budgetary impact statement. We anticipate that the costs associated with this rule will be: FY 2010—$8m; FY 2011—$4m; FY 2012—$2m; FY 2013—$3m; FY 2014—$3m.

These regulations are authorized by 42 U.S.C. 655(f) and 42 U.S.C. 1302 and represent the final regulations governing direct funding for computerized systems and Office Automation of Tribal IV–D agencies that demonstrate the capacity to operate a child support enforcement program, including establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this rule.

Executive Order 13175

Executive Order 13175 sets forth principles to strengthen the United States' government-to-government relationships with Indian Tribes and to reduce the imposition of unfunded mandates upon Indian Tribes. In association with this rule, ACF held three consultation sessions on June 27, July 8 and July 9 of 2008. The consultations were held in Seattle, Washington; Catoosa, Oklahoma; and Milwaukee, Wisconsin during the summer and elicited a range of questions and suggestions which are discussed in detail throughout the preceding pages of this preamble.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. As indicated above, we have determined this rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Congressional Review

This final rule is not a major rule as defined in 5 U.S.C., Chapter 8.

Assessment of Federal Regulations and Policies on Family Well-Being

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under sec. 654 of the Treasury and General Government Appropriations Act of 1999, Pub. L. 105–277. This final rule gives flexibility to Tribes and Tribal organizations to use technological advancements to meet program objectives that serve this purpose.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These regulations do not have federalism implications for State or local governments as defined in the Executive Order.

List of Subjects

45 CFR 309

Child support, Grant programs—Social programs, Indians, Native Americans.

45 CFR 310

Child support, Grant programs—Social programs, Indians, Native Americans.

(Catalogue of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: October 28, 2009.

Carmen Nazario,

Assistant Secretary for Children and Families.

Approved: November 16, 2009.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

■ For the reasons discussed in the preamble, title 45 chapter III of the Code of Federal Regulations is amended as follows:

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV–D) PROGRAM

■ 1. The authority citation for part 309 continues to read as follows:

Authority: 42 U.S.C. 655(f), 1302.

■ 2. In § 309.130, revise paragraph (c)(3) to read as follows:

§ 309.130 How will Tribal IV–D programs be funded and what forms are required?

* * * * *

(c) *Federal share of program expenditures.* * * *

(3)(i) Except as provided in paragraph (c)(3)(ii) of this section, for all periods following the three-year period specified in paragraph (c)(2) of this section, a Tribe or Tribal organization will receive Federal grant funds equal to 80 percent of the total amount of approved and allowable expenditures made for the administration of the Tribal child support enforcement program.

(ii) A Tribe or Tribal organization will receive Federal grant funds equal to 90 percent of pre-approved costs of installing the Model Tribal IV–D System.

* * * * *

■ 3. In § 309.145, revise paragraph (h) to read as follows:

§ 309.145 What costs are allowable for Tribal IV–D programs carried out under § 309.65(a) of this part?

* * * * *

(h) Automated data processing computer systems, including:

(1) Planning efforts in the identification, evaluation, and selection of an automated data processing computer system solution meeting the program requirements defined in a Tribal IV–D plan and the automated systems requirements in part 310 of this chapter;

(2) Installation, operation, maintenance, and enhancement of a Model Tribal IV–D System as defined in and meeting the requirements of part 310 of this title;

(3) Procurement, installation, operation and maintenance of essential Office Automation capability;

(4) Establishment of Intergovernmental Service Agreements with a State and another comprehensive Tribal IV–D agency for access to the State or other Tribe's existing automated data processing computer system to support Tribal IV–D program operations, and Reasonable Costs associated with use of such a system;

(5) Operation and maintenance of a Tribal automated data processing system funded entirely with Tribal funds if the software ownership rights and license requirements in § 310.25(c)(1) are met; and

(6) Other automation and automated data processing computer system costs in accordance with instructions and guidance issued by the Secretary.

* * * * *

■ 4. Revise part 310 to read as follows:

PART 310—COMPUTERIZED TRIBAL IV–D SYSTEMS AND OFFICE AUTOMATION

Subpart A—General Provisions

Subpart B—Requirements for Computerized Tribal IV–D Systems and Office Automation

Authority: 42 U.S.C. 655(f) and 1302.

Subpart A—General Provisions

§ 310.0 What does this part cover?

This part addresses conditions for funding and requirements governing Computerized Tribal IV–D Systems and Office Automation including:

(a) The automated systems options for comprehensive Tribal IV–D programs in § 310.5 of this part;

(b) The functional requirements for the Model Tribal IV–D Systems in § 310.10 of this part;

(c) The security and privacy requirements for Computerized Tribal IV–D Systems and Office Automation in § 310.15 of this part;

(d) The conditions for funding the installation, operation, maintenance, and enhancement of Computerized Tribal IV–D Systems and Office Automation in § 310.20 of this part;

(e) The conditions that apply to acquisitions of Computerized Tribal IV–D Systems in § 310.25 of this part; and

(f) The accountability and monitoring of Computerized Tribal IV–D Systems in § 310.40 of this part.

§ 310.1 What definitions apply to this part?

(a) The following definitions apply to this part and part 309:

(1) *Automated Data Processing Services (ADP Services)* means services for installation, maintenance, operation, and enhancement of ADP equipment and software performed by a comprehensive Tribal IV–D agency or for that agency through a services agreement or other contractual relationship with a State, another Tribe or private sector entity.

(2) *Comprehensive Tribal IV–D agency* means the organizational unit in the Tribe or Tribal organization that has the authority for administering or supervising a comprehensive Tribal IV–D program under section 455(f) of the Act and implementing regulations in part 309 of this chapter. This is an agency meeting all requirements of § 309.65(a) of this chapter which is not in the start-up phase under § 309.65(b) of this chapter.

(3) *Computerized Tribal IV–D System* means a comprehensive Tribal IV–D program's system of data processing that is performed by electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention. A Computerized Tribal IV–D System is:

(i) The Model Tribal IV–D System; or

(ii) Access to a State or comprehensive Tribal IV–D agency's existing automated data processing computer system through an Intergovernmental Service Agreement;

(4) *Installation* means the act of installing ADP equipment and software, performing data conversion, and turnover to operation status.

(5) *Maintenance* is the totality of activities required to provide cost-effective support to an operational ADP system. Maintenance is generally routine in nature and can include activities such as: Upgrading ADP hardware, and revising/creating new reports, making limited data element/data base changes, minor data presentation changes, and other software corrections.

(6) *Model Tribal IV–D System* means an ADP system designed and developed by OCSE for comprehensive Tribal IV–D programs to include system specifications and requirements as specified in this part. The Model Tribal IV–D System effectively and efficiently allows a comprehensive Tribal IV–D agency to monitor, account for, and control all child support enforcement services and activities pursuant to part 309 of this chapter.

(7) *Office Automation* means a generic adjunct component of a computer system that supports the routine administrative functions in an organization (e.g., electronic mail, word processing, internet access), as well as similar functions performed as part of an automated data processing system. Office Automation is not specifically designed to meet the programmatic and business-centric needs of an organization.

(8) *Reasonable Cost* means a cost that is determined to be reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness with regard to ADP systems cost, consideration shall be given to:

(i) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of a comprehensive Tribal IV–D agency;

(ii) The restraints or requirements imposed by such factors as: Sound business practices; arms-length bargaining; Federal, Tribal laws and regulations; and terms and conditions of any direct Federal funding;

(iii) Whether the individual concerned acted with prudence in the circumstances considering his or her responsibilities to the comprehensive Tribal IV–D agency, its employees, the public at large, and the Federal Government;

(iv) Market prices for comparable goods or services;

(v) Significant deviations from the established practices of the comprehensive Tribal IV–D agency which may unjustifiably increase the cost; and

(vi) Whether a project's Total Acquisition Cost is in excess of the comprehensive Tribal IV–D agency's total Tribal IV–D program grant award for the year in which the request is made.

(9) *Service Agreement* means a document signed by the Tribe or Tribal organization operating a comprehensive Tribal IV–D program under § 309.65(a) and the State or other comprehensive Tribal IV–D program whenever the latter provides data processing services to the former and identifies those ADP services that the State or other comprehensive Tribal IV–D program will provide to the Tribe or Tribal organization. Additionally, a Service Agreement would include the following details:

(i) Schedule of charges for each identified ADP service and a certification that these charges apply equally to all users;

(ii) Description of the method(s) of accounting for the services rendered under the agreement and computing service charges;

(iii) Assurances that services provided will be timely and satisfactory;

(iv) Assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with proposed § 310.15;

(v) Beginning and ending dates of the period of time covered by the Service Agreement; and

(vi) Schedule of expected total charges for the period of the Service Agreement.

(10) *Simplified Acquisition Threshold* for ADP systems, equipment, and service acquisitions means a Tribe or Tribal organization's monetary threshold for determining whether competitive acquisition rules are required for a given procurement or $100,000, whichever is less.

(b) The following terms apply to this part and are defined in § 95.605 of this title: "Acquisition"; "Advance Planning Document (APD)"; "Design or System Design"; "Development"; "Enhancement"; "Federal Financial Participation (FFP)"; "Operation"; "Project"; "Software"; and "Total Acquisition Cost".

(c) All of the terms defined in § 309.05 of this chapter apply to this part.

Subpart B: Requirements for Computerized Tribal IV–D Systems and Office Automation

§ 310.5 What options are available for Computerized Tribal IV–D Systems and office automation?

(a) *Allowable computerized support enforcement systems for a Comprehensive Tribal IV–D agency.* A comprehensive Tribal IV–D agency may have in effect an operational computerized support enforcement system that meets Federal requirements under this part.

(b) *Computerized Tribal IV–D Systems.* A Computerized Tribal IV–D System must be one of the design options listed below. A comprehensive Tribal IV–D program may automate its case processing and recordkeeping processes through:

(1) Installation, operation, maintenance, or enhancement of the Model Tribal IV–D System designed by OCSE to address the program requirements defined in a Tribal IV–D plan in accordance with § 309.65(a) of this chapter and the functional requirements in § 310.10 of this part;

(2) Establishment of Intergovernmental Service Agreements with a State or another comprehensive Tribal IV–D agency for access to that agency's existing automated data processing computer system to support comprehensive Tribal IV–D program operations.

(c) *Office Automation.* A comprehensive Tribal IV–D agency may opt to conduct automated data processing and recordkeeping activities through Office Automation. Allowable activities under this paragraph include procurement, installation, operation and maintenance of essential Office Automation capability as defined in § 310.1 of this part.

(d) *Alternative to Computerized Tribal IV–D Systems and Office Automation.* A comprehensive Tribal IV–D agency may design, develop, procure, or enhance an automated data processing system funded entirely with Tribal funds.

§ 310.10 What are the functional requirements for the Model Tribal IV–D System?

A Model Tribal IV–D System must:

(a) Accept, maintain and process the actions in the support collection and paternity determination processes under the Tribal IV–D plan, including:

(1) Identifying information such as Social Security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom paternity and support obligations are sought to be established or enforced and on individuals to whom support obligations are owed, and other data as may be requested by OCSE;

(2) Verifying information on individuals referred to in paragraph (a)(1) of this section with Tribal, Federal, State and local agencies, both intra-tribal and intergovernmental;

(3) Maintaining information pertaining to:

(i) Applications and referrals for Tribal IV–D services, including:

(A) Case record;

(B) Referral to the appropriate processing unit (i.e., locate or paternity establishment);

(C) Caseworker notification;

(D) Case Identification Number; and

(E) Participant Identification Number;

(ii) Delinquency and enforcement activities;

(iii) Intra-tribal, intergovernmental, and Federal location of the putative father and noncustodial parents;

(iv) The establishment of paternity;

(v) The establishment of support obligations;

(vi) The payment and status of current support obligations;

(vii) The payment and status of arrearage accounts;

(4) Maintaining data on case actions administered by both the initiating and responding jurisdictions in intergovernmental cases;

(b) Update, maintain and manage all IV–D cases under the Tribal IV–D plan from initial application or referral through collection and enforcement, including any events, transactions, or actions taken therein;

(c) Record and report any fees collected, either directly or by interfacing with State or Tribal financial management and expenditure information;

(d) Distribute current support and arrearage collections in accordance with Federal regulations at § 309.115 of this chapter and Tribal laws;

(e) Maintain, process and monitor accounts receivable on all amounts owed, collected, and distributed with regard to:

(1) Detailed payment histories that include the following:

(i) Amount of each payment;

(ii) Date of each collection;

(iii) Method of payment;

(iv) Distribution of payments; and

(v) Date of each disbursement;

(2) Automated income withholding activities such as:

(i) Recording and maintaining any date the noncustodial parent defaults on payment of the support obligation in an amount equal to the support payable for one month;

(ii) Generating the Standard Federal Income Withholding Form; and

(iii) Allocating amounts received by income withholding according to §§ 309.110 and 309.115 of this chapter.

(f) Maintain and automatically generate data necessary to meet Federal reporting requirements on a timely basis as prescribed by OCSE. At a minimum this must include:

(1) Yearly notices on support collected, which are itemized by month of collection and provided to families receiving services under the comprehensive Tribal IV–D program as required in § 309.75(c) of this chapter, to all case participants regarding support collections; and

(2) Reports submitted to OCSE for program monitoring and program performance as required in § 309.170 of this chapter;

(g) Provide automated processes to enable OCSE to monitor Tribal IV–D program operations and to assess program performance through the audit of financial and statistical data maintained by the system; and

(h) Provide security to prevent unauthorized access to, or use of, the data in the system as detailed in § 310.15 of this part.

§ 310.15 What are the safeguards and processes that comprehensive Tribal IV–D agencies must have in place to ensure the security and privacy of Computerized Tribal IV–D Systems and Office Automation?

(a) *Information integrity and security.* The comprehensive Tribal IV–D agency must have safeguards on the integrity, accuracy, completeness, access to, and use of data in the Computerized Tribal IV–D System and Office Automation. Computerized Tribal IV–D Systems and Office Automation should be compliant with the Federal Information Security Management Act, and the Privacy Act. The required safeguards must include written policies and procedures concerning the following:

(1) Periodic evaluations of the system for risk of security and privacy breaches;

(2) Procedures to allow Tribal IV–D personnel controlled access and use of IV–D data, including:

(i) Specifying the data which may be used for particular IV–D program purposes, and the personnel permitted access to such data;

(ii) Permitting access to and use of data for the purpose of exchanging information with State and Tribal agencies administering programs under titles IV–A, IV–E and XIX of the Act to the extent necessary to carry out the comprehensive Tribal IV–D agency's responsibilities with respect to such programs;

(3) Maintenance and control of application software program data;

(4) Mechanisms to back-up and otherwise protect hardware, software, documents, and other communications; and,

(5) Mechanisms to report breaches or suspected breaches of personally identifiable information to the Department of Homeland Security, and to respond to those breaches.

(b) *Monitoring of access.* The comprehensive Tribal IV–D agency must monitor routine access to and use of the Computerized Tribal IV–D System and Office Automation through methods such as audit trails and feedback mechanisms to guard against, and promptly identify, unauthorized access or use;

(c) *Training and information.* The comprehensive Tribal IV–D agency must have procedures to ensure that all personnel, including Tribal IV–D staff and contractors, who may have access to or be required to use confidential program data in the Computerized Tribal IV–D System and Office Automation are adequately trained in security procedures.

(d) *Penalties.* The comprehensive Tribal IV–D agency must have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure or use of confidential information.

Subpart C—Funding for Computerized Tribal IV–D Systems and Office Automation

§ 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV–D Systems and Office Automation?

(a) *Conditions that must be met for FFP at the applicable matching rate in § 309.130(c) of this chapter for Computerized Tribal IV–D Systems.* The following conditions must be met to obtain 90 percent FFP in the costs of installation of the Model Tribal IV–D System and FFP at the applicable matching rate under § 309.130(c) of this chapter in the costs of operation, maintenance, and enhancement of a Computerized Tribal IV–D System:

(1) A comprehensive Tribal IV–D agency must have submitted, and OCSE must have approved, an Advance Planning Document (APD) for the installation and enhancement of a Computerized Tribal IV–D System;

(2) An APD for installation of a Computerized Tribal IV–D System must:

(i) Represent the sole systems effort being undertaken by the comprehensive Tribal IV–D agency under this part;

(ii) Describe the projected resource requirements for staff, hardware, software, network connections and other needs and the resources available or expected to be available to meet the requirements;

(iii) Contain a proposed schedule of project milestones with detail sufficient to describe the tasks, activities, and complexity of the initial implementation project;

(iv) Contain a proposed budget including a description of expenditures by category and amount for items related to installing, operating, maintaining, and enhancing the Computerized Tribal IV–D System; and

(v) Contain a statement that the comprehensive Tribal IV–D agency agrees in writing to use the Computerized Tribal IV–D System for a minimum period of time;

(3) The following conditions, in addition to those in paragraphs (a)(1) and (2) of this section, must be met to obtain FFP in the installation costs of access to a State or another comprehensive Tribal IV–D program's ADP system established under an Intergovernmental Service Agreement. The comprehensive Tribal IV–D agency must:

(i) Maintain a copy of each intergovernmental cooperative agreement and Service Agreement in its files for Federal review; and

(ii) Ensure that the:

(A) Service Agreement for which FFP is being sought, meets the definition of a Service Agreement as defined in § 310.1 of this title;

(B) Claims for FFP conform to the timely claim provisions of part 95 subpart A of this title; and

(C) Service Agreement was not previously disapproved by the Department.

(4) The following conditions, in addition to those in paragraphs (a)(1) through (3) of this section, must be met in order for a comprehensive Tribal IV–D agency to obtain FFP in the costs of enhancements to its Computerized Tribal IV–D System:

(i) The project's Total Acquisition Cost cannot exceed the comprehensive Tribal IV–D agency's total Tribal IV–D program grant award for the year in which the acquisition request is made; and

(ii) The APD budget, schedule and commitment to use the Computerized Tribal IV–D System for a specified minimum period of time must be updated to reflect the enhancement project.

(5) To receive FFP in the costs of the operation and maintenance of a Computerized Tribal IV–D System installed under § 310.20 or developed under § 309.145(h)(5), which refers to a Tribal automated data processing system that is funded entirely with Tribal funds, the comprehensive Tribal IV–D agency must include operation and maintenance costs in its annual Title IV–D program budget submission in accordance with § 309.15(c) of this chapter;

(6) To receive FFP in the costs of the installation, operation, and maintenance of essential Office Automation capabilities, the comprehensive Tribal IV–D agency must include such costs in its annual Title IV–D program budget submission in accordance with § 309.15(c) of this chapter;

(b) *Procedure for APD Submittal.* The comprehensive Tribal IV–D agency must submit an APD for a Computerized Tribal IV–D System to the Commissioner of OCSE, Attention: Division of State and Tribal Systems. The APD submitted by the comprehensive Tribal IV–D agency must be approved and signed by the comprehensive Tribal IV–D agency Director and the appropriate Tribal officials prior to submission to OCSE for approval.

§ 310.25 What conditions apply to acquisitions of Computerized Tribal IV–D Systems?

(a) *APD Approval.* A comprehensive Tribal IV–D agency must have an approved APD in accordance with the applicable requirements of § 310.20 of this part prior to initiating acquisition of a Computerized Tribal IV–D System.

(b) *Procurements.* Requests for Proposals (RFP) and similar procurement documents, contracts, and contract amendments involving costs eligible for FFP, must be submitted to OCSE for approval prior to release of the procurement document, and prior to the execution of the resultant contract when a procurement is anticipated to or will

exceed the Simplified Acquisition Threshold;

(c) *Software and ownership rights.* (1) All procurement and contract instruments must include a clause that provides that the comprehensive Tribal IV–D agency will have all ownership rights to Computerized Tribal IV–D System software or enhancements thereof and all associated documentation designed, developed or installed with FFP. Intergovernmental Service Agreements are not subject to this paragraph.

(2) OCSE reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications and documentation.

(3) FFP is not available for the costs of rental or purchase of proprietary application software developed specifically for a Computerized Tribal IV–D System. Commercial-off-the-shelf (COTS) software packages that are sold or leased to the general public at established catalog or market prices are not subject to the ownership and license provisions of this requirement.

(d) *Requirements for acquisitions under the threshold amount.* A comprehensive Tribal IV–D agency is not required to submit procurement documents, contracts, and contract amendments for acquisitions under the Simplified Acquisition Threshold unless specifically requested to do so in writing by OCSE.

§ 310.30 Under what circumstances would FFP be suspended or disallowed in the costs of Computerized Tribal IV–D Systems?

(a) *Suspension of APD approval.* OCSE will suspend approval of the APD for a Computerized Tribal IV–D System approved under this part as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions of the APD. OCSE will notify a Tribal IV–D agency in writing in a notice of suspension, with such suspension effective as of the date on which there is no longer substantial compliance.

(b) *Suspension of FFP.* If OCSE suspends approval of an APD in accordance with this part during the installation, operation, or enhancement of a Computerized Tribal IV–D System, FFP will not be available in any expenditure incurred under the APD after the date of the suspension until the date OCSE determines that the comprehensive Tribal IV–D agency has taken the actions specified in the notice of suspension described in paragraph (a) of this section. OCSE will notify the comprehensive Tribal IV–D agency in writing upon making such a determination.

§ 310.35 Under what circumstances would emergency FFP be available for Computerized Tribal IV–D Systems?

(a) *Conditions that must be met for emergency FFP.* OCSE will consider waiving the approval requirements for acquisitions in emergency situations, such as natural or man-made disasters, upon receipt of a written request from the comprehensive Tribal IV–D agency. In order for OCSE to consider waiving the approval requirements in § 310.25 of this part, the following conditions must be met:

(1) The comprehensive Tribal IV–D agency must submit a written request to OCSE prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and include:

(i) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which resulted in the comprehensive Tribal IV–D agency's need to proceed prior to obtaining approval from OCSE; and

(iii) A description of the harm that will be caused if the comprehensive Tribal IV–D agency does not acquire immediately the ADP equipment and services.

(2) Upon receipt of the information, OCSE will, within 14 working days of receipt, take one of the following actions:

(i) Inform the comprehensive Tribal IV–D agency in writing that the request has been disapproved and the reason for disapproval; or

(ii) Inform the comprehensive Tribal IV–D agency in writing that OCSE recognizes that an emergency exists and that within 90 calendar days from the date of the initial written request under paragraph (a)(1) of this section the comprehensive Tribal IV–D agency must submit a formal request for approval which includes the information specified at § 310.25 of this title in order for the ADP equipment or services acquisition to be considered for OCSE's approval.

(b) *Effective date of emergency FFP.* If OCSE approves the request submitted under paragraph (a)(2) of this section, FFP will be available from the date the comprehensive Tribal IV–D agency acquires the ADP equipment and services.

Subpart D—Accountability and Monitoring Procedures for Computerized Tribal IV–D Systems

§ 310.40 What requirements apply for accessing systems and records for monitoring Computerized Tribal IV–D Systems and Office Automation?

In accordance with Part 95 of this title, a comprehensive Tribal IV–D agency must allow OCSE access to the system in all of its aspects, including installation, operation, and cost records of contractors and subcontractors, and of Service Agreements at such intervals as are deemed necessary by OCSE to determine whether the conditions for FFP approval are being met and to determine the efficiency, effectiveness, reasonableness of the system and its cost.

[FR Doc. 2010–3572 Filed 2–24–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2008–0184]

RIN 2105–AD67

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; response to comments on Interim Final rule.

SUMMARY: This final rule adopts as final, without change, a June 13, 2008, interim final rule (IFR) authorizing employers in the Department's drug and alcohol testing program to disclose to State commercial driver licensing (CDL) authorities the drug and alcohol violations of employees who hold CDLs and operate commercial motor vehicles (CMVs), when a State law requires such reporting. The rule also responds to comments on the IFR.

DATES: This rule is effective February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Patrice M. Kelly, Deputy Director, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; 202–366–3784 (voice), 202–366–3897 (fax), or *patrice.kelly@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Department's drug and alcohol testing procedures regulation, 49 CFR Part 40, provides confidentiality of

employee test results as a fundamental part of the balance between employee privacy and the public safety need to test for illegal drugs. As we discussed in the preamble to this IFR (73 FR 33735, June 13, 2008), the Department's regulation dates back to 1988 and has always limited the release of an employee's test results in the interest of privacy.

Generally, § 40.321 prohibits release of individual drug or alcohol test results to third parties without the employee's specific written consent. Section 40.331 creates certain exceptions to this general requirement. Of particular importance is § 40.331(e), which provides that parties "must provide drug or alcohol test records concerning the employee" to a "state or local safety agency with regulatory authority over you or the employee."

We recognized that several States have undertaken legislative action to require employers and certain service agents to provide individual test results to State agencies (e.g., the State CDL issuing and licensing authority) whenever CDL holders have tested positive for drugs, had a breath alcohol concentration (BAC) of 0.04 or greater, or refused a required drug or alcohol test result. Absent regulatory action by the Department to modify its employee privacy procedures, employers and third party administrators (TPAs) for owner-operator CMV drivers with CDLs would have been in violation of 49 CFR 40.321, if they released this information to State agencies under such State statutes. This is because doing so for all CDL drivers would not have fallen within the exception to the general privacy requirement created by § 40.331(e).

On June 13, 2008 [73 FR 33735], the Department issued an IFR to mitigate this conflict between the DOT rules and what we view as beneficial State laws by allowing employers and the TPAs for owner-operator CMV drivers with CDLs to comply with State laws of this type. The IFR permitted these parties to provide the information called for by State laws without violating Part 40. As a result of this IFR, employers and the TPAs for owner-operators will not be held in violation of 49 CFR 40.321 for complying with State law requirements to report violations that enable State CDL issuing and licensing authorities to act upon the DOT result. The IFR has now been in place since June 2008 without causing any reported problems. At the time we issued the IFR, we noted that it did not create any new reporting requirements or obligations. It merely allowed employers and the TPAs for owner-operator CMV drivers with CDLs to comply with some specific reporting requirements under State laws without violating part 40 by such reporting. The IFR created no new Federal reporting requirements. It merely eliminated a conflict that would have precluded parties from complying with certain State laws.

Discussion of Comments to the Docket

There were eleven comments to the docket. Six of the comments supported the IFR, four of the comments opposed the IFR, and one comment was neutral.

The neutral comment stated that the commenter did not know where, or to whom, within the State to report the results. This IFR is not intended to identify where reports are to be filed. That is a matter that program participants should take up with the State agencies in question. The IFR was only intended to make it clear that an employer or TPA for an owner-operator is not violating Part 40 when complying with its duty to report DOT drug and alcohol testing violations to State CDL issuing and licensing authorities.

Several commenters stated that they supported the objective of the IFR—"to ensure drug and/or alcohol abusing drivers are kept from behind the wheel of a large truck until they are successfully rehabilitated." Other commenters urged that DOT expand the IFR to cover some or all other service agents, including Medical Review Officers (MROs), Substance Abuse Professionals (SAPs), Breath Alcohol Technicians (BATs), etc. Some of these commenters wanted MROs to be responsible for reporting both drug and alcohol results to States.

The Department believes that, leaving aside TPAs serving owner-operators, it is not advisable, as a matter of policy, to task service agents with reporting drug and alcohol testing violations to State agencies. MROs often perform services for employers in multiple States and without having any ties or regular business dealings in those States. Consequently, it is questionable whether the State reporting laws could effectually apply to the out-of-state MROs. MROs would not have access to alcohol test results and many refusals, thus they would not be able to report such results, even if the States required them to do so.

Other commenters thought that service agents would be more responsible about reporting violations because the employers were likely to terminate the employee who violated Part 40 and would not want to pursue filing the violation with the State. We do not think it is reasonable to expand the IFR to include service agents who have no meaningful business contacts with a State and may have no knowledge of the test results or violations of a particular driver. Instead, we believe that it was prudent for us to narrowly tailor the IFR to encourage the existing and future crafting of State legislation that is directed at employers communicating with the State in which they do business and which is most likely to be the State that issued the driver's CDL. Employers have access to all the information needed by States; employers are directly regulated by the State agencies in question; it is reasonable to task employers with this reporting responsibility.

Some commenters who supported the IFR wanted us to change the language in the IFR from "you are authorized to comply with State laws" to instead read as "you are authorized to comply with "State laws and State regulations." The commenters felt that the reference to "laws" would not cover "regulations." We disagree with that distinction. However, to address the commenters concerns on this point, we are stating in this preamble that when we refer to "State law" in this provision, we are including State regulations that have the force and effect of State law.

One commenter supported the IFR, but felt that it should have gone further by requiring that States be notified that these drivers are no longer qualified to drive and that their licenses must be suspended until they can show proof of a SAP evaluation and a negative return-to-duty test. This commenter would also like to see more rigorous enforcement by the DOT agencies against violators. While we appreciate the safety intent underlying this commenter's suggestions, and we support vigorous enforcement of the rules, the purpose of the IFR was more limited: it intended only to remove a legal conflict that could have interfered with the implementation of beneficial State laws.

Several of the commenters who supported the IFR pointed out that the objective of the IFR is aimed in the right direction, but that true consistency in tracking, reporting, and acting upon CDL driver Part 40 drug and alcohol violations can only come through a national clearing house database. These commenters referred to a "piecemeal, non-uniform, voluntary State licensing agency-based approach" that will continue to take place until there is a Federal database to track driver non-negative results.

The Department of Transportation continues to strongly support the establishment of a national database. Currently, the Federal Motor Carrier Safety Administration (FMCSA) is

working toward being able to create such a database. However, it has not yet been established. Meanwhile, we believe it is useful to remove an obstacle to the implementation of State laws that do exist now. We simply recognize that the States are also stepping up to play a role in suspending CDLs based on Part 40 results and we do not want to discourage such actions where appropriate. We do not want Part 40 to pose an impediment to employers in their efforts to comply with their own respective State's legal requirements.

Some of the commenters who favored the IFR, as well as some of those who opposed it, suggested that we require the States to tailor their laws to include certain provisions, protections and limitations. Some of the commenters wanted us to order the States to have certain service agents report the results. Others wanted us to require that the individual driver's record be cleared of the violation after 2 years (which is not consistent with FMCSA requirements of 3 years tracking and would not provide a window into follow-up testing). Others asked that we order the States to notify drivers when the information is reported to the State and to provide the drivers with privacy rights, due process, and the right to correct their records in the State databases. Some commenters wanted assurance that the States would purge records regarding violations once the CDL holder completed the return-to-duty process under Part 40. Many of the commenters felt that, if DOT set standards for the States to meet within the scope of the respective legislation, this would address the concerns about inconsistent State laws.

The purpose of the IFR was simply to avoid a conflict between State and Federal law with respect to State laws that direct employers and TPAs for owner-operators to report violation information to State agencies. Going beyond this limited purpose and imposing additional requirements on States, even where such additional requirements would arguably be good policy, would exceed the scope of the IFR and require an additional notice of proposed rulemaking and comment period. We do not believe that taking such additional rulemaking steps is justified at this time.

Some of those who opposed the IFR appeared to suggest that, if we did not finalize this IFR, they would not need to comply with their State reporting laws. On a related, but slightly different note, some commenters assumed that this IFR was requiring compliance with State laws—and that the DOT Agencies would find employers and service agents out-of-compliance with Part 40 and the Federal Agency regulations, if these parties failed to properly comply with the State law requirements. These are not correct assumptions.

This IFR is intended to permit but not require employers and TPAs for owner-operator CMV drivers with CDLs to comply with State laws without running afoul of Part 40. We have not created compliance responsibilities under State law. That is within the jurisdiction of the States. It is up to the States to ensure compliance with their laws. Since we are not creating responsibilities, we also disagree with the commenter who believed that this IFR would impose significant costs resulting from new compliance requirements to conform to State laws. This IFR does not impose duties. It merely relieves a potential enforcement problem for certain employers and TPAs for owner-operator CMV drivers with CDLs.

Finally, there were some comments outside the scope of this rulemaking. One commenter suggested that the DOT rely on an industry association to point out who may be violating Part 40. Others referenced new Federal requirements that should be imposed upon the States, including a recommendation that Part 40 require notification to States that individual CDL holders have been identified as no longer qualified to drive after a Part 40 violation. Some commenters suggested higher fines levied by FMCSA for violations of § 40.25 and other provisions of Part 40. Others wanted this IFR to bring forward the FMCSA centralized database. All of these comments, and any others outside the scope of this rulemaking, have not resulted in changes to the IFR.

There were no comments which provided substantive information to warrant changing the procedures in the IFR, the Department will adopt the IFR as final with no changes to the procedures.

Regulatory Analyses and Notices

The statutory authority for this rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 5331, 20140, 31306, and 54101 *et seq.*) and the Department of Transportation Act (49 U.S.C. 322).

This final rule is not significant for purposes of Executive Order 12866 or the DOT's regulatory policies and procedures. It represents a minor modification to our regulation to ensure that employers and TPAs for owner-operators are not held out-of-compliance with our regulation for providing information required by the State. The rule does not increase costs on regulated parties. In fact, it will reduce the chance of civil penalty action and increase safety for employers and TPAs for owner-operators. Consequently, the Department certifies under the Regulatory Flexibility Act that this final rule does not have a significant economic impact on a substantial number of small entities. To the extent that there is any such impact, it is expected to be negligible.

Issued at Washington DC, this 10th day of February 2010.

Ray LaHood,

Secretary of Transportation.

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

Accordingly, the Interim Final Rule amending 49 CFR Part 40 which was published at 73 FR 33735 on June 13, 2008 is adopted as a final rule without change.

[FR Doc. 2010–3729 Filed 2–24–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2007–26828]

RIN 2105–AD64

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule responds to the comments received regarding the interim final rule (IFR) procedures for the use of a new alcohol screening device (ASD) which is qualified for use in DOT Agency regulated alcohol testing. The Department did not receive any comments which were germane to the rulemaking. As such, the Department will adopt the rule as final without change.

DATES: This rule is effective February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Bohdan Baczara, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; 202–366–3784 (voice), 202–366–3897 (fax), or *bohdan.baczara@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Purpose

Department regulations require that in order for an employer to utilize a specific ASD to conduct required DOT alcohol tests, the device must (a) Have been approved by the National Highway Traffic Safety Administration (NHTSA) as meeting required model specifications, (b) be published by NHTSA in the **Federal Register** on their most current ASD CPL, and (c) have Department-approved procedures in part 40 for its use. By publishing the IFR, the Department ensured that procedures were in place so that when NHTSA published its ASD CPL in the **Federal Register**, the breath tube ASD was immediately available for use by DOT regulated employers.

Background and Purpose

When it originally published its alcohol testing rules on February 15, 1994 [54 FR 7302 *et seq.*], the Department established breath testing using evidential breath testing devices (EBTs) as the required method. However, in response to comments requesting additional flexibility in testing methods, the Department said that NHTSA would develop model specifications for non-evidential alcohol screening devices, evaluate additional screening devices against those specifications, and periodically publish a conforming products list of screening devices that met the model specifications. The Department noted, too, that the Department would also have to undertake separate rulemaking proceedings to establish part 40 procedures for use by DOT-regulated industries of any devices approved by NHTSA.

On April 20, 1995 [60 FR 19675], the Department published procedures for use of both breath and saliva ASDs. At that time, the Department did not anticipate that additional breath and saliva screening devices would be developed that would necessitate new procedures for their use. As a result, the revised part 40 published December 19, 2000 [65 FR 79462] stated, in part, that ASDs on the NHTSA CPL could be used for part 40 alcohol screening tests. Because NHTSA added an ASD to their CPL and the Department had no procedures for its use, we were forced to amend that rule. On August 9, 2001 [65 FR 41944], part 40 was amended to read, "You may use an ASD that is on the NHTSA CPL for DOT alcohol tests only if there are instructions for its use in this part."

On October 1, 2002 [67 FR 61521], the Department published procedures for the use of a breath tube ASD that had been approved by NHTSA and added to their May 4, 2001 CPL [66 FR 22639]. By 2005, that device was no longer being manufactured, and was removed from the CPL effective September 19, 2005 [70 FR 54972]. Subsequently, NHTSA approved a new breath tube ASD but had not yet added it to its ASD CPL which was one of three critical criteria to permitting DOT regulated employers to use the device.

Although DOT regulated employers could still not use the ASD, the Department realized that the breath tube procedures currently in our regulation were not consistent with instructions for use of the newly approved ASD. As a result, on January 11, 2007 the Department published an IFR [72 FR 1298] where it amended part 40 by eliminating procedures specific for the breath tube ASD which is no longer being manufactured and added procedures for use of the newly approved device.

The IFR provided instructions for use of the new ASD which were generally similar to those for the previously approved breath tube device. The principal difference was in how the alcohol result is read by the technician. Instead of comparing the color of the crystals in the ASD with the colored crystals in a manufacturer-produced control tube, the new ASD used an electronic analyzer to provide the technician and the employee with an automated visual result of negative (a flashing green light) or positive (a flashing red light) at 0.02. The Department also retained the requirement to read the result within 15 minutes of the test to ensure a confirmation test, when necessary, was conducted in a timely manner. Finally, because of the manufacturer's requirement to only use the detector device with a pre-calibrated electronic analyzer, the IFR also added a fatal flaw to the current list of fatal flaws. Specifically, the alcohol screening test was to be cancelled if an electronic analyzer was not used with a specified lot of detector devices.

Discussion of Comments to the Docket

There were two comments to the docket which were not germane to the interim final rule and, therefore, the Department will not address them. Because there were no comments which provided substantive information to warrant changing the procedures in the IFR, the Department will adopt the text in the IFR as final.

Regulatory Analyses and Notices

The statutory authority for this rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*) and the Department of Transportation Act (49 U.S.C. 322).

This final rule is not significant for purposes of Executive Order 12866 or the DOT's regulatory policies and procedures. It finalizes minor modifications, already in effect, to our procedures that do not increase costs on regulated parties. In fact, it facilitates the use of an alcohol screening device that may increase flexibility and lower costs for employers who choose to use them over more expensive options previously approved by the Department. The rule will impose no burdens on any parties, and NHTSA has already determined that the device is technically acceptable for use in the DOT alcohol testing program. While small entities are among those who may use the device, the Department consequently certifies, under the Regulatory Flexibility Act, that this rule does not have a significant economic impact on a substantial number of small entities.

We issued the IFR on this subject to ensure that employers could use the ASD when it is placed on NHTSA's CPL as a qualified device (meeting DOT specifications for accuracy and precision). We determined, at that time, under section 553 of the Administrative Procedure Act, that prior notice and an opportunity for public comment were unnecessary, impracticable, or contrary to the public interest. Given the absence of any comment on the IFR, and the fact that this rule simply finalizes a rule already in effect, the Department finds good cause under 553 to make this rule effective immediately.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued at Washington DC, this 9th day of February 2010.

Ray LaHood,

Secretary of Transportation.

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ Accordingly, the Interim Final Rule amending 49 CFR part 40 which was published at 72 FR 1298 on January 11,

2007 is adopted as a final rule without change.

[FR Doc. 2010–3730 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT–OST–2008–0088]

RIN OST 2105–AD84

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation is making technical amendments to its drug and alcohol testing procedures to authorize employers to begin using the updated U.S. DOT Alcohol Testing Form (ATF) and the Management Information System (MIS) Data Collection Form. The Department updated the information collection notice on the forms to conform to requirements under the Paperwork Reduction Act.

DATES: The rule is effective February 25, 2010.

FOR FURTHER INFORMATION CONTACT: For program issues, Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–3784 (voice), (202) 366–3897 (fax), or *bohdan.baczara@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background and Purpose

In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. 3501 *et seq.*) the Department submitted a request to the Office of Management and Budget (OMB) for the extension of the currently approved Procedures for the Transportation Drug and Alcohol Testing Program. OMB approved the submission which included a revised U.S. DOT Alcohol Testing Form (ATF) and the Management Information System (MIS) Data Collection Form.

As part of the approval process, the Department asked for public comment on ways to enhance the quality, utility, and clarity of the information being collected on the Alcohol Testing Form (ATF) and Management Information System (MIS) form **Federal Register** [73 FR 14300] and [73 FR 33140]. There was one response, which contained several comments. As a result of the comments and other input from OMB and DOT agencies, both forms were updated. Specifically, the ATF and MIS were updated to include an updated Paperwork Reduction Act Burden Statement, the current address of the Department, new DOT form numbers. We provided additional instructions on the reverse side of Page 3 of the ATF that tamper evident tape must not obscure the printed information. Also, the legends in the test result boxes on the front of the ATF were adjusted and printed in a smaller font so they don't obscure test results printed directly on the ATF. Other than these changes, the content and format of ATF from the previous versions remain the same.

The Department recognizes that employers and alcohol testing technicians may currently have a large supply of old ATFs. To avoid unnecessarily wasting these forms, the Department will permit the use of the old ATF until supplies are exhausted, but the old ATF must not be used beyond August 1, 2010. Employers are authorized to begin using the updated ATF immediately.

In 2006, the Department published a **Federal Register** notice [71 FR 49383] to update the MIS form and its accompanying instructions to change the name the Research and Special Programs Administration (RSPA) to the Pipeline and Hazardous Materials Safety Administration (PHMSA). This change reflects a February 2005 reorganization and renaming of that DOT agency. Since the change did not appear in the **Federal Register** notice, we are publishing the form with its accompanying instructions sheet again.

The MIS form is a single-page form, and the information reported on the MIS data form can be submitted electronically via the Internet at *http://damis.dot.gov.* As a result, it is less likely any employer would have a large number of MIS forms. Thus, employers required to report MIS data must begin using the revised MIS form in 2011 to report calendar year 2010 MIS data.

Both revised forms can be found on our Web site at *http://www.dot.gov/ost/dapc/documents.html.*

Regulatory Analyses and Notices

The statutory authority for this rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*) and the Department of Transportation Act (49 U.S.C. 322).

This rule is a non-significant rule both for purposes of Executive Order 12886 and the Department of Transportation's Regulatory Policies and Procedures. The Department certifies that it will not have a significant economic effect on a substantial number of small entities, for purposes of the Regulatory Flexibility Act. The Department makes these statements on the basis that, as a series of technical amendments that correct or clarify existing regulatory provisions, this rule will not impose any significant costs on anyone. The costs of the underlying Part 40 final rule were analyzed in connection with its issuance in December 2000. Therefore, it has not been necessary for the Department to conduct a regulatory evaluation or Regulatory Flexibility Analysis for this final rule. The forms comply with the Paperwork Reduction Act. It has no Federalism impacts that would warrant a Federalism assessment. The amendments made in this rule are technical and corrective, to an existing rule that went through an extensive public notice and comment process.

The amendments are purely technical, do not make significant changes to Part 40, and we would not anticipate the receipt of meaningful comments on them. Consequently, the Department has determined, for purposes of section 553 of the Administrative Procedure Act, that prior notice and comment are unnecessary, impracticable, or contrary to the public interest. For the same reasons, and because it will be very useful to program participants to be authorized to use the revised forms immediately, we have determined, under section 553, that there is good cause to make the rule effective immediately upon publication.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 9th day of February 2010, at Washington, DC.

Ray LaHood,

Secretary of Transportation.

■ For reasons discussed in the preamble, the Department of Transportation is amending 49 CFR part 40, Code of Federal Regulations, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority citation for 49 CFR part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*

§ 40.225 [Amended]

■ 2. Section 40.225 (a) is amended by removing the words, "February 1, 2002".

■ 3. Appendix G to Part 40—Alcohol Testing Form is revised to read as follows:

Appendix G to Part 40—Alcohol Testing Form

The following form is the alcohol testing form required for use in the DOT alcohol testing program beginning August 1, 2010. Employers are authorized to use the form effective February 25, 2010.

BILLING CODE 4910–9X–P

U.S. Department of Transportation (DOT)
Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results Here or Affix with Tamper Evident Tape

Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name _____
(Print) (First, M.I., Last)

B: SSN or Employee ID No. _____

C: Employer Name _____
Street
City, Sate, Zip _____

_____

DER Name and Telephone No. _____ (___) _____
DER Name DER Phone Number

D: Reason for Test: Random Reasonable Susp Post-Accident Return to Duty Follow-up Pre-employment

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

_____ ___/___/___
Signature of Employee Date Month Day Year

Print Confirmation Results Here or Affix with Tamper Evident Tape

STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: BAT STT DEVICE: SALIVA BREATH* 15-Minute Wait: Yes No

SCREENING TEST: *(For BREATH DEVICE* write in the space below only if the testing device is not designed to print.)*

Test #	Testing Device Name	Device Serial # OR Lot # & Exp Date	Activation Time	Reading Time	Result

CONFIRMATION TEST: *Results MUST be affixed to each copy of this form or printed directly onto the form.*

REMARKS:

_____

_____

_____

_____ _____
Alcohol Technician's Company Company Street Address

_____ _____ (___) _____
(PRINT) Alcohol Technician's Name (First, M.I., Last) Company City, State, Zip Phone Number

_____ ___/___/___
Signature of Alcohol Technician Date Month Day Year

Print Additional Results Here or Affix With Tamper Evident Tape

STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

_____ ___/___/___
Signature of Employee Date Month Day Year

Form DOT F 1380 (Rev. 5/2008) OMB No. 2105-0529

COPY 1 – ORIGINAL – FORWARD TO THE EMPLOYER

U.S. Department of Transportation (DOT)
Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name _____
(Print) (First, M.I., Last)

B: SSN or Employee ID No. _____

C: Employer Name _____
Street
City, State, Zip _____

_____

DER Name and Telephone No. _____ (___) _____
DER Name DER Phone Number

D: Reason for Test: ☐ Random Reasonable Susp ☐ Post-Accident ☐ Return to Duty ☐ Follow-up ☐ Pre-employment

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

_____ ___/___/___
Signature of Employee Date Month Day Year

STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: ☐ BAT ☐ STT **DEVICE:** ☐ SALIVA ☐ BREATH* **15-Minute Wait:** ☐ Yes ☐ No

SCREENING TEST: *(For BREATH DEVICE* write in the space below only if the testing device is not designed to print.)*

Test #	Testing Device Name	Device Serial # OR Lot # & Exp Date	Activation Time	Reading Time	Result

CONFIRMATION TEST: *Results MUST be affixed to each copy of this form or printed directly onto the form.*

REMARKS:

_____

_____

_____

_____ _____
Alcohol Technician's Company Company Street Address

_____ _____ (___) _____
(PRINT) Alcohol Technician's Name (First, M.I., Last) Company City, State, Zip Phone Number

_____ ___/___/___
Signature of Alcohol Technician Date Month Day Year

STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

_____ ___/___/___
Signature of Employee Date Month Day Year

Print Screening Results Here or Affix with Tamper Evident Tape

Print Confirmation Results Here or Affix with Tamper Evident Tape

Print Additional Results Here or Affix With Tamper Evident Tape

Form DOT F 1380 (Rev. 5/2008) OMB No. 2105-0529

COPY 2 – EMPLOYEE RETAINS

U.S. Department of Transportation (DOT)
Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results Here or Affix with Tamper Evident Tape

Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name _____
(Print) (First, M.I., Last)

B: SSN or Employee ID No. _____

C: Employer Name _____
Street
City, State, Zip _____

_____

DER Name and Telephone No. _____ (____) _____
DER Name **DER Phone Number**

D: Reason for Test: ☐ **Random** ☐ **Reasonable Susp** ☐ **Post-Accident** ☐ **Return to Duty** ☐ **Follow-up** ☐ **Pre-employment**

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

_____ ____/____/____
Signature of Employee **Date Month Day Year**

Print Confirmation Results Here or Affix with Tamper Evident Tape

STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: ☐ **BAT** ☐ **STT** **DEVICE:** ☐ **SALIVA** ☐ **BREATH*** **15-Minute Wait:** ☐ **Yes** ☐ **No**

SCREENING TEST: *(For BREATH DEVICE* write in the space below only if the testing device is not designed to print.)*

Test #	Testing Device Name	Device Serial # *OR* Lot # & Exp Date	Activation Time	Reading Time	Result

CONFIRMATION TEST: *Results MUST be affixed to each copy of this form or printed directly onto the form.*

REMARKS:

_____

_____

_____

_____ _____
Alcohol Technician's Company **Company Street Address**

_____ _____ (____) _____
(PRINT) Alcohol Technician's Name (First, M.I., Last) **Company City, State, Zip** **Phone Number**

_____ ____/____/____
Signature of Alcohol Technician **Date Month Day Year**

Print Additional Results Here or Affix With Tamper Evident Tape

STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

_____ ____/____/____
Signature of Employee **Date Month Day Year**

Form DOT F 1380 (Rev. 5/2008) **OMB No. 2105-0529**

COPY 3 – ALCOHOL TECHNICIAN RETAINS

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

A federal agency may not conduct or sponsor, and a person is not required to respond 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 Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2105-0529. Public reporting for this collection of information is estimated to be approximately 8 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE, Suite W62-300, Washington, D.C. 20590.

BACK OF PAGES 1 and 2

INSTRUCTIONS FOR COMPLETING THE U.S. DEPARTMENT OF TRANSPORTATION ALCOHOL TESTING FORM

NOTE: Use a ballpoint pen, press hard, and check all copies for legibility.

STEP 1 The Breath Alcohol Technician (BAT) or Screening Test Technician (STT) completes the information required in this step. Be sure to print the employee's name and check the box identifying the reason for the test.

NOTE: If the employee refuses to provide SSN or I.D. number, be sure to indicate this in the remarks section in STEP 3. Proceed with STEP 2.

STEP 2 Instruct the employee to read, sign, and date the employee certification statement in STEP 2.

NOTE: If the employee refuses to sign the certification statement, do not proceed with the alcohol test. Contact the designated employer representative.

STEP 3 The BAT or STT completes the information required in this step and checks the type of device (saliva or breath) being used. After conducting the alcohol screening test, do the following (as appropriate):

Enter the information for the screening test (test number, testing device name, testing device serial number or lot number and expiration date, time of test with any device-dependent activation times, and the results), on the front of the AFT. For a breath testing device capable of printing, the information may be part of the printed record.

NOTE: Be sure to enter the result of the test exactly as it is indicated on the breath testing device, e.g., 0.00, 0.02, 0.04, etc.

Affix the printed information to the front of the form in the space provided, or to the back of the form, in a tamper-evident manner (e.g., tape) such that it does not obscure the original printed information, or the device may print the results directly on the ATF. If the results of the screening test are less than 0.02, print, sign your name, and enter today's date in the space provided. The test process is complete.

If the results of the screening test are 0.02 or greater, a confirmation test must be administered in accordance with DOT regulations. An EVIDENTIAL BREATH TESTING device that is capable of printing confirmation test information must be used in conducting this test.

Ensure that a waiting period of at least 15 minutes occurs before the confirmation test begins. Check the box indicating that the waiting period lasted at least 15 minutes.

After conducting the alcohol confirmation test, affix the printed information to the front of the form in the space provided, or to the back of the form, in a tamper-evident manner (e.g., tape) such that it does not obscure the original information, or the device may print the results directly on the ATF. Print, sign your name, and enter the date in the space provided. Go to STEP 4.

STEP 4 If the employee has a breath alcohol confirmation test result of 0.02 or higher, instruct the employee to read, sign, and date the employee certification statement in STEP 4.

NOTE: If the employee refuses to sign the certification statement in STEP 4, be sure to indicate this in the remarks line in STEP 3.

Immediately notify the DER if the employee has a breath alcohol confirmation test result of 0.02 or higher.

Forward **Copy 1** to the employer. Give **Copy 2** to the employee. Retain **Copy 3** for BAT/STT records.

BACK OF PAGE 3

■ 4. Appendix H to Part 40—DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form is revised to read as follows:

Appendix H to Part 40—DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form

The following form is the MIS Data Collection form required for use beginning in 2011 to report calendar year 2010 MIS data.

U.S. DEPARTMENT OF TRANSPORTATION DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

Calendar Year Covered by this Report: _____ OMB No. 2105-0529

Form DOT F 1385 (Rev. 5/2008)

I. Employer:

Company Name: _____

Doing Business As (DBA) Name (if applicable): _____

Address: _____ E-mail: _____

Name of Certifying Official: _____ Signature: _____

Telephone: (____) _____ Date Certified: _____

Prepared by (if different): _____ Telephone: (____) _____

C/TPA Name and Telephone (if applicable): _____ (____) _____

Check the DOT agency for which you are reporting MIS data; and complete the information on that same line as appropriate:

___ FMCSA – Motor Carrier: DOT #: _____ Owner-operator: (circle one) YES or NO Exempt (Circle One) YES or NO

___ FAA – Aviation: Certificate # (if applicable): _____ Plan / Registration # (if applicable): _____

___ PHMSA – Pipeline: (Check) Gas Gathering__ Gas Transmission__ Gas Distribution__ Transport Hazardous Liquids__ Transport Carbon Dioxide__

___ FRA – Railroad: Total Number of observed/documented Part 219 "Rule G" Observations for covered employees: _____

___ USCG – Maritime: Vessel ID # (USCG- or State-Issued): _____ (If more than one vessel, list separately.)

___ FTA – Transit

II. Covered Employees: (A) Enter Total Number Safety-Sensitive Employees In All Employee Categories: _____

(B) Enter Total Number of Employee Categories: _____

(C)

Employee Category	Total Number of Employees in this Category

If you have multiple employee categories, complete Sections I and II (A) & (B). Take that filled-in form and make one copy for each employee category and complete Sections II (C), III, and IV for each separate employee category.

III. Drug Testing Data:

	1	2	3	4	5	6	7	8	9	10	11	12	13
									Refusal Results				
Type of Test	Total Number Of Test Results [Should equal the sum of Columns 2, 3, 9, 10, 11, and 12]	Verified Negative Results	Verified Positive Results ~ For One Or More Drugs	Positive For Marijuana	Positive For Cocaine	Positive For PCP	Positive For Opiates	Positive For Amphetamines	Adulterated	Substituted	"Shy Bladder" ~ With No Medical Explanation	Other Refusals To Submit To Testing	Cancelled Results
Pre-Employment													
Random													
Post-Accident													
Reasonable Susp./Cause													
Return-to-Duty													
Follow-Up													
TOTAL													

IV. Alcohol Testing Data:

	1	2	3	4	5	6	7	8	9
							Refusal Results		
Type of Test	Total Number Of Screening Test Results [Should equal the sum of Columns 2, 3, 7, and 8]	Screening Tests With Results Below 0.02	Screening Tests With Results 0.02 Or Greater	Number Of Confirmation Tests Results	Confirmation Tests With Results 0.02 Through 0.039	Confirmation Tests With Results 0.04 Or Greater	"Shy Lung" ~ With No Medical Explanation	Other Refusals To Submit To Testing	Cancelled Results
Pre-Employment									
Random									
Post-Accident									
Reasonable Susp./Cause									
Return-to-Duty									
Follow-Up									
TOTAL									

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

A federal agency may not conduct or sponsor, and a person is not required to respond 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 Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2105-0529. Public reporting for this collection of information is estimated to be approximately 90 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE, Suite W62-300, Washington, D.C. 20590.

Title 18, USC Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements of representations in any matter within the jurisdiction of any agency of the United States.

U.S. DEPARTMENT OF TRANSPORTATION
DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM
INSTRUCTION SHEET

This Management Information System (MIS) form is made-up of four sections: employer information; covered employees (i.e., employees performing DOT regulated safety-sensitive duties) information; drug testing data; and alcohol testing data. The employer information needs only to be provided once per submission. However, you must submit a separate page of data for each employee category for which you report testing data. If you are preparing reports for more than one DOT agency then you must submit DOT agency-specific forms.

Please type or print entries legibly in black ink.

TIP *~ Read the entire instructions before starting. Please note that USCG-regulated employers do not report alcohol test results on the MIS form.*

Calendar Year Covered by this Report: Enter the appropriate year.

Section I. Employer

1. Enter your company's name, to include when applicable, your "doing business as" name; current address, city, state, and zip code; and an e-mail address, if available.
2. Enter the printed name, signature, and complete telephone number of the company official certifying the accuracy of the report and the date that person certified the report as complete.
3. If someone other than the certifying official completed the MIS form, enter that person's name and phone number on the appropriate lines provided.
4. If a Consortium/Third Party Administrator (C/TPA) performs administrative services for your drug and alcohol program operation, enter its name and phone number on the appropriate lines provided.
5. DOT Agency Information: Check the box next to the DOT agency for which you are completing this MIS form. Again, if you are submitting to multiple DOT agencies, you must use separate forms for each DOT agency.

a. If you are completing the form for FMCSA, enter your FMCSA DOT Number, as appropriate. In addition, you must indicate whether you are an owner-operator (i.e., an employer who employs only himself or herself as a driver) and whether you are exempt from providing MIS data. Exemptions are noted in the FMCSA regulation at 382.103(d).

b. If you are completing the form for FAA, enter your FAA Certificate Number and FAA Antidrug Plan / Registration Number, when applicable.

c. If you are completing the form for PHMSA, check the additional box(s) indicating your type of operation.

d. If you are completing the form for FRA, enter the number of observed/documented Part 219 "Rule G" Observations for covered employees.

e. If you are submitting the form for USCG, enter the vessel ID number. If there is more than one number, enter the numbers separately.

Section II. Covered Employees

1. In Box II-A, enter the total number of covered employees (i.e., employees performing DOT regulated safety-sensitive duties) who work for your company. Then enter, in Box II-B, the total number of employee categories that number represents. If you have employees, some of whom perform duties under one DOT agency and others of whom perform duties under another DOT agency, enter only the number of those employees performing duties under the DOT agency for whom you are submitting the form. If you have covered employees who perform multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for you), count the employee only on the MIS report for the DOT agency regulating more than 50 percent of the employee's safety sensitive function.

[Example: If you are submitting the information for the FRA and you have 2000 covered employees performing duties in all FRA-covered service categories – you would enter "2000" in the first box (II-A) and "5" in the second box (II-B), because FRA has five safety-sensitive employee categories and you have employees in all of these groups. If you have 1000 employees performing safety-sensitive duties in three FRA-covered service categories (e.g., engine service, train service, and dispatcher/operation), you would enter "1000" in the first box (II-A) and "3" in the second box (II-B).]

TIP *~ To calculate the total number of covered employees, add the total number of covered employees eligible for testing during each random testing selection period for the year and divide that total by the number of random testing periods. (However, no company will need to factor the average number of employees more often than once per month.) For instance, a company conducting random testing quarterly needs to add the total of covered employees they had in the random pool when each selection was made; then divide this number by 4 to obtain the yearly average number of covered employees. It is extremely important that you place all eligible employees into these random pools. [As an example, if Company A had 1500 employees in the first quarter random pool, 2250 in the second quarter, 2750 in the third quarter; and 1500 in the fourth quarter; 1500 + 2250 + 2750 + 1500 = 8000; 8000 / 4 = 2000; the total number of covered employees for the year would be reported as, "2000".*

If you conduct random selections more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis. Therefore, employers need not compute the covered employees rate more than 12 times per year.]

2. If you are reporting multiple employee categories, enter the specific employee category in box II-C; and provide the number of employees performing safety-sensitive duties in that specific category.

[Example: You are submitting data to the FTA and you have 2000 covered employees. You have 1750 personnel performing revenue vehicle operation and the remaining 250 are performing revenue vehicle and equipment maintenance. When you provide vehicle operation information, you would enter "Revenue Vehicle Operation" in the first II-C box and "1750" in the second II-C box. When you provide data on the maintenance personnel, you would enter "Revenue Vehicle and Equipment Maintenance" in the first II-C box and "250" in the second II-C box.]

TIP *~ A separate form for each employee category must be submitted. You may do this by filling out a single MIS form through Section II-B and then make one copy for each additional employee category you are reporting. [For instance, if you are submitting the MIS form for the FMCSA, you need only submit one form for all FMCSA covered employees working for you – your only category of employees is "driver." If you are reporting testing data to the FAA and you employ only flight crewmembers, flight attendants, and aircraft maintenance workers, you need to complete one form each for category – three forms in all. If you are reporting to FAA and have all FAA categories of covered employees, you must submit eight forms.]*

Here is a full listing of covered-employee categories:

***FMCSA** (one category): Driver*
***FAA** (eight categories): Flight Crewmember; Flight Attendant; Flight Instructor; Aircraft Dispatcher; Aircraft Maintenance; Ground Security Coordinator; Aviation Screener; Air Traffic Controller*
***PHMSA** (one category): Operation/Maintenance/Emergency Response*
***FRA** (five categories): Engine Service; Train Service; Dispatcher/Operation; Signal Service; Other [Includes yardmasters, hostlers (non-engineer craft), bridge tenders; switch tenders, and other miscellaneous employees performing 49 CFR 228.5 (c) defined covered service.]*
***USCG** (one category): Crewmember*
***FTA** (five categories): Revenue Vehicle Operation; Revenue Vehicle and Equipment Maintenance; Revenue Vehicle Control/Dispatch; CDL/Non-Revenue Vehicle; Armed Security Personnel*

Section III. Drug Testing Data

This section summarizes the drug testing results for all covered employees (to include applicants). The table in this section requires drug test data by test type and by result. The categories of test types are: Pre-Employment; Random; Post-Accident; Reasonable Suspicion / Reasonable Cause; Return-to-Duty, and Follow-Up.

The categories of type of results are: Total Number of Test Results [excluding cancelled tests and blind specimens]; Verified Negative; Verified Positive; Positive for Marijuana; Positive for Cocaine; Positive for PCP; Positive for Opiates; Positive for Amphetamines; Refusals due to Adulterated, Substituted, "Shy Bladder" with No Medical Explanation, and Other Refusals to Submit to Testing; and Cancelled Results.

TIP *~ Do not enter data on blind specimens submitted to laboratories. Be sure to enter all pre-employment testing data regardless of whether an applicant was hired or not. You do not need to separate reasonable suspicion and reasonable cause drug testing data on the MIS form. [Therefore, if you conducted only reasonable suspicion drug testing (i.e., FMCSA and FTA), enter that data; if you conducted only reasonable cause drug testing (i.e., FAA, PHMSA, and USCG); or if you conducted both under FRA drug testing rules, simply enter the data with no differentiation.] For USCG, enter any "Serious Marine Incident" testing in the Post-Accident row. For FRA, do not enter post accident data (the FRA does not collect this data on the MIS form). Finally, you may leave blank any row or column in which there were no results, or you may enter "0" (zero) instead. Please note that cancelled tests are not included in the "total number of test results" column.*

Section III, Column 1. Total Number of Test Results ~ This column requires a count of the total number of test results in each testing category during the entire reporting year. Count the number of test results as the number of testing events resulting in negative, positive, and refusal results. Do not count cancelled tests and blind specimens in this total.

[Example: A company that conducted fifty pre-employment tests would enter "50" on the Pre-Employment row. If it conducted one hundred random tests, "100' would be entered on the Random row. If that company did no post-accident, reasonable suspicion, reasonable cause, return-to-duty, or follow-up tests, those categories will be left blank or zeros entered.]

Section III, Column 2. Verified Negative Results ~ This column requires a count of the number of tests in each testing category that the Medical Review Officer (MRO) reported as negative. Do not count a negative-dilute result if, subsequently, the employee underwent a second collection; the second test is the test of record.

[Example: If forty-seven of the company's fifty pre-employment tests were reported negative, "47" would be entered in Column 2 on the Pre-Employment row. If ninety of the company's one hundred random test results were reported negative, "90" would be entered in Column 2 on the Random row. Because the company did no other testing, those other categories would be left blank or zeros entered.]

Section III, Column 3. Verified Positive Results ~ For One Or More Drugs ~ This column requires a count of the number of tests in each testing category that the MRO reported as positive for one or more drugs. When the MRO reports a test positive for two drugs, it would count as one positive test.

[Example: If one of the fifty pre-employment tests was positive for two drugs, "1" would be entered in Column 3 on the Pre-Employment row. If four of the company's one hundred random test results were reported positive (three for one drug and one for two drugs), "4" would be entered in Column 3 on the Random row.]

■ **Section III, Columns 4 through 8. Positive** (for specific drugs) ~ These columns require entry of the by-drug data for which specimens were reported positive by the MRO.

[Example: The pre-employment positive test reported by the MRO was positive for marijuana, "1" would be entered in Column 4 on the Pre-Employment row. If three of the four positive results for random testing were reported by the MRO to be positive for marijuana, "3" would be entered in Column 4 on the Random row. If one of the four positive results for random testing was reported positive for both PCP and opiates, "1" would be entered in Column 6 on the Random row and "1" would be entered in Column 7 of the Random row.]

TIP *~ Column 1 should equal the sum of Columns 2, 3, 9, 10, 11, and 12. Remember you have not counted specimen results that were ultimately cancelled or were from blind specimens. So, Column 1 = Column 2 + Column 3 + Column 9 + Column 10 + Column 11 + Column 12. Certainly, double check your records to determine if your actual results count is reflective of all negative, positive, and refusal counts.*

An MRO may report that a specimen is positive for more than one drug. When that happens, to use the company example above (i.e., one random test was positive for both PCP and opiates), the positive results should be recorded in the appropriate columns – PCP and opiates in this case. There is no expectation for Columns 4 through 8 numbers to add up to the numbers in Column 3 when you report multiple positives.

Section III, Columns 9 through 12. Refusal Results ~ The refusal section is divided into four refusal groups – they are: Adulterated; Substituted; "Shy Bladder" ~ With No Medical Explanation; and Other Refusals To Submit to Testing. The MRO reports two of these refusal types – adulterated and substituted specimen results – because of laboratory test findings.

When an individual does not provide enough urine at the collection site, the MRO conducts or causes to have conducted a medical evaluation to determine if there exists a medical reason for the person's inability to provide the appropriate amount of urine. If there is no medical reason to support the inability, the MRO reports the result to the employer as a refusal to test: Refusals of this type are reported in the "Shy Bladder" ~ With No Medical Explanation category.

Finally, additional reasons exist for a test to be considered a refusal. Some examples are: the employee fails to report to the collection site as directed by the employer; the employee leaves the collection site without permission; the employee fails to empty his or her pockets at the collection site; the employee refuses to have a required shy bladder evaluation. Again, these are only four examples: there are more.

■ **Section III, Column 9. Adulterated** ~ This column requires the count of the number of tests reported by the MRO as refusals because the specimens were adulterated.

[Example: If one of the fifty pre-employment tests was adulterated, "1" would be entered in Column 9 of the Pre-Employment row.]

■ **Section III, Column 10. Substituted** ~ This column requires the count of the number of tests reported by the MRO as refusals because the specimens were substituted.

[Example: If one of the 100 random tests was substituted, "1" would be entered in Column 10 of the Random row.]

■ **Section III, Column 11. "Shy Bladder" ~ With No Medical Explanation** ~ This column requires the count of the number of tests reported by the MRO as being a refusal because there was no legitimate medical reason for an insufficient amount of urine.

[Example: If one of the 100 random tests was a refusal because of shy bladder, "1" would be entered in Column 11 of the Random row.]

■ **Section III, Column 12. Other Refusals To Submit To Testing** ~ This column requires the count of refusals other than those already entered in Columns 9 through 11.

[Example: If the company entered "100" as the number of random specimens collected, however it had five employees who refused to be tested without submitting specimens: two did not show up at the collection site as directed; one refused to empty his pockets at the collection site; and two left the collection site rather than submit to a required directly observed collection. Because of these five refusal events, "5" would be entered in Column 11 of the Random row.]

TIP *~ Even though some testing events result in a refusal in which no urine was collected and sent to the laboratory, a "refusal" is still a final test result. Therefore, your overall numbers for test results (in Column 1) will equal the total number of negative tests (Column 2); positives (Column 3); and refusals (Columns 9, 10, 11, and 12). Do not worry that no urine was processed at the laboratory for some refusals; all refusals are counted as a testing event for MIS purposes and for establishing random rates.*

Section III, Column 13. Cancelled Tests ~ This column requires a count of the number of tests in each testing category that the MRO reported as cancelled. You must not count any cancelled tests in Column 1 or in any other column. For instance, you must not count a positive result (in Column 3) if it had ultimately been cancelled for any reason (e.g., specimen was initially reported positive, but the split failed to reconfirm).

[Example: If a pre-employment test was reported cancelled, "1" would be entered in Column 13 on the Pre-Employment row. If three of the company's random test results were reported cancelled, "3" would be entered in Column 13 on the Random row.]

TOTAL Line. Columns 1 through 13 ~ This line requires you to add the numbers in each column and provide the totals.

Section IV. Alcohol Testing Data

This section summarizes the alcohol testing conducted for all covered employees (to include applicants). The table in this section requires alcohol test data by test type and by result. The categories of test types are: Pre-Employment; Random; Post-Accident; Reasonable Suspicion / Reasonable Cause; Return-to-Duty, and Follow-Up.

The categories of results are: Number of Screening Test Results; Screening Tests with Results Below 0.02; Screening Tests with Results 0.02 Or Greater; Number of Confirmation Test Results; Confirmation Tests with Results 0.02 through 0.039; Confirmation Tests with Results 0.04 Or Greater; Refusals due to "Shy Lung" with No Medical Explanation, and Other Refusals to Submit to Testing; and Cancelled Results.

TIP *~ Be sure to enter all pre-employment testing data regardless of whether an applicant was hired or not. Of course, for most employers pre-employment alcohol testing is optional, so you may not have conducted this type of testing. You do not need to separate "reasonable suspicion" and "reasonable cause" alcohol testing data on the MIS form. [Therefore, if you conducted only reasonable suspicion alcohol testing (i.e., FMCSA, FAA, FTA, and PHMSA), enter that data; if you conducted both reasonable suspicion and reasonable cause alcohol testing (i.e.., FRA), simply enter the data with no differentiation.] PHMSA does not authorize "random" testing for alcohol. Finally, you may leave blank any row or column in which there were no results, or you may enter "0" (zero) instead. Please note that USCG-regulated employers do not report alcohol test results on the MIS form: Do not fill-out Section IV if you are a USCG-regulated employer.*

Section IV, Column 1. Total Number of Screening Test Results ~ This column requires a count of the total number of screening test results in each testing category during the entire reporting year. Count the number of screening tests as the number of screening test events with final screening results of below 0.02, of 0.02 through 0.039, of 0.04 or greater, and all refusals. Do not count cancelled tests in this total.

[Example: A company that conducted twenty pre-employment tests would enter "20" on the Pre-Employment row. If it conducted fifty random tests, "50' would be entered. If that company did no post-accident, reasonable suspicion, reasonable cause, return-to-duty, or follow-up tests, those categories will be left blank or zeros entered.]

Section IV, Column 2. Screening Tests With Results Below 0.02 ~ This column requires a count of the number of tests in each testing category that the BAT or STT reported as being below 0.02 on the screening test.

[Example: If seventeen of the company's twenty pre-employment screening tests were reported as being below 0.02, "17" would be entered in Column 2 on the Pre-Employment row. If forty-four of the company's fifty random screening test results were reported as being below 0.02, "44" would be entered in Column 2 on the Random row. Because the company did no other testing, those other categories would be left blank or zeros entered.]

Section IV, Column 3. Screening Tests With Results 0.02 Or Greater ~ This column requires a count of the number of screening tests in each testing category that BAT or STT reported as being 0.02 or greater on the screening test.

[Example: If one of the twenty pre-employment tests was reported as being 0.02 or greater, "1" would be entered in Column 3 on the Pre-Employment row. If four of the company's fifty random test results were reported as being 0.02 or greater, "4" would be entered in Column 3 on the Random row.]

Section IV, Column 4. Number of Confirmation Test Results ~ This column requires entry of the number of confirmation tests that were conducted by a BAT as a result of the screening tests that were found to be 0.02 or greater. In effect, all screening tests of 0.02 or greater should have resulted in confirmation tests. Ideally the number of tests in Column 3 and Column 4 should be the same. However, we know that this required confirmation test sometimes does not occur. In any case, the number of confirmation tests that were actually performed should be entered in Column 4.

[Example: If the one pre-employment screening test reported as 0.02 or greater had a subsequent confirmation test performed by a BAT, "1" would be entered in Column 4 on the Pre-Employment row. If three of the four random screening tests that were found to be 0.02 or greater had a subsequent confirmation test performed by a BAT, "3" would be entered in Column 4 on the Random row.]

Section IV, Column 5. Confirmation Tests With Results 0.02 Through 0.039 ~ This column requires entry of the number of confirmation tests that were conducted by a BAT that led to results that were 0.02 through 0.039.

[Example: If the one pre-employment confirmation test yielded a result of 0.042, Column 5 of the Pre-Employment row would be left blank or zeros entered. If two of the random confirmation tests yielded results of 0.03 and 0.032, "2" would be entered in Column 5 of the Random row.]

Section IV, Column 6. Confirmation Tests With Results 0.04 Or Greater ~ This column requires entry of the number of confirmation tests that were conducted by a BAT that led to results that were 0.04 or greater.

[Example: Because the one pre-employment confirmation test yielded a result of 0.042, "1" would be entered in Column 6 of the Pre-Employment row. If one of the random confirmation tests yielded a result of 0.04, "1" would be entered in Column 6 of the Random row.]

TIP *~ Column 1 should equal the sum of Columns 2, 3, 7, and 8. The number of screening tests results should reflect the number of screening tests you have no matter the result (below 0.02 or at or above 0.02, plus refusals to test), unless of course, the tests were ultimately cancelled. So, Column 1 = Column 2 + Column 3 + Column 7 + Column 8. Certainly, double check your records to determine if your actual screening results count is reflective of all these counts.*

There is no need to record MIS confirmation tests results below 0.02: That is why we have no column for it on the form. [If the random test that screened 0.02 went to a confirmation test, and that confirmation test yielded a result below 0.02, there is no place for that confirmed result to be entered.] We assume that if a confirmation test was completed but not listed in either Column 5 or Column 6, the result was below 0.02. In addition, if the confirmation test ended up being cancelled, it should not have been included in Columns 1, 3, or 4 in the first place.

Section IV, Columns 7 and 8. Refusal Results ~ The refusal section is divided into two refusal groups – they are: Shy Lung ~ With No Medical Explanation; and Other Refusals To Submit to Testing. When an individual does not provide enough breath at the test site, the company requires the employee to have a medical evaluation to determine if there exists a medical reason for the person's inability to provide the appropriate amount of breath. If there is no medical reason to support the inability as reported by the examining physician, the employer calls the result a refusal to test: Refusals of this type are reported in the "Shy Lung ~ With No Medical Explanation" category.

Finally, additional reasons exist for a test to be considered a refusal. Some examples are: the employee fails to report to the test site as directed by the employer; the employee leaves the test site without permission; the employee fails to sign the certification at Step 2 of the ATF; the employee refuses to have a required shy lung evaluation. Again, these are only four examples; there are more.

■ **Section IV, Column 7. "Shy Lung" ~ With No Medical Explanation** ~ This column requires the count of the number of tests in which there is no medical reason to support the employee's inability to provide an adequate breath as reported by the examining physician; subsequently, the employer called the result a refusal to test.

[Example: If one of the 50 random tests was a refusal because of shy lung, "1" would be entered in Column 7 of the Random row.]

■ **Section IV, Column 8. Other Refusals To Submit To Testing** ~ This column requires the count of refusals other than those already entered in Columns 7.

[Example: The company entered "50" as the number of random specimens collected, however it had one employee who did not show up at the testing site as directed. Because of this one refusal event, "1" would be entered in Column 8 of the Random row.]

TIP *~ Even though some testing events result in a refusal in which no breath (or saliva) was tested, there is an expectation that your overall numbers for screening tests (in Column 1) will equal the total number of screening tests with results below 0.02 (Column 2); screening tests with results 0.02 or greater (Column 3); and refusals (Columns 7 and 8). Do not worry that no breath (or saliva) was tested for some refusals; all refusals are counted as a screening test event for MIS purposes and for establishing random rates.*

Section IV, Column 9. Cancelled Tests ~ This column requires a count of the number of tests in each testing category that the BAT or STT reported as cancelled. Do not count any cancelled tests in Column 1 or in any other column other than Column 9. For instance, you must not count a 0.04 screening result or confirmation result in any column, other than Column 9, if the test was ultimately cancelled for some reason (e.g., a required air blank was not performed).

[Example: If a pre-employment test was reported cancelled, "1" would be entered in Column 9 on the Pre-Employment row. If three of the company's random test results were reported cancelled, "3" would be entered in Column 13 on the Random row.]

TOTAL Line. Columns 1 through 9 ~ This line requires you to add the numbers in each column and provide the totals.

[FR Doc. 2010–3731 Filed 2–24–10; 8:45 am]
BILLING CODE 4910–9X–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XU59

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closures and openings.

SUMMARY: NMFS is announcing the opening and closing dates of the Atka mackerel directed fisheries within the harvest limit area (HLA) in Statistical Area 542 (area 542) and Statistical Area 543 (area 543). This action is necessary to fully use the 2010 A season HLA limits of Atka mackerel in areas 542 and 543 of the Bering Sea and Aleutian Islands management area.

DATES: The effective dates are provided in Table 1 under the **SUPPLEMENTARY INFORMATION** section of this temporary action.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 9, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by [RIN], by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Enter "N/A" in the required fields, if you wish to remain anonymous. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) the HLA limits of the A season allowance of the 2010 Atka mackerel total allowable catch (TAC) in area 542 and area 543 are 2,854 metric tons (mt) and 2,022 mt, respectively, for the Amendment 80 cooperative. For Amendment 80 limited access sector in area 543, the HLA limit of the A season allowance of the 2010 TAC for Atka mackerel is 3,250 mt. Finally, the HLA limit in area 542 of the A season allowance of the 2010 TAC for Atka mackerel for the BSAI trawl limited access sector is 458 mt.

NMFS previously announced the opening and closing dates of the first and second directed fisheries within the HLA in areas 542 and 543 (75 FR 3873, January 25, 2010). NMFS has determined that approximately 2,225 mt of Atka mackerel remain in the A season HLA limit in area 542 and approximately 2,022 mt of Atka mackerel remain in the A season HLA limit in area 543 for vessels participating in the Amendment 80 cooperative. NMFS has determined that approximately 3,250 mt of Atka mackerel remain in the A season HLA limit in area 543 for vessels participating in the Amendment 80 limited access fishery. NMFS also has determined that approximately 458 mt of Atka mackerel remain in the A season HLA limit in area 542 for the vessel participating in the trawl limited access fishery.

Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the A season HLA limits of Atka mackerel in areas 542 and 543, NMFS is terminating the previous closures and is opening directed fishing for Atka mackerel in the HLA of areas 542 and 543 for Amendment 80 cooperative vessels authorized to participate in the first HLA fishery in area 542 and the second HLA fishery in area 543. NMFS is also opening directed fishing for Atka mackerel in the HLA of area 543 for Amendment 80 limited access vessels authorized to participate in the first

HLA fishery in area 543. Finally, NMFS is opening directed fishing for Atka mackerel in the area 542 HLA for the vessel participating in the trawl limited access fishery.

In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fishery in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the fishery. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA in areas 542 and 543 in accordance with the dates and times listed in Table 1 of this notice.

TABLE 1. EFFECTIVE DATES AND TIMES

Action	Area	Effective Time[1] and Date	
		From	To
Opening the directed fishery in the HLA for the Amendment 80 cooperative vessels authorized to participate in the first HLA fishery in area 542 and second HLA fishery in area 543	542	1200 hrs, February 22, 2010	1200 hrs, March 8, 2010
	543	1200 hrs, March 18, 2010	1200 hrs, March 25, 2010
Opening the directed fishery in the HLA for the Amendment 80 limited access vessels authorized to participate in the first HLA fishery in area 543	543	1200 hrs, February 21, 2010	1200 hrs, February 28, 2010
Opening the directed fishery in the HLA for the vessel participating in the BSAI trawl limited access sector	542	1200 hrs, March 18, 2010	1200 hrs, March 31, 2010

[1]Alaska local time

After the effective dates of these closures, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening and closing of the fishery for the HLA limit established for areas 542 and 543 pursuant to the 2010 Atka mackerel TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 19, 2010. The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 9, 2010.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 22, 2010.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–3867 Filed 2–22–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 37
Thursday, February 25, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0171; Directorate Identifier 2009–NM–185–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes, Airbus Model A300 B4–600 Series Airplanes, Airbus Model A300 B4–600R Series Airplanes, and A310 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 the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: During a maintenance check performed by an A310 operator, the recommended modification of the lower attachment beam of rack 101VU by accomplishment of Airbus Service Bulletin (SB) A310–53–2076 was embodied on the aeroplane, leading the operator to find three cracks on the FR15A crossbeam above the NLG [nose landing gear] box at the splicing with rack 107VU fitting. This condition, if not detected and corrected, could degrade the structural integrity of the crossbeam on NLG FR15A web attachment fitting of rack 107VU. Rack 107VU contains major airworthiness system components whose functioning could be adversely affected by the loss of the attachment fitting. As the A300 and A300–600 aeroplanes share this design feature, they are also affected. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 12, 2010.

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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.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 Operations office 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 Operations 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

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–2010–0171; Directorate Identifier 2009–NM–185–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 based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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 European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0165, dated July 31, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During a maintenance check performed by an A310 operator, the recommended modification of the lower attachment beam of rack 101VU by accomplishment of Airbus Service Bulletin (SB) A310–53–2076 was embodied on the aeroplane, leading the operator to find three cracks on the FR15A crossbeam above the NLG [nose landing gear] box at the splicing with rack 107VU fitting.
>
> This condition, if not detected and corrected, could degrade the structural integrity of the crossbeam on NLG FR15A web attachment fitting of rack 107VU. Rack 107VU contains major airworthiness system components whose functioning could be adversely affected by the loss of the attachment fitting.
>
> As the A300 and A300–600 aeroplanes share this design feature, they are also affected.

For the reasons stated above, this AD requires repetitive inspections for cracks of the crossbeam on NLG FR15A web face attachment fitting of rack 107VU and corrective action, depending on findings.

The corrective actions include contacting Airbus for repair instructions, and doing the repair if any crack is found. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the following service bulletins:

- Airbus Mandatory Service Bulletin A300–53–0388, including Appendix 01, dated March 17, 2009;
- Airbus Mandatory Service Bulletin A300–53–6164, including Appendix 01, dated March 17, 2009; and
- Airbus Mandatory Service Bulletin A310–53–2131, including Appendix 01, dated March 17, 2009.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 206 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $35,020, or $170 per product, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2010–0171; Directorate Identifier 2009–NM–185–AD.

Comments Due Date

(a) We must receive comments by April 12, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, B4–203, B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, C4–605R Variant F airplanes, and A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category.

Subject

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

Reason

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

During a maintenance check performed by an A310 operator, the recommended modification of the lower attachment beam of rack 101VU by accomplishment of Airbus Service Bulletin (SB) A310–53–2076 was embodied on the aeroplane, leading the operator to find three cracks on the FR15A crossbeam above the NLG [nose landing gear] box at the splicing with rack 107VU fitting.

This condition, if not detected and corrected, could degrade the structural integrity of the crossbeam on NLG FR15A web attachment fitting of rack 107VU. Rack 107VU contains major airworthiness system components whose functioning could be adversely affected by the loss of the attachment fitting.

As the A300 and A300–600 aeroplanes share this design feature, they are also affected.

For the reasons stated above, this AD requires repetitive inspections for cracks of the crossbeam on NLG FR15A web face attachment fitting of rack 107VU and corrective action, depending on findings.

The corrective actions include contacting Airbus for repair instructions, and doing the repair if any crack is found.

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.

Actions

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

(1) At the later of the times specified in paragraph (g)(1)(i) and (g)(1)(ii) of this AD: Do a detailed inspection for cracks of the crossbeam on the nose landing gear FR15A web attachment fitting of rack 107VU, in accordance with the Accomplishment Instructions in the applicable service bulletin specified in Table 1 of this AD.

(i) Before the accumulation of 6,600 total flight cycles.

(ii) Within 2,300 flight cycles or 30 months after the effective date of this AD, whichever occurs first.

(2) Thereafter, at intervals not to exceed 2,300 flight cycles, repeat the inspection specified in paragraph (g)(1) of this AD.

TABLE 1—SERVICE BULLETINS

Model	Service Bulletin	Date
Airbus A300 series airplanes	Airbus Mandatory Service Bulletin A300–53–0388, including Appendix 01.	March 17, 2009.
Airbus 300–600 series airplanes	Airbus Mandatory Service Bulletin A300–53–6164, including Appendix 01.	March 17, 2009.
Airbus A310 series airplanes	Airbus Mandatory Service Bulletin A310–53–2131, including Appendix 01.	March 17, 2009.

(3) If any crack is found during any inspection required by paragraphs (g)(1) and (g)(2) of this AD, before further flight contact Airbus for approved repair instructions and do the repair.

(4) Submit an inspection report of the inspection required by paragraph (g)(1) of this AD to Airbus Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, telephone +33 5 61 93 33 33; fax +33 5 61 93 28 06; e-mail: *sb.reporting@airbus.com,* at the applicable time specified in paragraph (g)(4)(i) or (g)(4)(ii) of this AD. The report must include the information specified on the inspection report sheet provided in Appendix 01 of the applicable service bulletin identified in Table 1 of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(i) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0165, dated July 31, 2009; Airbus Mandatory Service Bulletin A300–53–0388, including Appendix 01, dated March 17, 2009; Airbus Mandatory Service Bulletin A300–53–6164, including Appendix 01, dated March 17, 2009; and Airbus Mandatory Service Bulletin A310–53–2131, including Appendix 01, dated March 17, 2009; for related information.

Issued in Renton, Washington, on February 17, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3816 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0172; Directorate Identifier 2009–NM–189–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, and A310 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

In the past, some operators have reported difficulties to pressurise the hydraulic reservoirs, due to leakage of the Crissair reservoir air pressurisation check valves. * * * The leakage of the check valves was caused by an incorrect spring material. The affected Crissair check valves * * * were then replaced with improved check valves P/N [part number] 2S2794–1 * * *.

More recently, similar issues were again reported on aeroplanes with Crissair check valves P/N 2S2794–1 installed. The investigations * * * have shown that a spring, mounted inside the valve, does not meet the Airbus type design specifications.

This situation, if not corrected, can cause hydraulic system functional degradation, possibly resulting in reduced control of the aeroplane when combined with an air duct leak, air conditioning system contamination or, if installed, malfunction of the fire extinguishing system in the Class 'C' cargo compartment.

* * * * *

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

DATES: We must receive comments on this proposed AD by April 12, 2010.

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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; *e-mail: account.airworth-eas@airbus.com;* Internet *http://www.airbus.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 Operations office 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 Operations 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

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–2010–0172; Directorate Identifier 2009–NM–189–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 based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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 European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0171, dated August 5, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> In the past, some operators have reported difficulties to pressurise the hydraulic reservoirs, due to leakage of the Crissair reservoir air pressurisation check valves. In some cases, the air conditioning system was contaminated with hydraulic mist. The leakage of the check valves was caused by an incorrect spring material. The affected Crissair check valves Part Number (P/N) 2S2794 were then replaced with improved check valves P/N 2S2794–1 in accordance with Airbus Service Information Letter 29–020.
>
> More recently, similar issues were again reported on aeroplanes with Crissair check valves P/N 2S2794–1 installed. The investigations carried out on those check valves have shown that a spring, mounted inside the valve, does not meet the Airbus type design specifications.
>
> This situation, if not corrected, can cause hydraulic system functional degradation, possibly resulting in reduced control of the aeroplane when combined with an air duct leak, air conditioning system contamination or, if installed, malfunction of the fire extinguishing system in the Class 'C' cargo compartment.
>
> For the reasons described above, EASA AD 2008–0166 was issued to require the inspection of the Crissair check valves P/N 2S2794–1, to identify serial numbers (s/n) and the replacement of the affected ones with serviceable units.
>
> Later on, further investigation by the vendor Crissair revealed more suspect check valves P/N 2S2794–1. Based on this, it was concluded that EASA AD 2008–0166 did not adequately address the unsafe condition and also did not correctly identify the Functional Item Numbers (FIN) of the various aeroplane installations of the affected valves. Consequently, EASA AD Cancellation Notice No.: 2008–0166–CN was issued on 29 October 2008 to cancel EASA AD 2008–0166.
>
> An updated list of suspect check valves with P/N 2S2794–1 has now been issued by Crissair Inc., the manufacturer. Consequently, this EASA AD requires the identification of the check valves by s/n and the replacement of the affected ones with serviceable units.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the following service bulletins:

• Airbus Mandatory Service Bulletin A300–29–0124, Revision 02, including Appendices 1, 2, and 3, dated March 10, 2009;

• Airbus Mandatory Service Bulletin A300–29–6060, Revision 01, including Appendices 1, 2, and 3, dated March 10, 2009; and

• Airbus Mandatory Service Bulletin A310–29–2097, Revision 01, including Appendices 1, 2, and 3, dated March 19, 2009.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 206 products of U.S. registry. We also estimate that it would

take about 12 work-hours per product, depending on airplane configuration, to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $210,120, or $1,020 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2010–0172; Directorate Identifier 2009–NM–189–AD.

Comments Due Date

(a) We must receive comments by April 12, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, B4–203, B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category, all certified models and all serial numbers on which any Crissair check valve part number 2S2794–1 is installed.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic Power; and 26: Fire Protection.

Reason

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

In the past, some operators have reported difficulties to pressurise the hydraulic reservoirs, due to leakage of the Crissair reservoir air pressurization check valves. In some cases, the air conditioning system was contaminated with hydraulic mist. The leakage of the check valves was caused by an incorrect spring material. The affected Crissair check valves Part Number (P/N) 2S2794 were then replaced with improved check valves P/N 2S2794–1 in accordance with Airbus Service Information Letter 29–020.

More recently, similar issues were again reported on aeroplanes with Crissair check valves P/N 2S2794–1 installed. The investigations carried out on those check valves have shown that a spring, mounted inside the valve, does not meet the Airbus type design specifications.

This situation, if not corrected, can cause hydraulic system functional degradation, possibly resulting in reduced control of the aeroplane when combined with an air duct leak, air conditioning system contamination or, if installed, malfunction of the fire extinguishing system in the Class 'C' cargo compartment.

For the reasons described above, EASA [European Aviation Safety Agency] AD 2008–0166 was issued to require the inspection of the Crissair check valves P/N 2S2794–1, to identify serial numbers (s/n) and the replacement of the affected ones with serviceable units.

Later on, further investigation by the vendor Crissair revealed more suspect check valves P/N 2S2794–1. Based on this, it was concluded that EASA AD 2008–0166 did not adequately address the unsafe condition and also did not correctly identify the Functional Item Numbers (FIN) of the various aeroplane installations of the affected valves. Consequently, EASA AD Cancellation Notice No.: 2008–0166–CN was issued on 29 October 2008 to cancel EASA AD 2008–0166.

An updated list of suspect check valves with P/N 2S2794–1 has now been issued by Crissair Inc., the manufacturer. Consequently, this EASA AD requires the identification of the check valves by s/n and the replacement of the affected ones with serviceable units.

Actions and Compliance

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

(1) At the applicable compliance time specified in Table 1 of this AD: For Crissair check valves, P/N 2S2794–1, identify the serial number using Appendix 1 of the applicable service bulletin identified in Table 2 of this AD, in accordance with the Accomplishment Instructions in the applicable service bulletin identified in Table 2 of this AD. Except as provided by paragraph (f)(2) of this AD, for any valve having a serial number listed in Appendix 1 of the applicable service bulletin identified in Table 2 of this AD, before further flight, install a new or modified check valve in accordance with the applicable service bulletin identified in Table 2 of this AD.

TABLE 1—AFFECTED CHECK VALVE INSTALLATION

Affected check valve installation, identified by FIN (functional item number)	Compliance time
(i) Airplanes having Hydraulic System with FIN 29/1388, FIN 29/2388 and FIN 29/3388.	Within 4 months after the effective date of this AD.
(ii) Cargo Compartment Fire Extinguishing System, equipped with Flow Metering System (A310 and A300–600 airplanes having "post-Airbus modification 06403" only) FIN 26/0203.	Within 4 months after the effective date of this AD.

TABLE 1—AFFECTED CHECK VALVE INSTALLATION—Continued

Affected check valve installation, identified by FIN (functional item number)	Compliance time
(iii) Airplanes having Hydraulic System with FIN 29/1378, FIN 29/1382 and FIN 29/1394.	Within 30 months after the effective date of this AD.
(iv) Hydraulic System (A300 airplanes having configuration 01 "pre-Airbus modification 03079" only) FIN 29/1381.	Within 30 months after the effective date of this AD.

(2) Check valves P/N 2S2794–1 marked with an "R" have already been modified in accordance with Crissair Service Bulletin 20070407–29–1 and do not need to be replaced. Check valves with P/N 2S2794 are not affected and do not need to be replaced.

(3) As of the effective date of this AD, no person may install any Crissair check valve, P/N 2S2794–1, on any airplane unless it has a serial number other than those listed in Appendix 1 of the applicable service bulletin identified in Table 2 of this AD, or unless check valve P/N 2S2794–1 is marked with an "R."

TABLE 2—SERVICE INFORMATION

Airbus model—	Airbus Mandatory Service Bulletin—	Revision—	Dated—
A300 airplanes	A300–29–0124, including Appendices 1, 2, and 3	02	March 10, 2009.
A300–600 airplanes	A300–29–6060, including Appendices 1, 2, and 3	01	March 10, 2009.
A310 airplanes	A310–29–2097, including Appendices 1, 2, and 3	01	March 19, 2009.

(4) Submit an inspection report of the inspection required by paragraph (f)(1) of this AD to Airbus Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 33 33; fax +33 5 61 93 42 51; e-mail: *sb.reporting@airbus.com;* at the applicable time specified in paragraph (f)(4)(i) or (f)(4)(ii) of this AD. The report must include the information specified on the inspection report sheet provided in the applicable service bulletin identified in Table 2 of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although the MCAI states not to install the part identified in paragraph (f)(3) of this AD after accomplishing the actions specified in paragraph (f)(1) of this AD, this AD prohibits installation of the part as of the effective date of this AD.

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, Transport Airplane Directorate, 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:* Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2009–0171, dated August 5, 2009; and the service bulletins identified in Table 2 of this AD; for related information.

Issued in Renton, Washington, on February 17, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3817 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0132; Directorate Identifier 2009–NM–096–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, –200B, and –200F Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Model 747–100, 747–200B, and –200F series airplanes. The existing AD currently requires inspections to detect cracking in the upper row of fasteners holes of the skin lap joints in the fuselage lower lobe, and repair, if necessary. This proposed AD would reduce the maximum interval of the post-modification inspections. This proposed AD results from reports of fatigue cracking on modified airplanes. We are proposing this AD to detect and correct fatigue cracking in the longitudinal lap joints of the fuselage lower lobe, which could lead to the rapid decompression of the airplane and the inability of the structure to carry fail-safe loads.

DATES: We must receive comments on this proposed AD by April 12, 2010.

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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; 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–2010–0132; Directorate Identifier 2009–NM–096–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

On August 4, 1994, we issued AD 94–17–01, Amendment 39–8996 (59 FR 41653, August 15, 1994), for certain Model 747 series airplanes. That AD requires inspections to detect cracking in the upper row of fastener holes of the skin lap joints in the fuselage lower lobe, and repair if necessary. That AD resulted from reports of incidents involving fatigue cracking and corrosion of transport category airplanes that are approaching or have exceeded their design life goal. We issued that AD to prevent separation of fuselage skin and rapid loss of pressure in the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 94–17–01, Boeing has performed a fleet-wide evaluation of the skin panel lap joints for widespread fatigue damage (WFD) and determined that the post-modification inspection interval of AD 94–17–01 needs to be reduced. In addition, lap joints where the upper (overlapping) skin thickness at the upper row of fasteners is 0.071 inch or less need to be further modified to preclude WFD. WFD of the lap joints can link up and result in large skin cracks, and possible rapid in-flight decompression of the airplane.

Relevant Service Information

AD 94–17–01 referred to Boeing Service Bulletin 747–53A2267, Revision 3, dated March 26, 1992, as the appropriate source of service information. Boeing has since issued Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009. This service bulletin reduces the repetitive interval for the post-modification inspections and references a structural modification for lap joints where the upper (overlapping) skin thickness at the upper row of fasteners is 0.071 inch or less.

Related Rulemaking

We are considering issuing related rulemaking to address the identified unsafe condition. We are in the process of issuing an AD that will refer to Revision 1 of Boeing Alert Service Bulletin 747–53A2463, and is related to this issue. That AD will require further modification of all the affected lap joints with an upper skin thickness of 0.071 inch or less.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 94–17–01. This AD would retain the requirements of that AD using the revised service information, and reduce the maximum interval of the post-modification inspections from 3,000 flight cycles to 1,000 flight cycles.

Differences Between the Proposed AD and Service Bulletin

Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

• Using a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization that we have authorized to make those findings.

Changes to Existing AD

This proposed AD would retain the requirements of AD 94–17–01. Since AD 94–17–01 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 94–17–01	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (g).
Paragraph (b)	Paragraph (h).
Paragraph (c)	Paragraph (i).

This proposed AD identifies the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Costs of Compliance

There are about 23 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S. -registered airplanes	Fleet cost
Inspection (required by AD 94–17–01).	244	$85	$0	$20,740 per inspection cycle.	7	$145,180 per inspection cycle.

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 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 that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–8996 (59 FR 41653, August 15, 1994) and adding the following new AD:

The Boeing Company: Docket No. FAA–2010–0132; Directorate Identifier 2009–NM–096–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 12, 2010.

Affected ADs

(b) This AD supersedes AD 94–17–01, Amendment 39–8996.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–200B, and 747–200F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009.

Subject

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

Unsafe Condition

(e) This AD results from reports of fatigue cracking. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracking in the fuselage lower lobe longitudinal lap joints, which could lead to the rapid decompression of the airplane and the inability of the structure to carry fail-safe loads.

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.

Restatement of Requirements of AD 94–17–01, with Revised Compliance Times for Post-Modification Inspection and Revised Service Information:

Initial External High Frequency Eddy Current Inspection

(g) Perform an external high frequency eddy current inspection to detect cracks in the upper row of fasteners in the modified lap joints in accordance with Boeing Service Bulletin 747–53A2267, Revision 3, dated March 26, 1992; or Revision 4, dated March 26, 2009; at the time specified in paragraph (g)(1) or (g)(2) or (g)(3) of this AD, as applicable. As of the effective date of this AD, only Revision 4 may be used.

(1) For airplanes on which the full modification required by AD 90–06–06, Amendment 39–6490, has been accomplished in accordance with Revision 2 of Boeing Service Bulletin 747–53A2267, dated March 29, 1990; or Revision 3, dated March 26, 1992; or Revision 4, dated March 26, 2009: Prior to the accumulation of 10,000 flight cycles after accomplishment of the full modification.

(2) For airplanes on which the full modification required by AD 90–06–06 has been accomplished in accordance with Boeing Service Bulletin 747–53A2267, dated March 28, 1986; or Revision 1, dated September 25, 1986: Prior to the accumulation of 7,000 flight cycles after accomplishment of the full modification.

(3) For airplanes on which the optional modification has been accomplished in accordance with Boeing Service Bulletin 747–53A2267, Revision 2, dated March 29, 1990; or Revision 3, dated March 26, 1992; or Revision 4, dated March 26, 2009: Prior to the accumulation of 7,000 flight cycles after accomplishment of the optional modification.

Repetitive External High Frequency Eddy Current Inspections

(h) If no cracking is detected during the inspection required by paragraph (g) of this AD, repeat the inspection required by paragraph (g) of this AD at the earlier of the times specified in paragraphs (h)(1) and (h)(2) of this AD, and thereafter at intervals not to exceed 1,000 flight cycles.

(1) Within 3,000 flight cycles after the last inspection required by paragraph (g) of this AD.

(2) Within 1,000 flight cycles after the last inspection required by paragraph (g) of this AD or 500 flight cycles after the effective date of this AD, whichever occurs later.

Repair

(i) If any cracking is detected during any inspection required by paragraph (g) of this

AD, prior to further flight, repair in accordance with Section 53–30–03 of the Boeing 747 Structural Repair Manual (SRM); or Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009; except as required by paragraph (j) of this AD; and repeat the inspection required by paragraph (g) of this AD at the times specified in paragraph (i)(1) of this AD. After the effective date of this AD, use only Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009.

(1) As of the effective date of this AD: If the repair specified in the Boeing 747 SRM does not include removing the lap joint and the upper row of countersunk fasteners, repeat the inspection required by paragraph (g) of this AD at the earlier of the times specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD, and thereafter at intervals not to exceed 1,000 flight cycles.

(i) Within 3,000 flight cycles after the last inspection required by paragraph (g) of this AD.

(ii) Within 1,000 flight cycles after the last inspection required by paragraph (g) of this AD, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) If the repair specified in the 747 SRM includes removing the lap joint and the upper row of countersunk fasteners, such repair constitutes terminating action for the inspection requirements of this AD.

Exception to the Service Bulletin

(j) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009, specifies contacting Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (k) of this AD. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; 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 the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that 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.

(4) AMOCs approved previously in accordance with AD 94–17–01 are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on February 17, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3819 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0170; Directorate Identifier 2009–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135ER, –135KE, –135KL, and –135LR Airplanes; and EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Reassessment of the damage tolerance analysis resulted in threshold reduction for some Structure Significant Items (SSI) of the Maintenance Review Board Report (MRBR) Airworthiness Limitations Items (ALI). Failure to inspect these structural components, according to the new threshold, could prevent a timely detection of fatigue cracking. These cracks, if not properly addressed, could adversely affect the structural integrity of the airplane.

* * * * *

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

DATES: We must receive comments on this proposed AD by April 12, 2010.

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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br;* Internet: *http://www.flyembraer.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 Operations office 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 Operations 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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–2010–0170; Directorate Identifier 2009–NM–127–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 based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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 Agencia Nacional De Aviacao Civil—Brazil (ANAC), which is the airworthiness authority for Brazil, has issued Brazilian Airworthiness Directive 2009–05–02, effective June 1, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Reassessment of the damage tolerance analysis resulted in threshold reduction for some Structure Significant Items (SSI) of the Maintenance Review Board Report (MRBR) Airworthiness Limitations Items (ALI). Failure to inspect these structural components, according to the new threshold, could prevent a timely detection of fatigue cracking. These cracks, if not properly addressed, could adversely affect the structural integrity of the airplane.
>
> * * * * *

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer has issued Temporary Revision 12–1, dated November 27, 2008, to the EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 12, dated September 19, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 711 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $60,435, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2010–0170; Directorate Identifier 2009–NM–127–AD.

Comments Due Date

(a) We must receive comments by April 12, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

Reassessment of the damage tolerance analysis resulted in threshold reduction for some Structure Significant Items (SSI) of the Maintenance Review Board Report (MRBR) Airworthiness Limitations Items (ALI). Failure to inspect these structural components, according to the new threshold, could prevent a timely detection of fatigue cracking. These cracks, if not properly addressed, could adversely affect the structural integrity 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.

Actions

(g) Within 90 days after the effective date of this AD, do the following actions, as applicable.

(1) For EMBRAER Model EMB–135ER, –135KE, –135KL, and –135LR airplanes, and Model EMB–145, –145EP, –145ER, –145LR, –145MP, and –145MR airplanes: Revise the Airworthiness Limitations (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate Tasks 54–50–00–230–802–A00 and 54–50–00–220–808–A01 specified in Appendix 2, Airworthiness Limitation Requirements, of EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 12, dated September 19, 2008 (the "MRBR"). The initial compliance times for the tasks start from the applicable threshold specified in Appendix 2 of the MRBR, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For EMBRAER Model EMB–145EP, –145ER, –145LR, –145MR, and –145MP airplanes: Revise the ALS of the ICA to incorporate Tasks 57–26–00–250–815–A00, 57–26–00–250–815–A01, 57–26–00–250–813–A00, and 57–26–00–250–813–A02, specified in Appendix 2, Airworthiness Limitation Requirements, of EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 12, dated September 19, 2008 ("the MRBR"). The initial compliance times for the tasks start from the later of the times specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) At the later of the applicable thresholds specified in Appendix 2 of the MRBR or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(ii) At the applicable time specified in Section A2.3.2.3.1, "Fatigue Threshold Reduced," of Appendix 2, Airworthiness Limitation Requirements, of the MRBR.

(3) For all airplanes: Revise the ALS of the ICA to incorporate Tasks 57–10–00–250–801–A00 and 57–10–00–250–801–A01 specified in EMBRAER Temporary Revision 12–1, dated November 27, 2008, to the EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 12, dated September 19, 2008. The initial compliance times for the tasks start at the times specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD, as applicable.

(i) For Task 57–10–00–250–801–A00: Prior to the accumulation of 23,600 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For Task 57–10–00–250–801–A01: Within 24,000 flight cycles after accomplishing EMBRAER Service Bulletin 145–57–0047, dated October 18, 2008, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(h) After accomplishing the actions specified in paragraph (g) of this AD, no alternative inspections, inspection intervals, or airworthiness limitations may be used unless the inspections, inspection intervals, or airworthiness limitations are approved as alternative method of compliance in accordance with the procedures specified in paragraph (i) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. 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.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(j) Refer to MCAI Brazilian Airworthiness Directive 2009–05–02, effective June 1, 2009; EMBRAER Temporary Revision 12–1, dated November 27, 2008, to the EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 12, dated September 19, 2008; and Tasks 54–50–00–230–802–A00 and 54–50–00–220–808–A01 specified in Appendix 2, Airworthiness Limitation Requirements, of EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 12, dated September 19, 2008; for related information.

Issued in Renton, Washington, on February 17, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3826 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0169; Directorate Identifier 2009–NM–102–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A specific batch of nose landing gear (NLG) and NLG door selector valves, part number (P/N) 601R75146–1 (Kaiser Fluid Technologies P/N 750006000), may have had their end caps incorrectly lock-wired and/or incorrectly torqued during assembly. This condition can lead to the end cap backing off, with consequent damage to a seal and internal leakage within the valve.

Subsequently, if electrical power is transferred or removed from the aircraft before the NLG safety pin is installed, any pressure, including residual pressure, in the No. 3 hydraulic system can result in an uncommanded NLG retraction.

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

DATES: We must receive comments on this proposed AD by April 12, 2010.

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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.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 Operations office 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 Operations 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: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

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–2010–0169; Directorate Identifier 2009–NM–102–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 based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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

On June 25, 2007, we issued AD 2007–14–02, Amendment 39–15124 (72 FR 38004, July 12, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–14–02, we have received a report that a number of nose landing gears (NLG) and door selector valves of the NLG may have had their end caps incorrectly lock-wired and incorrectly torqued during assembly. Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–21R1, dated May 20, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> A specific batch of nose landing gear (NLG) and NLG door selector valves, part number (P/N) 601R75146–1 (Kaiser Fluid Technologies P/N 750006000), may have had their end caps incorrectly lock-wired and/or incorrectly torqued during assembly. This condition can lead to the end cap backing off, with consequent damage to a seal and internal leakage within the valve. Subsequently, if electrical power is transferred or removed from the aircraft before the NLG safety pin is installed, any pressure, including residual pressure, in the No. 3 hydraulic system can result in an uncommanded NLG retraction.
>
> Although there have been no such cases reported on the Challenger models covered by this directive, there have been six cases reported on the CRJ (CL600–2B19) aircraft, one of which resulted in the collapse of the NLG at the departure gate.
>
> This directive mandates a check of the NLG and NLG door selector valves installed on all aircraft in the Applicability section * * *. Depending on the results; replacement, rework and/or additional identification of the valves may be required.
>
> This [MCAI] revision corrects a Service Bulletin number in the Corrective Actions table.
>
> **Notes:**
>
> 1. The check is required whether or not an aircraft has previously been checked in accordance with AD CF–2006–16R1 (now superseded and cancelled by this AD). This is necessary since, following the issuance of AD CF–2006–16R1, it has been determined that the serial number (S/N) range of the affected valves requires expansion from the previous upper limit of S/N 0767 to S/N 2126 and the exact location of each of these additional valves is unknown.
>
> 2. Valves that have a S/N with suffix "T" have been manufactured by Tactair Fluid Controls Inc. and do not require any corrective action.
>
> 3. Valves manufactured by Kaiser Fluid Technologies, P/N 750006000, with S/N 0001 through 2126, and ink stamp "SB750006000–1", have already been checked and reworked as necessary and do not require any additional corrective action.
>
> 4. The Illustrated Parts Catalog, for each of the models covered in the Applicability section * * *, gives instructions not to install a valve manufactured by Kaiser Fluid Technologies, P/N 750006000, with S/N 0001 through 2126, if the marking "SB750006000–1" is not ink stamped on the valve.
>
> 5. CL–600–2B16 (CL–605) aircraft, S/Ns 5701 and subsequent, are not affected by this directive. They were delivered with valves, P/N 750006000, that have either a S/N with suffix "T" or have the ink stamp marking "SB750006000–1".

We have clarified the applicability of this AD by removing serial numbers 5666 through 5699 that were included in AD 2007–14–02. Those serial numbers do not exist for the affected airplane models in this AD. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 600–0721, Revision 03, dated February 23, 2009; Service Bulletin 601–0558, Revision 03, dated February 23, 2009; and Service Bulletin 604–32–021, Revision 04, dated February 23, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this

AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 82 products of U.S. registry.

The actions that are required by AD 2007–14–02 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions for U.S. operators is $6,970, or $85 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,970, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15124 (72 FR 38004, July 12, 2007) and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2010–0169; Directorate Identifier 2009–NM–102–AD.

Comments Due Date

(a) We must receive comments by April 12, 2010.

Affected ADs

(b) The proposed AD supersedes AD 2007–14–02, Amendment 39–15124.

Applicability

(c) This AD applies to Bombardier, Inc. airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model CL–600–1A11 (CL–600), serial numbers 1004 through 1085 inclusive.

(2) Model CL–600–2A12 (CL–601), serial numbers 3001 through 3066 inclusive.

(3) Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604), serial numbers 5001 through 5194 inclusive, and serial numbers 5301 through 5665 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

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

"A specific batch of nose landing gear (NLG) and NLG door selector valves, part number (P/N) 601R75146–1 (Kaiser Fluid Technologies P/N 750006000), may have had their end caps incorrectly lock-wired and/or incorrectly torqued during assembly. This condition can lead to the end cap backing off, with consequent damage to a seal and internal leakage within the valve. Subsequently, if electrical power is transferred or removed from the aircraft before the NLG safety pin is installed, any pressure, including residual pressure, in the No. 3 hydraulic system can result in an uncommanded NLG retraction.

"Although there have been no such cases reported on the Challenger models covered by this directive, there have been six cases reported on the CRJ (CL600–2B19) aircraft, one of which resulted in the collapse of the NLG at the departure gate.

"This directive mandates a check of the NLG and NLG door selector valves installed on all aircraft in the Applicability section * * *. Depending on the results; replacement, rework and/or additional identification of the valves may be required.

"This [MCAI] revision corrects a Service Bulletin number in the Corrective Actions table.

"**Notes:**

"1. The check is required whether or not an aircraft has previously been checked in accordance with AD CF–2006–16R1 (now superseded and cancelled by this AD). This is necessary since, following the issuance of AD CF–2006–16R1, it has been determined that the serial number (S/N) range of the affected valves requires expansion from the previous upper limit of S/N 0767 to S/N 2126 and the exact location of each of these additional valves is unknown.

"2. Valves that have a S/N with suffix 'T' have been manufactured by Tactair Fluid Controls Inc. and do not require any corrective action.

"3. Valves manufactured by Kaiser Fluid Technologies, P/N 750006000, with S/N 0001 through 2126, and ink stamp 'SB750006000–1', have already been checked and reworked as necessary and do not require any additional corrective action.

"4. The Illustrated Parts Catalog, for each of the models covered in the Applicability section * * *, gives instructions not to install a valve manufactured by Kaiser Fluid Technologies, P/N 750006000, with S/N 0001 through 2126, if the marking 'SB750006000–1' is not ink stamped on the valve.

"5. CL–600–2B16 (CL–605) aircraft, S/Ns 5701 and subsequent, are not affected by this

directive. They were delivered with valves, P/N 750006000, that have either a S/N with suffix 'T' or have the ink stamp marking 'SB750006000–1'."

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.

Restatement of Requirements of AD 2007–14–02 With New Service Information but No Changes to Actions

Inspection and Corrective Action

(g) For airplanes having serial numbers (S/Ns) as identified in the service bulletins specified in Table 1 of this AD, as applicable: Within 500 flight hours or 12 months after August 16, 2007 (the effective date AD 2007–14–02), whichever occurs first, inspect to determine the manufacturer part numbers (P/Ns) and serial numbers of the selector valves of the nose landing gear (NLG) and nose gear door. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial numbers of the selector valves can be conclusively determined from that review. For any subject selector valve having Tactair Fluid Controls P/N 750006000 and a S/N from 0001 through 0767 inclusive, before further flight, do related investigative (including a general visual inspection for proper installation of the lock wire of the end cap) and corrective actions; in accordance with the applicable service bulletin identified in Table 1 of this AD. After the effective date of this AD, use only the applicable service bulletin specified in Table 2 of this AD.

TABLE 1—BOMBARDIER SERVICE

Model—	Bombardier Service Bulletin—	Revision—	Dated—
CL–600–1A11 (CL–600) airplanes	600–0721	01	February 20, 2006.
CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.	601–0558	01	February 20, 2006.
CL–600–2B16 (CL–604) airplanes	604–32–021	02	February 20, 2007.

TABLE 2—BOMBARDIER SERVICE BULLETINS FOR PARAGRAPH (g) OF THIS AD

Model—	Bombardier Service Bulletin—	Revision—	Dated—
CL–600–1A11 (CL–600) airplanes	600–0721	03	February 23, 2009.
CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.	601–0558	03	February 23, 2009.
CL–600–2B16 (CL–604) airplanes	604–32–021	04	February 23, 2009.

Note 1: Operators should be aware that selector valves having Bombardier P/N 601R75146–1 may be supplied by different manufacturers and have different manufacturer part numbers. Only airplanes having selector valves manufactured by Tactair Fluid Controls, having P/N 750006000, are subject to the investigative and corrective actions specified in paragraph (g) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: The service bulletins identified in Table 1 of this AD refer to Tactair Fluid Controls Service Bulletin SB750006000–1, Revision A, dated September 6, 2005, as an additional source of service information for doing the related investigative and corrective actions required by this AD.

Actions Accomplished According to Previous Issue of Service Bulletin

(h) Actions accomplished before August 16, 2007, in accordance with Bombardier Service Bulletin 604–32–021, Revision 01, dated February 20, 2006 (for Model CL–600–2B16 (CL–605) airplanes), are considered acceptable for compliance with the corresponding actions specified in paragraph (g) of this AD.

New Requirements of This AD

Actions

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

(1) Within 250 flight hours or within 6 months after the effective date of this AD, whichever occurs first: Do an inspection of the selector valve of the NLG and the door selector valve of the NLG to determine if P/N 601R75146–1 (Kaiser Fluid Technologies P/N 750006000) is installed, in accordance with the Accomplishment Instructions of the applicable service bulletin listed in Table 3 of this AD. Doing the inspection required by this paragraph terminates the inspection required by paragraph (g) of this AD.

TABLE 3—BOMBARDIER SERVICE BULLETINS FOR ACTIONS IN PARAGRAPH (h) OF THIS AD

Model—	Bombardier Service Bulletin—	Revision—	Date—
CL–600–1A11 (CL–600) airplanes	600–0721	03	February 23, 2009.
CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.	601–0558	03	February 23, 2009.
CL–600–2B16 (CL–604) airplanes	604–32–021	04	February 23, 2009.

(2) If, during any inspection required by paragraph (i)(1) of this AD, any selector valve having P/N 601R75146–1 (Kaiser Fluid Technologies P/N 750006000) and having a S/N from 0001 through 2126 inclusive without a suffix "T" is found, and the valve is not ink-stamped with the marking "SB750006000–1": Before further flight, do a general visual inspection for proper

installation of the lock wire of the end cap, and replace it with a serviceable selector valve as applicable, in accordance with the Accomplishment Instructions in the applicable service bulletin listed in Table 3 of this AD.

(3) Doing the actions before the effective date of this AD in accordance with the applicable service bulletin listed in Table 4 of this AD is acceptable for compliance with the corresponding actions specified in this AD.

TABLE 4—CREDIT SERVICE BULLETINS

Service Bulletin	Revision level	Date
Bombardier Service Bulletin 600–0721	02	June 16, 2008.
Bombardier Service Bulletin 601–0558	02	June 16, 2008.
Bombardier Service Bulletin 604–32–021	03	June 16, 2008.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. 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.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(k) Refer to MCAI Canadian Airworthiness Directive CF–2009–21R1, dated May 20, 2009; Bombardier Service Bulletin 600–0721, Revision 03, dated February 23, 2009; Bombardier Service Bulletin 601–0558, Revision 03, dated February 23, 2009; and Bombardier Service Bulletin 604–32–021, Revision 04, dated February 23, 2009; for related information.

Issued in Renton, Washington, on February 17, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–3827 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0062]

RIN 1625–AA00

Safety Zone; Fleet Week Maritime Festival, Pier 66, Elliott Bay, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Coast Guard is proposing to establish a permanent safety zone on all waters extending 100 yards from Pier 66, Elliot Bay, WA to ensure adequate safety of the boating public during multiple naval and aerial spectator events associated with the annual Fleet Week Maritime Festival. Entry into, transit through, mooring, or anchoring within these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: Comments and related material must be received by the Coast Guard on or before May 26, 2010. Requests for public meetings must be received by the Coast Guard on or before March 29, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0062 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Ashley M. Wanzer, USCG Sector Seattle Waterways Management Division, Coast Guard; telephone 206–217–6175, e-mail *SectorSeattleWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0062), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via

www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0062" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0062" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before 30 days after publication in the **Federal Register** using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Ensign Ashley M. Wanzer at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Background and Purpose

The U.S. Coast Guard is proposing to establish a permanent safety zone on all waters extending 100 yards from Pier 66, Elliot Bay, WA to ensure adequate safety for the public during multiple naval and aerial spectator events associated with the annual Fleet Week Maritime Festival. This safety zone is necessary as these events have historically resulted in vessel congestion near Pier 66, Elliot Bay, WA which adversely compromises participant and spectator safety. This safety zone is also necessary to ensure the safety of participant vessels through providing unobstructed vessel traffic lanes to ensure unobstructed access to emergency response craft in the event of an emergency. The Captain of the Port, Puget Sound may be assisted by other federal and local agencies in the enforcement of this safety zone.

The Captain of the Port, Puget Sound will give notice of the enforcement of the safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts. The public will also be notified of Festival events by local newspapers, radio and television stations. These various methods of notification will facilitate informing mariners so they may adjust their plans accordingly.

Each year the Fleet Week Maritime Festival occurs in the same location and time period, and involves multiple naval and aerial spectator events. The proposed permanent safety zone will be used to control vessel movement within a specified distance surrounding the Festival activities to ensure the safety of persons and property. An on-scene patrol commander may allow persons within the safety zone if conditions permit.

This proposed safety zone will be enforced from 8 a.m. until 8 p.m., prior to and immediately following events associated with the annual Fleet Week Maritime Festival, scheduled for either the last weekend in July or the first weekend in August. However, vessels may enter, remain in, or transit through the safety zone during this timeframe if authorized by the Captain of the Port or designated on-scene patrol commander.

This proposed rule is necessary to protect the safety of life and property on navigable waters during the annual Fleet Week Maritime Festival events and provide the marine community information on the safety zone location, size and length of time the zone will be active.

Discussion of Proposed Rule

This proposed rule will create a permanent safety zone to control the movement of all vessels and persons on all waters extending 100 yards from Pier 66, Elliot Bay, WA, encompassed by the points, 47°36.70′ N & 122°21.07′ W, 47°36.68′ N & 122°21.13′ W, 47°36.53′ N & 122°20.86′ W, and 47°36.55′ N & 122°20.81′ W (NAD 1983). This safety zone is necessary to adequately provide necessary protection to people and national assets participating in the annual Fleet Week Maritime Festival. This safety zone will be delineated by the presence of on-scene patrol craft. This is the most effective mechanism to establish the boundaries of the safety zone while providing unencumbered access for rescue craft in the event of an emergency.

The Coast Guard will provide notice to the public of enforcement of this zone through both the Local Notice to Mariners and marine information broadcast on the day of the event.

Regulatory Analyses

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

Regulatory Planning and Review

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

period of enforcement and size of this security zone is minimal.

Small Entities

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

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

This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the Puget Sound while this rule is enforced. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This temporary rule will be in effect for minimal times when vessel traffic volume is low and are limited in size. If safe to do so, traffic will be allowed to pass through the zone with the permission of the Captain of the Port or Designated Representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ensign Ashley Wanzer. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves multiple naval and aerial spectator events associated with the annual Fleet Week Maritime Festival. We seek any comments or information that may lead to the discovery of a

significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1330 to read as follows:

§ 165.1330 Safety Zone; Fleet Week Maritime Festival, Pier 66, Elliott Bay, Seattle, WA.

(a) *Location.* The following area is a safety zone: All waters extending 100 yards from Pier 66, Elliot Bay, WA within a box encompassed by the points, 47°36.70′ N & 122°21.07′ W, 47°36.68′ N & 122°21.13′ W, 47°36.53′ N & 122°20.86′ W, and 47°36.55′ N & 122°20.81′ W (NAD 1983). This safety zone does not extend on land.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port or Designated Representative. The Captain of the Port may be assisted by other federal, state, or local agencies as needed.

(c) *Authorization.* In order to transit through this safety zone, authorization must be granted by the Captain of the Port Puget Sound or Designated Representative. All vessel operators desiring entry into this safety zone shall gain authorization by contacting either the on-scene U.S. Coast Guard patrol craft on VHF Ch 13 or Ch 16, or Coast Guard Sector Seattle Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6452. Requests shall indicate the reason why movement within the safety zone is necessary, and the vessel's arrival and/or departure facility name, pier and/or berth. Vessel operators granted permission to enter this safety zone will be escorted by the on-scene patrol until no longer within the safety zone.

(d) *Enforcement Period.* This rule is effective during the day of the Fleet Week Maritime Festival occurring on either the last weekend in July or the first weekend in August, and will be enforced from 8 a.m. until 8 p.m. unless cancelled sooner by the Captain of the Port.

Dated: February 4, 2010.

S.E. Englebert,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2010–3834 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0063]

RIN 1625–AA00

Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish multiple permanent safety zones to ensure public safety during annual firework displays at various locations the Captain of the Port, Puget Sound Area of Responsibility (AOR). When these safety zones are activated, and thus subject to enforcement, this rule would limit the movement of vessels within the established firework display areas. This action is necessary to prevent injury and to protect life and property of the maritime public from the hazards associated with firework displays. Entry into, transit through, mooring, or anchoring within these zones during times of enforcement is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: Comments and related material must be received by the Coast Guard on or before May 26, 2010. Requests for public meetings must be received by the Coast Guard on or before March 29, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0063 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Ashley M. Wanzer, USCG Sector Seattle Waterways Management Division, Coast Guard; telephone 206–217–6175, e-mail *SectorSeattleWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0063), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the

"submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0063" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0063" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before 30 days after publication in the **Federal Register** using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Ensign Ashley M. Wanzer at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Background and Purpose

The U.S. Coast Guard is proposing to establish multiple permanent safety zones to ensure public safety during annual firework shows occurring within the Captain of the Port, Puget Sound, WA, AOR. These events may result in a number of vessels congregating near fireworks launching barges and sites. These safety zones are necessary to protect watercraft and their occupants from the hazards associated with fireworks displays. The Captain of the Port, Puget Sound, may be assisted by other Federal, State and local agencies in the enforcement of this safety zone.

The Coast Guard typically receives numerous applications in these geographic areas for firework displays. Currently, temporary safety zones are established on an emergency basis for each individual display thereby limiting opportunity for public comment. Establishing permanent safety zones through notice and comment rulemaking provides the public the opportunity to comment on safety zone locations, size and length of time each zone will be enforced. Additionally, this proposed rule includes a variety of locations and date ranges to allow for speedy and safe activation of permanent safety zones. Firework displays occur in these locations and on these dates with regularity. The establishment of multiple permanent safety zones provides enhanced public safety measures by reducing the number of emergency safety zones needed for firework displays. Notification of the specific dates and time for activation of safety zones will be available to the maritime public.

Each year organizations sponsor firework displays in the same general location and time period. Each event uses a barge, a tug and a barge, or an on-shore site near the shoreline as the fireworks launch platform. A safety zone is used to control vessel movement within a specified distance surrounding the launch platforms to ensure the safety of persons and property. An on-scene patrol commander may allow persons within the safety zone if conditions permit.

The Captain of the Port, Puget Sound, will give notice of the enforcement of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts. The public will also be notified about many of these firework displays by local newspapers, radio and television stations. These various methods of notification will facilitate informing mariners so they may adjust their plans accordingly.

Firework barges or launch sites on land used in locations stated in this proposed rule shall display a sign. The sign will be affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land and in close proximity to the shoreline facing the water labeled "FIREWORKS—DANGER—STAY AWAY". This will provide on scene notice that the safety zone is, or will, be enforced on that day. This notice will consist of a diamond shaped sign, 4 foot by 4 foot, with a 3 inch orange retro-reflective border. The word "DANGER" shall be 10 inch black block letters centered on the sign with the words "FIREWORKS" and "STAY AWAY" in 6 inch black block letters placed above and below the word "DANGER" respectively on a white background. There will also be an on-scene patrol vessel present to enforce the safety zone 30 minutes prior to the start and 30 minutes after the conclusion of the fireworks display.

The enforcement period for the proposed safety zones are from 5:30 p.m. until 1 a.m. local time. However, vessels may enter, remain in, or transit through these safety zones during this timeframe if authorized by the Captain of the Port or designated on-scene patrol commander.

This proposed rule is necessary to protect the safety of life and property on navigable waters during these firework events and provide the marine community information on safety zone locations, size and length of time the zones will be active.

Discussion of Proposed Rule

This proposed rule will create permanent safety zones on the waterways of Puget Sound, WA to assist in minimizing the inherent dangers associated with firework displays. These safety zones will extend 450 yards from their launch site. This zone size allows for the use of up to a 16″ mortar shell in annual firework displays. However, safety zones will only be enforced for the appropriate size for the largest mortar shell used. These zones are nominal in size and are typically positioned in areas which allow for transit around the zone thus the safety zones have an inconsequential impact on the majority of waterway users. These zones are also short in duration and allow waterway users to enter or

transit through the zone when deemed safe by the on-scene patrol commander. The COTP, through this action, intends to promote the safety of personnel, vessels, and facilities in the area.

Regulatory Analyses

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

Regulatory Planning and Review

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

Small Entities

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

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

This temporary rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the affected waterways while this rule is enforced. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This temporary rule will be in effect for minimal times when vessel traffic volume is low and are limited in size. If safe to do so, traffic will be allowed to pass through the zone with the permission of the Captain of the Port or Designated Representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ensign Ashley Wanzer via the contact information listed under **FOR FURTHER INFORMATION** in this docket. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

This proposed rule does not use technical standards. Therefore, we did

not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves multiple discharging of various aerial shelled fireworks within the COTP Puget Sound AOR. Each event will individually comply with NEPA requirements on an annual basis as ensured through the requirement of an annual marine event permit. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1332 to read as follows:

§ 165.1332 Safety Zones; Annual Firework Displays within the Captain of the Port, Puget Sound Area of Responsibility.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) All waters of Puget Sound, WA extending to a 450 yard radius from the following launch sites:

CAPTAIN OF THE PORT PUGET SOUND AOR ANNUAL FIREWORK DISPLAYS

Event name (typically)	Event location	Latitude	Longitude
Steilicom Annual Fireworks	Steilicom	47°10.4′ N	122°36.2′ W
Tacoma Freedom Fair	Commencement Bay	47°16.817′ N	122°27.933′ W
City of Anacortes Fireworks	Fidalgo Bay	47°17.1′ N	122°28.4′ W
Alderbrook Resort & Spa Fireworks	Hood Canal	47°21.033′ N	123°04.1′ W
Fireworks Display	Henderson Bay	47°21.8′ N	122°38.367′ W
Des Moines Fireworks	Des Moines	47°24.117′ N	122°20.033′ W
Three Tree Point Community Fireworks	Three Tree Point	47°27.033′ N	122°23.15′ W
City of Renton Fireworks	Renton, Lake Washington	47°29.986′ N	122°11.85′ W
Port Orchard Fireworks	Port Orchard	47°32.883′ N	122°37.917′ W
Chimes and Lights	Port Orchard	47°32.75′ N	122°38.033′ W
Seattle Seafair	Lake Washington	47°34.333′ N	122°16.017′ W
Mercer Island Celebration	Mercer Island	47°35.517′ N	122°13.233′ W
Medina Days	Medina Park	47°36.867′ N	122°14.5′ W
Bainbridge Island Fireworks	Eagle Harbor	47°37.267′ N	122°31.583′ W
Whaling Days	Dyes Inlet	47°38.65′ N	122°41.35′ W
Yarrow Point Community	Yarrow Point	47°38.727′ N	122°13.466′ W
City of Kenmore Fireworks	Lake Forest Park	47°39.0′ N	122°13.55′W
Kirkland Concours D'Elegence	Kirkland	47°39.521′ N	122°12.439′ W
Kirkland Fireworks	Kirkland	47°40.583′ N	122°12.84′ W
Liberty Bay Fireworks	Liberty Bay	47°43.917′ N	122°39.133′ W
Sheridan Beach Community	Lake Forest Park	47°44.783′ N	122°16.917′ W
Langlie's Old Fashioned Independence Celebration	Indianola	47°44.817′ N	122°31.533′ W
Lake Forest Park Fireworks	Lake Forest Park	47°45.117′ N	122°16.367′ W
Vashon Island Fireworks	Quartermaster Harbor	47°45.25′ N	122°15.75′ W
Kingston Fireworks	Appletree Cove	47°47.65′ N	122°29.917′ W
Mikilteo Lighthouse Festival	Possession Sound	47°56.9′ N	122°18.6′ W
Brewster Fire Department Fireworks	Brewster	48°06.367′ N	119°47.15′ W
Port Angeles	Port Angeles Harbor	48°07.033′ N	123°24.967′ W
Port Townsend Sunrise Rotary	Port Townsend	48°08.067′ N	122°46.467′ W
Friday Harbor Independence	Friday Harbor	48°32.6′ N	122°00.467′ W
Roche Harbor Fireworks	Roche Harbor	48°36.7′ N	123°09.5′ W
Deer Harbor Annual Fireworks Display	Deer Harbor	48°37.0′ N	123°00.25′ W
Orcas Island	Orcas Island	48°41.317′ N	122°54.467′ W
Blast Over Bellingham	Bellingham Bay	48°44.933′ N	122°29.667′ W
True Colors Event	Blaine	48°59.488′ N	122°46.339′ W
John Eddy Wedding	Magnolia Bluff	49°38.988′ N	122°25.356′ W
City of Mount Vernon Fireworks	Edgewater Park	48°25.178′ N	122°20.424′ W
Chase Family Fourth at Lake Union	Lake Union	47°38.418′ N	122°20.111′ W

(2) [Reserved]

(b) *Special Requirements.* Firework barges or launch sites on land used in locations stated in this proposed rule shall display a sign. The sign will be affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land and in close proximity to the shoreline facing the water labeled "FIREWORKS—DANGER—STAY AWAY". This will provide on scene notice that the safety zone is, or will, be enforced on that day. This notice will consist of a diamond shaped sign, 4 foot by 4 foot, with a 3

inch orange retro-reflective border. The word "DANGER' shall be 10 inch black block letters centered on the sign with the words "FIREWORKS" and "STAY AWAY" in 6 inch black block letters placed above and below the word "DANGER" respectively on a white background. There will also be an on-scene patrol vessel present to enforce the safety zone 30 minutes prior to the start and 30 minutes after the conclusion of the fireworks display.

(c) *Notice of Enforcement.* These safety zones will be activated and thus subject to enforcement, under the following conditions: The Coast Guard must receive and approve a marine event permit for each firework display and then the Captain of the Port will cause notice of the enforcement of these safety zones to be made by all appropriate means to provide notice to the affected segments of the public as practicable, in accordance with 33 CFR 165.7(a). The Captain of the Port will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public of activation and suspension of enforcement of these safety zones. Additionally, an on-scene Patrol Commander will ensure enforcement of this safety zone by limiting the transit of non-participating vessels in the designated areas described above.

(d) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port or Designated Representative.

(e) *Authorization.* All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or Designated Representative by contacting either the on-scene patrol craft on VHF Ch 13 or Ch 16 or the Coast Guard Sector Seattle Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002.

(f) *Enforcement Period.* This rule will be enforced from 5:00 pm until 1:00 am each day a barge with a "FIREWORKS—DANGER—STAY AWAY" sign is located within any of the designated safety zone locations listed in paragraph (a) of this section and meets the criteria established in paragraph (b) of this section, within the following timeframes:

(1) The last two weeks of December until the conclusion of the first weekend of January.

(2) The last weekend of June until the conclusion of the third week in July.

(3) The second weekend of August until the conclusion of the fourth week of August.

(4) The first weekend of September until the conclusion of the third week of September.

(5) The first weekend of December.

(g) *Contact Information.* Questions about safety zones and related events should be addressed to COMMANDER (spw), U.S. COAST GUARD SECTOR, Attention: Waterways Management Division, 1519 Alaskan Way South, Seattle, WA 98134–1192.

Dated: February 4, 2010.

L.R. Tumbarello,

Commander, U.S. Coast Guard, Captain of the Port, Puget Sound Acting.

[FR Doc. 2010–3812 Filed 2–24–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Atlantic Ocean off John F. Kennedy Space Center, FL; Restricted Area

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to revise its regulations to establish a new restricted area in the Atlantic Ocean off the coast of the John F. Kennedy Space Center (KSC), Florida. The KSC is the main launch facility for the National Aeronautics and Space Administration (NASA) and they need to have the capability to secure their shoreline at KSC. This amendment to the existing regulations is necessary to enhance KSC's ability to secure their shoreline to counter postulated threats to their facilities and to provide for safe launch operations.

DATES: Written comments must be submitted on or before March 29, 2010.

ADDRESSES: You may submit comments, identified by docket number COE–2010–0001, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE–2010–0001, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2010–0001. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that 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 regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through 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, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr. Jon M. Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 904–232–1680.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is

proposing to amend the regulations in 33 CFR part 334 by establishing a new restricted area in Florida offshore of the KSC facilities. The proposed amendment will allow the Director, KSC, to restrict passage of persons, watercraft, and vessels in waters contiguous to this facility during launch operations and whenever there is a perceived threat to the facility.

Procedural Requirements

a. *Review Under Executive Order 12866.* The proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* The proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the comment period, the Corps expects that the proposed rule will would have practically no economic impact on the public, or result in no anticipated navigational hazard or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. *Unfunded Mandates Act.* This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.525 to read as follows:

§ 334.525 Atlantic Ocean off John F. Kennedy Space Center, FL; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, contiguous to the area offshore of the John F. Kennedy Space Center (KSC), Florida. The area is bounded by a line connecting the following coordinates: Commencing from the shoreline at the southwest portion of the area, at latitude 28°35.008′ N, longitude 80°34.448′ W, thence directly to latitude 28°35.716′ N, longitude 80°32.938′ W, thence following the mean high water line northerly at a distance of 1.5 nautical miles to a point at latitude 28°43.566′ N longitude 80°39.094′ W, thence proceeding westerly to terminate at a point on the shoreline at latitude 28°43.566′ N, longitude 80°41.189′ W.

(b) *The regulation.* (1) The area described in paragraph (a) of this section will be closed when it is deemed necessary by the Director, KSC or his/her designee during launch operations or to address any perceived threat to the facilities. With the exception of local, State, and federal law enforcement entities, all persons, vessels, and other craft are prohibited from entering, transiting, anchoring, or drifting within the restricted area when it is closed, unless they have the permission of the Director, KSC or his/her designee.

(2) Due to the nature of this restricted area, closures may occur with little advance notice. Closure of the area shall be noticed by warning statements displayed on the electronic marquee signs located at the gates of the KSC and on an electronic marquee sign located on the north side of the Port Canaveral ship channel between the Trident and Poseidon wharfs during the duration of the closure. If time permits, additional information will be published in area newspapers and announced on marine radio broadcast.

(c) *Enforcement.* The regulations in this section shall be enforced by the Director, KSC and/or such persons or agencies as he/she may designate.

Dated: February 19, 2010.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 2010–3848 Filed 2–24–10; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2009–0705; A–1–FRL–9118–4]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Determination of Attainment of the 1997 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the Providence (All of Rhode Island) moderate 1997 8-hour ozone nonattainment area has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon complete, quality-assured, certified ambient air monitoring data that shows the area has monitored attainment of the 8-hour ozone NAAQS for the 2006–2008 monitoring period. In addition, preliminary ozone data for 2009 show the area continues to attain the 1997 8-hour ozone NAAQS. If this proposed determination is made final, under the provisions of EPA's ozone implementation rule, the requirements for this area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans related to attainment of the 1997 8-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 ozone NAAQS.

DATES: Written comments must be received on or before March 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2009–0705 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: arnold.anne@epa.gov.*

3. *Fax:* (617) 918–0047.

4. *Mail:* "Docket Identification Number EPA–R01–OAR–2009–0705," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier:* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2009–0705. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, e-mail *Burkhart.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What Action Is EPA Taking?

EPA is proposing to determine that the Providence (All of Rhode Island) moderate 8-hour ozone nonattainment area (hereafter the Rhode Island (RI) area) has attained the 1997 8-hour NAAQS for ozone. This determination is based upon complete, quality-assured and certified ambient air monitoring data that show the area has monitored attainment of the 1997 ozone NAAQS for the 2006–2008 monitoring period. In addition, preliminary ozone data for 2009 show this area continues to attain the 1997 ozone NAAQS.

II. What Is the Effect of This Action?

If this determination is made final, under the provisions of EPA's ozone implementation rule (*see* 40 CFR Section 51.918), the requirements for the Rhode Island moderate ozone nonattainment area to submit an attainment demonstration, a reasonable further progress plan, section 172(c)(9) contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS would be suspended for so long as the area continues to attain the ozone NAAQS. As discussed further below, this action also affects the Federal Implementation Plan (FIP) clock started for Rhode Island in 2008. This proposed action, if finalized, would not constitute a redesignation to attainment under the Clean Air Act (CAA) section 107(d)(3), because we would not yet have an approved maintenance plan for the area as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The classification and designation status of the area would remain moderate nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment.

For the Rhode Island area, EPA started a FIP clock on March 24, 2008 (73 FR 15416) for failure to submit attainment demonstration and Reasonable Further Progress (RFP) SIPs. That same notice also started a highway sanctions clock and an offset sanctions clock for Rhode Island. This proposed action, if finalized, will stay the FIP clock started on March 24, 2008, for both the attainment demonstration and the RFP SIP. The highway and offset sanctions clocks were previously stopped for these areas since Rhode Island submitted the required SIPs and EPA has determined them complete. If the area subsequently violates the 8-hour standard before it is redesignated to attainment, the FIP clock would restart for Rhode Island for these SIPs.

If this determination of attainment is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 8-hour ozone standard, the basis for the suspension of these requirements would no longer exist, and the area would thereafter have to address the pertinent CAA requirements.

III. What Is the Background for This Action?

On April 30, 2004 (69 FR 23857), EPA designated as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years (2001–2003) of air quality data. The entire state of Rhode Island was designated as a moderate ozone nonattainment area. Recent air quality data, however, indicate that the Rhode Island area is now attaining the 1997 8-hour ozone standard.

IV. What Is EPA's Analysis of the Relevant Air Quality Data?

The EPA has reviewed the ambient air monitoring data for ozone, consistent with the requirements contained in 40 CFR part 50 and recorded in the AQS database, for Rhode Island, from 2006 through 2008. On the basis of that review, EPA has concluded that the area

attained the 1997 8-hour ozone standard at the end of the 2008 ozone season, based on three years of complete, quality-assured and state-certified 2006–2008 ozone data. In addition, preliminary ozone data for 2009, show the area continues to attain the 1997 8-hour ozone NAAQS.

Under EPA regulations at 40 CFR Part 50, the 1997 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 parts per million (ppm) (i.e., 0.084 ppm, based on the rounding convention in 40 CFR part 50, Appendix I). This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm at each monitor within the area, then the area is meeting the NAAQS. (*See* 69 FR 23857 (April 30, 2004) for further information.) Also, the data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR part 50.

Table 1 shows the fourth-highest daily maximum 8-hour average ozone concentrations for the Rhode Island nonattainment area monitors for the years 2006–2008, and the ozone design values for these same monitors based on 2006–2008.

TABLE 1—FOURTH-HIGH 8-HOUR OZONE AVERAGE CONCENTRATIONS AND DESIGN VALUES (PARTS PER MILLION) IN THE RHODE ISLAND AREA

State	Site ID	Site location	4th high 2006	4th high 2007	4th high 2008	Design value (2006–2008)
RI	440030002	West Greenwich	0.079	0.089	0.074	0.080
RI	440071010	East Providence	0.081	0.088	0.077	0.082
RI	440090007	Narragansett	0.081	0.083	0.081	0.081

EPA's review of these data indicates that the Rhode Island ozone nonattainment area has met the 1997 8-hour ozone NAAQS. In addition, preliminary ozone data for 2009, show the area continues to attain the 1997 8-hour ozone NAAQS.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters pertaining to this rulemaking action. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

V. Proposed Action

EPA is proposing to determine that the Rhode Island 1997 8-hour ozone moderate nonattainment area has attained the 1997 8-hour ozone standard, based on complete, quality-assured data through 2008, and preliminary data for 2009 indicating continuing attainment. As provided in 40 CFR Section 51.918, if EPA finalizes this determination, it would suspend the requirements for Rhode Island to submit planning SIPs related to attainment of the 1997 8-hour ozone NAAQS for this area, for so long as the area continues to attain the standard.

VI. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would, if finalized; result in the suspension of certain Federal requirements, and would not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 12, 2010.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2010–3829 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–1186–201012(b); FRL–9118–3]

Approval and Promulgation of Air Quality Implementation Plan: Kentucky; Approval Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for the Paducah Area; Limited Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; limited reopening of the comment period.

SUMMARY: EPA is announcing a 30-day reopening of the public comment period for the proposed rule entitled "Approval and Promulgation of Air Quality Implementation Plan: Kentucky; Approval Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for the Paducah Area," for the purpose of limited public review and comment of supplemental information that was provided by the Commonwealth of Kentucky on July 15, 2009, in support of the Paducah Area 110(a)(1) maintenance plan. The Paducah, KY Area consists of Marshall and a portion of Livingston Counties. The proposed rule was initially published in the **Federal Register** on January 4, 2010. The reason for this limited reopening of the comment period is that EPA has learned that supplemental information relating to projected emissions for the Paducah Area that was referenced in the proposed rulemaking January 4, 2010 (75 FR 97) was inadvertently omitted from the electronic docket when that proposed rulemaking was published. EPA has since made that information available in the electronic docket and wants to ensure an opportunity for the public to comment on that information. The July 15, 2009 supplemental information can be viewed online at *http://www.regulations.gov* using docket ID No. EPA–R04–OAR–2007–1186–0043.

Thus, EPA is reopening the comment period for an additional thirty days, for the limited purpose of providing an opportunity for public comment on the supplemental information added to the docket after publication of the proposed rulemaking.

DATES: The comment period for the proposed rule published on January 4, 2010 (75 FR 97), is reopened. Comments must be received on or before March 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–1186, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* "EPA–R04–OAR–2007–1186," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2007–1186." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2007–1186. All documents in the docket are listed on the www.regulations.gov index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9152. Mr. Farngalo can also be reached via electronic mail at *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was signed by the Acting Regional Administrator on December 22, 2009, and published in the **Federal Register** on January 4, 2010 (75 FR 97). The comment period for this proposed action closed on February 3, 2010. EPA did not receive any adverse comments during this public comment period. However, EPA noticed an inadvertent omission of the July 15, 2009, supplement that Kentucky provided from the electronic docket at *http://www.regulations.gov.* Since EPA referenced this supplement in the January 4, 2010, proposed rulemaking, EPA is reopening the comment period for this proposed action for the limited purpose of allowing the public the opportunity to review and consider this supplemental information in regards to EPA's proposed rulemaking. The July 15, 2009, supplement (which was included in the electronic docket on

February 4, 2010) contains updated emissions inventory projections for both the Paducah and Owensboro Areas.

Dated: February 12, 2010.

J. Scott Gordon,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–3838 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0871; FRL–9116–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to the Definition of Volatile Organic Compound and Other Terms

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia consisting of the amended wording of 22 definitions, including the definition of Volatile Organic Compound (VOC). In the Final Rules section of this **Federal Register**, EPA is approving Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0871 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: frankford.harold@epa.gov.*

C. *Mail:* EPA–R03–OAR–2009–0871, Harold A. Frankford, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0871. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: February 1, 2010.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–3510 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2009–0112; FRL–8805–8]

RIN 2070–AD16

Testing of Certain High Production Volume Chemicals; Third Group of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a test rule under section 4(a)(1)(B) of the Toxic Substances Control Act (TSCA) that would require manufacturers, importers, and processors of certain high production volume (HPV) chemicals to conduct testing to obtain screening level data for health and environmental effects and chemical fate.

DATES: Comments must be received on or before May 26, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0112, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2009–0112. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special

arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2009–0112. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul Campanella or John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8091 or (202) 564–8173; e-mail address: *campanella.paul@epa.gov or schaeffer.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) or process any of the chemical substances that are listed in § 799.5089(j) of the proposed regulatory text. Any use of the term "manufacture" in this proposed rule will encompass "import," unless otherwise stated. In addition, as described in Unit V., once the Agency issues a final rule, any person who exports, or intends to export, any of the chemical substances included in the final rule will be subject to the export notification requirements in 40 CFR part 707, subpart D. Potentially affected entities may include, but are not limited to:

- Manufacturers (defined by statute to include importers) of one or more of the 29 subject chemical substances (NAIC codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.
- Processors of one or more of the 29 subject chemical substances (NAIC codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit IV.E. and consult § 799.5089(b) of the proposed regulatory text. If you have any questions regarding the applicability of this action to a particular entity, consult either technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. Can I Request an Opportunity to Present Oral Comments to the Agency?

You may submit a request for an opportunity to present oral comments. This request must be made in writing.

If such a request is received on or before May 26, 2010, EPA will hold a public meeting on this proposed rule in Washington, DC. This written request must be submitted to the mailing or hand delivery addresses provided under **ADDRESSES**. If such a request is received, EPA will announce the scheduling of the public meeting in a subsequent document in the **Federal Register**. If a public meeting is announced, and if you are interested in attending or presenting oral and/or written comments at the public meeting, you should follow the instructions provided in the subsequent **Federal Register** document announcing the public meeting.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to issue a test rule under TSCA section 4(a)(1)(B) (15 U.S.C. 2603(a)(1)(B)) that would require manufacturers and processors of the 29 chemical substances listed in this proposed rule to conduct testing for environmental fate (including five tests for physical/chemical properties and biodegradation), ecotoxicity (in fish, Daphnia, and algae), acute toxicity, genetic toxicity (gene mutations and chromosomal aberrations), repeated dose toxicity, and developmental and reproductive toxicity. The chemical substances are HPV chemicals, i.e., chemical substances with a production/import volume equal to or greater than 1 million pounds (lbs.) per year. A detailed discussion regarding efforts to enhance the availability of screening level hazard and environmental fate information about HPV chemicals can be found in a **Federal Register** notice which published on December 26, 2000 (Ref. 1).

This proposed rule follows earlier testing actions for certain HPV chemicals (see Refs. 2, 3, and 11).

This proposed TSCA section 4(a) test rule addresses some of the 207 remaining "orphan" HPV chemicals that were placed on the *Priority Testing List* by the Interagency Testing Committee (ITC). For a summary, see: "Sixty-Third Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice" (Ref. 9). "Orphan" chemical substances are those HPV chemicals that were not sponsored for testing under the voluntary HPV Challenge Program or under certain international efforts (see Unit II.C.).

Of the 207 chemical substances, 159 no longer meet the HPV criterion; 3 already have data that meets needs identified in this proposed rule; and 16, while meeting the production volume criterion for HPV, appear to lack the exposure data necessary to support TSCA section 4(a)(1)(B) findings. Therefore, these 178 chemical substances are not being considered for testing by EPA at this time. The remaining 29 chemical substances are addressed in this proposed TSCA section 4(a) test rule. These conclusions are based primarily on information reported in the 2006 TSCA Inventory Update Rule (IUR) (40 CFR part 710) and a 2006 TSCA Preliminary Assessment Information Reporting (PAIR) rule issued for the HPV orphan chemicals (Ref. 10). EPA also sought and considered, when available, information from other data sources (e.g., the Toxics Release Inventory (TRI), the National Occupational Exposure Survey (NOES)).

B. What is the Agency's Authority for Taking this Action?

EPA is proposing this test rule under TSCA section 4(a)(1)(B) (15 U.S.C. 2603(a)(1)(B)), which directs EPA to require by rule that manufacturers and/or processors of chemical substances and mixtures conduct testing, if the EPA Administrator finds that:

> (B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
>
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data [.]

Once the EPA Administrator has made a finding under TSCA section 4(a)(1)(B), EPA may require any type of health or environmental effects testing necessary to address unanswered questions about the effects of the chemical substance or mixture that are relevant to whether the manufacture, distribution in commerce, processing, use, or disposal of the chemical substance or mixture, or any combination of such activities, presents an unreasonable risk of injury to health or the environment. EPA need not limit the scope of testing required to the factual basis for the TSCA section 4(a)(1)(B)(i) findings. This approach is explained in more detail in EPA's TSCA section 4(a)(1)(B) Final Statement of Policy (B Policy) (Ref. 4, pp. 28738–28739).

In this proposed test rule, EPA would use its broad TSCA section 4(a) authority to obtain data necessary to support the development of preliminary or "screening level" hazard and risk characterizations for certain HPV chemicals specified in Table 2 in § 799.5089(j) of the proposed regulatory text. EPA has made preliminary findings for these chemical substances under TSCA section 4(a)(1)(B) that: They are produced in substantial quantities; there is or may be substantial human exposure to them; existing data are insufficient to determine or predict their health and environmental effects; and testing is necessary to develop such data.

C. Why is EPA Taking this Action?

In April 1998, EPA initiated a national effort to make certain basic information about the environmental fate and potential health and environmental hazards associated with the most widespread chemicals in commerce available to the public. Mechanisms to collect or, where necessary, develop needed data on U.S. HPV chemicals include the voluntary HPV Challenge Program, certain international efforts (the Organization for Economic Cooperation and Development (OECD) HPV Screening Information Data Sets (SIDS) Program; and the International Council of Chemical Associations (ICCA) HPV Initiative), and TSCA section 4 test rules. The voluntary HPV Challenge Program was created to ensure that a baseline set of data on approximately 2,800 HPV chemicals would be made available to EPA and the public. HPV chemicals are manufactured or imported in amounts equal to or greater than 1 million lbs. per year and were identified for the voluntary HPV Challenge Program through data reported under the IUR during 1990. The SIDS data set sought by the voluntary HPV Challenge Program was developed by OECD, of which the United States is a member. The SIDS provides an internationally agreed upon set of test data for screening HPV chemicals for human and environmental hazards, and assists the Agency and others in making an informed, preliminary judgment about the hazards of HPV chemicals.

The voluntary HPV Challenge Program was designed to make maximum use of scientifically adequate existing test data and to avoid unnecessary and duplicative testing of U.S. HPV chemicals. Therefore, EPA is continuing to participate in the voluntary international efforts, complementary to the voluntary HPV Challenge Program, that are being

coordinated by the OECD to secure basic hazard information on HPV chemicals in use worldwide, including some of those on the 1990 U.S. HPV chemicals list (Ref. 5). This includes agreements to sponsor a U.S. HPV chemical under either the OECD HPV SIDS Program (Ref. 6), including sponsorship by OECD member countries beyond the United States, or the international HPV Initiative that is being organized by the ICCA (Ref. 7).

Additional details regarding the voluntary HPV Challenge Program and these international efforts were provided in the prior HPV TSCA section 4 rules (Refs. 2, 3, and 11). It was EPA's position that U.S. data needs that remained unmet in the voluntary HPV Challenge Program or through international efforts could be addressed through TSCA section 4 rulemakings, such as the final test rule published by EPA on March 16, 2006 (Ref. 3). This proposed rule is the third TSCA section 4 HPV SIDS rule, and addresses the unmet data needs of 29 chemical substances.

After EPA publishes the final rule based on the proposed rule, EPA intends to make the information collected under the final rule available to the public, other Federal agencies, and any other interested parties. This information will be on its website (*http://www.epa.gov/chemrtk*) and in the docket for the final rule identified under **ADDRESSES**. As appropriate, this information will be used to ensure a scientifically sound basis for risk assessment/management actions.

D. Why is this Proposed Rule Focusing on HPV Chemicals and SIDS Testing?

This proposed rule pertains to HPV chemicals, which are manufactured or imported in amounts equal to or greater than 1 million lbs. per year, which EPA determined account for 95% of total chemical production in the United States (Ref. 8, p. 32296). EPA found that, of those non-polymeric organic substances produced or imported in amounts equal to or greater than 1 million lbs. per year based on 1990 IUR reporting, only 7% had a full set of publicly available and internationally recognized basic screening test data for health and environmental effects (Ref. 12). Of the over 2,800 U.S. HPV chemicals 43% had no publicly available basic hazard data. For the remaining chemicals, limited amounts of the data were available. This lack of available hazard data compromises EPA's and others' ability to determine whether these HPV chemicals pose potential risks to human health or the environment, as well as the public's ability to know about the hazards of chemicals that may be found in their environment, their homes, their workplaces, and the products they buy.

SIDS testing evaluates the following six testing endpoints (Ref. 6):

- Acute toxicity.
- Repeated dose toxicity.
- Developmental and reproductive toxicity.
- Genetic toxicity (gene mutations and chromosomal aberrations).
- Ecotoxicity (studies in fish, Daphnia, and algae).
- Environmental fate (including physical/chemical properties (melting point, boiling point, vapor pressure, *n*-Octanol/Water Partition Coefficient, and water solubility), photolysis, hydrolysis, transport/distribution, and biodegradation).

Data on the six SIDS endpoints provide a consistent minimum set of information that can be used to help assess the relative risks of chemicals and whether additional testing or assessment is necessary.

E. How Would the Data Developed Under this Test Rule Be Used?

EPA would use the data obtained from the rule proposed in this document to support development of preliminary hazard and risk assessments for the 29 HPV chemicals subject to the rule. The data would also be used by EPA to set priorities for further testing that may produce hazard information on these HPV chemicals that may be needed by EPA, other Federal agencies, the public, industry, and others, to support adequate risk assessments. As appropriate, this information would be used to ensure a scientifically sound basis for risk characterizations and risk management actions. As such, this effort would serve to further the Agency's goal of identifying and controlling human and environmental risks as well as providing greater knowledge and protection to the public. EPA uses data from test rules to support such activities as the development of water quality criteria, TRI listings, chemical advisories, and reduction of workplace exposures.

In addition, a key goal of the voluntary HPV Challenge Program was making basic health and environmental effects data for HPV chemicals available to the public as part of EPA's "Right to Know" Initiative. A basic premise of the voluntary HPV Challenge Program is that the public has a right to know about the hazards associated with chemicals in their environment. Everyone—including industry, environmental protection groups, animal welfare organizations, government groups, and the general public, among others—can use the data provided through the HPV Challenge Program, and also data collected on HPV chemicals through other means, including TSCA section 4 testing, to make informed decisions related to the human and the environmental hazards of chemicals that they encounter in their daily lives.

F. How are Animal Welfare Issues Being Considered in the HPV Initiative?

EPA recognizes the concerns that have been expressed about the use of test procedures that require the use of animals. As discussed in Unit II.E. of Ref. 1, EPA is making every effort to ensure that as the HPV Initiative is implemented (including TSCA section 4 HPV test rules), unnecessary or duplicative testing is avoided and the use of animals is minimized. As a general matter, EPA does not require that tests on animals be conducted if an alternative scientifically validated method is found acceptable and practically available for use. Where testing must be conducted to develop adequate data, the Agency is committed to reducing the number of animals used for testing, to replacing test methods requiring animals with alternative test methods when acceptable alternative methods are available, and to refining existing test methods to optimize animal use when there is no substitute for animal testing. EPA believes that these reduction, replacement, and refinement objectives are all important elements in the overall consideration of alternative testing methods.

III. EPA Proposed Findings

A. What is the Basis for EPA's Proposed Rule to Test These Chemical Substances?

As indicated in Unit II.B., in order to promulgate a final rule under TSCA section 4(a) requiring the testing of chemical substances or mixtures, EPA must, among other things, make certain findings regarding either risk (TSCA section 4(a)(1)(A)(i)) or production combined with either chemical release or human exposure (TSCA section 4(a)(1)(B)(i)), with regard to those chemical substances. EPA is proposing to require testing of the chemical substances included in this proposed rule based on its preliminary findings under TSCA section 4(a)(1)(B)(i) relating to "substantial" production and "substantial human exposure," and/or "substantial release to the environment," as well as findings under TSCA sections 4(a)(1)(B)(ii) and (iii) relating to sufficient data and the need for testing. The chemical substances included in

this proposed rule are listed in Table 2 in § 799.5089(j) of the proposed regulatory text along with their Chemical Abstract Service (CAS) Registry numbers.

In EPA's B Policy (see Unit III.E.), "substantial production" of a chemical substance or mixture is generally considered to be aggregate production (including import) volume equaling or exceeding 1 million lbs. per year of that chemical substance or mixture (Ref. 4, p. 28747). EPA's B Policy also provides guidelines that are generally considered by EPA in evaluating whether there is or may be "substantial human exposure" of workers, consumers, and the general population to a chemical substance or mixture or whether a chemical substance enters or may reasonably be anticipated to enter the environment in substantial quantities. Refer to EPA's B Policy for further discussion on how EPA generally evaluates chemical substances or mixtures under TSCA section 4(a)(1)(B)(i). For the reasons set out in EPA's B Policy, EPA believes that the guidance included in the B Policy is appropriate for consideration in this proposed rule and EPA sees no reason not to act consistently with that guidance with respect to the chemical substances included in this proposed rule.

EPA has found preliminarily that, under TSCA section 4(a)(1)(B)(i), each of the 29 chemical substances included in this proposed rule is produced in "substantial" quantities (see Unit III.B.) and, for 27 chemical substances, that there is or may be "substantial human exposure" to each chemical substance (see Units III.C. and III.D.). Also, for 3 chemical substances (including the 2 for which EPA is not able to make a preliminary finding regarding substantial human exposure), EPA has found preliminarily that, under TSCA section 4(a)(1)(B)(i), the chemical substance enters or may reasonably be anticipated to enter the environment in substantial quantities (see Unit III.E.). In addition, under TSCA section 4(a)(1)(B)(ii), EPA has preliminarily determined that there are insufficient data and experience to reasonably determine or predict the effects of the manufacture, processing, or use of these chemical substances, or of any combination of such activities, on human health or the environment (see Unit III.F.). EPA has also found preliminarily that testing the 29 chemical substances identified in this proposed rule is necessary to develop such data (TSCA section 4(a)(1)(B)(iii)) (see Unit III.F.). EPA has not identified any "additional factors" as discussed in the B Policy (Ref. 4, p. 28746) to cause the Agency to use decisionmaking criteria other than those described in the B Policy.

The chemical substances included in this proposed rule are listed in § 799.5089(j) of the proposed regulatory text along with their CAS numbers.

B. Are These Chemical Substances Produced and/or Imported in Substantial Quantities?

EPA has made preliminary findings that each of the chemical substances included in this proposed rule is produced and/or imported in an amount equal to or greater than 1 million lbs. per year (Ref. 15). These findings are based on:

1. Information gathered in the 2006 IUR (40 CFR part 710), which is the most recently available compilation of TSCA Inventory data.

2. A TSCA section 8(a) PAIR rule (Ref. 10), issued for those HPV orphan chemicals which had been added to the ITC *Priority Testing List* (Ref. 9). EPA believes that these annual production and/or importation volumes are "substantial" as that term is used with reference to production in TSCA section 4(a)(1)(B)(i). (See also Ref. 4, p. 28746). A discussion of EPA's preliminary "substantial production" finding for each chemical substance included in this proposed rule is contained in a separate document (see Ref. 15).

C. Are a Substantial Number of Workers Exposed to These Chemicals?

EPA has made preliminary findings that the manufacture, processing, and use of 27 of the 29 chemical substances (Table 1. of Unit III.D.) included in this action result or may result in exposure of a substantial number of workers to the chemical substances.

This finding is based, in large part, on information submitted in accordance with the 2006 IUR (40 CFR part 710) and the 2006 PAIR rule (Ref. 10). For chemicals whose total production volume (manufactured and imported) exceeded 300,000 lbs. at a site during calendar year 2005, manufacturers and importers were required to report the number of potentially exposed workers during industrial processing and use to the extent the information was readily obtainable. In addition, the submitters are required to provide information regarding the commercial and consumer uses of the chemical substance.

EPA believes that an exposure of over 1,000 workers to a chemical substance is "substantial" as that term is used with reference to "human exposure" in TSCA section 4(a)(1)(B)(i). EPA believes, based on experience gained through case-by-case analysis of existing chemicals, that an exposure of 1,000 workers or more to a chemical substance is a reasonable interpretation of the phrase "substantial human exposure" in TSCA section 4(a)(1)(B)(i) (Ref. 4). Therefore, EPA's preliminary finding is that there is or may be substantial human exposure (workers) to 27 of these 29 chemical substances.

In addition to the 2006 IUR and the 2006 PAIR data collected on the HPV orphan chemicals, EPA also reviewed NOES data developed by the National Institute for Occupational Safety and Health (NIOSH) (Ref. 16). The NOES data indicates that more than 1,000 workers were exposed to 7 of the 29 chemical substances that are the subject of this rule. The NOES was a nationwide data gathering project conducted by NIOSH, which was designed to develop national estimates for the number of workers potentially exposed to various chemical, physical and biological agents and describe the distribution of these potential exposures. Begun in 1980 and completed in 1983, the survey involved a walk-through investigation by trained surveyors of 4,490 facilities in 523 different types of industries. Surveyors recorded potential exposures when a chemical agent was likely to enter or contact the worker's body for a minimum duration. These potential exposures could be observed or inferred. Information from these representative facilities was extrapolated to generate national estimates of potentially exposed workers for more than 10,000 different chemicals (Refs. 16, 51, and 52). For the 29 chemical substances in this proposed rule, EPA compared production volumes from the 1986 IUR data collection to the production volumes for the 2006 IUR and PAIR data collections. For the 29 chemical substances in this proposed rule, there was no decrease in production volume from 1986 to 2006. For the 7 chemical substances for which EPA has NOES data indicating substantial worker exposure, the 2006 IUR and 2006 PAIR production volume data are consistent with the 1980's NOES results, in that production volumes for these chemical substances either stayed the same or increased since 1986, thereby suggesting that the usage of these chemical substances is no less than when NOES data were gathered.

EPA has performed a chemical–by–chemical analysis for all 29 chemical substances and carefully considered the industrial process and use information along with the commercial and consumer use information from the 2006 IUR and PAIR submissions. Commercial uses are defined as: "The

use of a chemical substance or mixture in a commercial enterprise providing saleable goods or services (e.g., dry cleaning establishment, painting contractor)"; 40 CFR 710.43. Detailed information from the IUR submissions can be found in the "Testing of Certain High Production Volume Chemicals-3 (Exposure Findings Supporting Information)" (Ref. 15). Based on the descriptions provided for the IUR uses, EPA has preliminarily concluded that chemical substances with certain reported commercial uses, such as painting contractor, etc., may result in potential exposure to 1,000 workers or more. The total number of workers reported under the IUR is the sum of information on both industrial workers plus commercial use workers. EPA's exposure findings document (Ref. 15) discusses the basis of EPA's preliminary "substantial exposure" finding for workers. The Agency also solicits comment regarding the number of workers potentially exposed to the chemical substances identified in this proposed rule.

D. Are a Substantial Number of Consumers Exposed to These Chemicals?

Based on 2006 IUR data, EPA has made preliminary findings that the uses of 20 of the chemical substances included in this action result or may result in exposure to a substantial number of consumers (Ref. 15). EPA reviewed the consumer use information reported for the 2006 IUR and carefully considered the nature of those uses. As stated in EPA's B Policy, the Agency believes, based on experience gained through case-by-case analysis of other chemical substances, that an exposure of 10,000 or more consumers to a chemical substance is a reasonable interpretation of the phrase "substantial human exposure" in TSCA section 4(a)(1)(B)(i) (Ref. 4). Upon completion of the review, EPA has preliminarily concluded that the reported consumer uses for certain of the chemical substances in this action may result in exposures to at least 10,000 consumers, so there is substantial human exposure to these chemical substances.

A discussion of the basis for EPA's preliminary "substantial exposure" finding for consumers is contained in a separate document (Ref. 15). The Agency solicits comment regarding the number of consumers potentially exposed to the chemical substances identified in this proposed rule, particularly on assumptions that are based on EPA's experience with other chemical substances that there is or may be "substantial human exposure" to a chemical substance when that chemical substance is used in certain consumer–use products, and is produced at high production volume.

TABLE 1.—EXPOSURE BASED FINDINGS—SUBSTANTIAL HUMAN EXPOSURE

CAS No.	Production Volume		Meet Exposure Based Criteria For Manufacturing & Industrial Workers	NOES (number of workers)	Meet Exposure Based Criteria for Commercial Workers	Meet Exposure Based Criteria for Consumers	Meet Substantial or Significant Release Criteria (PAIR)	2006 IUR or PAIR commercial/consumer use
	2006 IUR	PAIR						
83–41–0	< 1 million (M)	> 10M–50M					X	
96–22–0	> 10M–50M	> 10M–50M				X		X
98–09–9	> 1M–10M	> 1M–10M	X	851	X	X		X
98–56–6	> 1M–10M	> 1M–10M	X		X	X		X
111–44–4	> 1M–10M	< 1M	X		X	X		X
127–68–4	> 1M–10M	< 1M	X	9,386	X			
506–51–4	< 1M	> 1M–10M	X	1,281	X			
506–52–5	< 1M	> 1M–10M	X	1,565	X			
515–40–2	> 1M–10M	> 1M–10M	X		X	X		X
2494–89–5	> 1M–10M	> 1M–10M	X		X	X		X
5026–74–4	> 1M–10M	> 1M–10M	X	952	X			
22527–63–5	> 1M–10M	> 1M–10M	X		X	X		X
24615–84–7	> 1M–10M	< 1M	X		X	X		X
25321–41–9	> 1M–10M	< 1M	X	2,843	X			
25646–71–3	> 1M–10M	< 1M	X		X	X		X
52556–42–0	> 1M–10M	> 1M–10M	X		X	X		X
61788–76–9	> 10M–50M	> 1M–10M	X	176,314	X	X		X
65996–79–4	> 10M–50M	> 1M–10M	X		X	X		X
65996–82–9	> 100M–1 billion (B)	> 100M–1B	X		X	X		X

TABLE 1.—EXPOSURE BASED FINDINGS—SUBSTANTIAL HUMAN EXPOSURE—Continued

CAS No.	Production Volume		Meet Exposure Based Criteria For Manufacturing & Industrial Workers	NOES (number of workers)	Meet Exposure Based Criteria for Commercial Workers	Meet Exposure Based Criteria for Consumers	Meet Substantial or Significant Release Criteria (PAIR)	2006 IUR or PAIR commercial/ consumer use
	2006 IUR	PAIR						
65996–89–6	> 1B	> 1B	X	761	X	X	X	X
65996–92–1	> 100M–1B	> 100M–1B	X		X	X		X
68082–78–0	> 1M–10M	> 1M–10M	X	41,153	X			
68187–57–5	> 100M–1B	> 100M–1B	X		X	X		X
68442–60–4	> 1M–10M	> 1M–10M	X		X	X		X
68610–90–2	> 1M–10M	> 1M–10M				X		X
68988–22–7	> 10M–50M	> 10M–50M					X	
70693–50–4	> 1M–10M	> 1M–10M	X		X	X		X
72162–15–3	> 1M–10M	< 1M	X	64,227	X			
73665–18–6	> 50M–100M	> 100M–1B	X		X	X		X

E. Are Substantial Quantities of These Chemicals Released to the Environment?

EPA has made preliminary findings that three chemical substances, benzene, 1,2–dimethyl–3–nitro–acetaldehyde (CAS No. 83–41–0); tar oils, coal (CAS No. 65996–89–6); and 1,4–benzenedicarboxylic acid, 1,4–dimethyl ester, manuf. of, by-products from (CAS No. 68988–22–7) enter or may reasonably be anticipated to enter the environment in substantial quantities. These findings are based upon their reported PAIR data.

EPA believes that an environmental release of a chemical substance in an amount equal to or greater than 1 million lbs. per year or greater than 10% of the reported production volume is "substantial" as that term is used with reference to "enter the environment in substantial quantities" in TSCA section 4(a)(1)(B)(i). (See Ref. 4, pp. 28736, 28746).

The Agency solicits comment regarding additional information pertaining to the amount of environmental release of the chemical substances identified in this proposed rule.

F. Do Sufficient Data Exist for These Chemical Substances?

In developing the testing requirements for chemicals contained in this proposed rule, available information on chemical/physical properties, environmental fate, ecotoxicity and human health effects was searched using the data sources outlined in the OECD guidelines found in section 3.1 (Reliability, Relevance and Adequacy) of the "Manual for the Investigation of HPV Chemicals" (Ref. 6) such as: Beilstein Database, CRC Handbook of Chemistry and Physics, Hawley's Condensed Chemical Dictionary, Illustrated Handbooks of Physical–Chemical Properties and Environmental Fate for Organic Chemicals, Merck Index, Hazardous Substances Data Bank (HSDB), TOXLINE, and National Technical Information Service (NTIS). EPA also searched for available data as summarized in its HPV Information System (Ref. 50). When appropriate, the Federal Research In Progress (FEDRIP) database was also searched. Any information that was obtained from these searches was evaluated for data acceptability using the guidelines described on EPA's HPV Challenge Program website (*http://www.epa.gov/chemrtk*): "Guidance for Meeting the SIDS Requirements (the SIDS Guide)" and "Guidance for Assessing the Adequacy of Existing Data." Furthermore, data adequacy and reliability were evaluated using the OECD guidelines which can be found in section 3.1 of the OECD "Manual for the Investigation of HPV Chemicals" (Ref. 6).

Section 799.5089(j) of the proposed regulatory text lists each chemical and the SIDS tests for which adequate data are not currently available to the Agency. The Agency preliminarily finds that the existing data for one or more of the SIDS testing endpoints for each of the chemicals listed in Table 2 of the proposed regulatory text (including environmental fate (comprising five tests for physical/chemical properties [melting point, boiling point, vapor pressure, *n*-Octanol/Water Partition Coefficient, and water solubility] and biodegradation); ecotoxicity (tests in fish, Daphnia, and algae); acute toxicity; genetic toxicity (gene mutations and chromosomal aberrations); repeated dose toxicity; and developmental and reproductive toxicity) are insufficient to enable EPA to reasonably determine or predict the human health and environmental effects resulting from manufacture, processing, and use of these chemical substances.

G. Can Other Data Meet the Requirements for the Testing Proposed in this Action?

EPA solicits comment concerning the availability of existing studies on the SIDS endpoints proposed in this document on these chemical substances. To the extent that additional studies relevant to the testing proposed in this rulemaking are known to exist, EPA strongly encourages the submission of this information as comments to the proposed rule, including full citations for publications and full copies of unpublished studies. If EPA judges such data to be sufficient, corresponding testing will not be included in the final rule. Commenters are also encouraged to prepare a robust summary (Ref. 13) for each such study to facilitate EPA's review of the full study report or publication. Persons who respond to

this request to submit robust summaries are also encouraged to submit the robust summary electronically via the High Production Volume Information System (HPVIS) to allow for its ready incorporation into HPVIS. Directions for electronic submission of robust summary information into HPVIS are provided at *https://iaspub.epa.gov/oppthpv/metadata.html.* This link will direct you to the ''HPVIS Quick Start and User's Guide.''

Persons who believe that adequate information regarding a chemical subject to this proposed rule can be developed using a category or the Structure–Activity Relationships (SAR) approach are encouraged to submit appropriate information, along with their rationale which substantiates this belief, during the comment period on this proposed rule. If, based on submitted information and other information available to EPA, the Agency agrees EPA will take such measures as are needed to avoid unnecessary testing in the final rule.

H. Is Testing Necessary for These Chemical Substances?

EPA knows of no other means to generate the SIDS data other than the testing proposed in this document, and therefore believes that conducting the needed SIDS testing identified for the 29 subject chemical substances is necessary to provide data relevant to a determination of whether the manufacture, processing, and use of the chemical substances does or does not present an unreasonable risk of injury to human health and the environment. EPA also believes it's important to make these data available to satisfy the "Right-to-Know" principles included in the HPV Challenge Program goals.

IV. Proposed Testing

A. What Testing is Being Proposed in this Action?

EPA is proposing specific testing and reporting requirements for the chemical substances specified in § 799.5089(j) of the proposed regulatory text.

All of the proposed testing requirements are listed in Table 2 in § 799.5089(j) of the proposed regulatory text and consist of a series of test methods covering many of the endpoints in the OECD HPV SIDS testing battery. EPA's TSCA 799 test guidelines (40 CFR part 799, subparts E and H) have been harmonized with the OECD test guidelines. However, EPA is specifying that the American Society for Testing and Materials International (ASTM International) or the TSCA 799 test guidelines be used rather than OECD test guidelines because the language in the ASTM International standards and the TSCA 799 test guidelines makes clear which steps are mandatory and which steps are only recommended. Accordingly, in order to comply with the testing proposed, EPA is proposing that testing must be conducted in accordance with ASTM International or TSCA 799 test guidelines. Most of the proposed testing requirements for a particular endpoint are specified in one test standard. In the case of certain endpoints, however, any of multiple listed methods could be used. For several of the proposed test standards, EPA has identified and is proposing certain "Special Conditions" as discussed in this unit. The following endpoints and proposed test standards would be required under this proposed rule.

1. *Physical/Chemical Properties.*

Melting Point: ASTM E 324–99 (capillary tube) (Ref. 17).

Boiling Point: ASTM E 1719–05 (ebulliometry) (Ref. 18).

Vapor Pressure: ASTM E 1782–03 (thermal analysis) (Ref. 19).

n-Octanol/Water Partition Coefficient:

Method A (40 CFR 799.6755—shake flask).

Method B (ASTM E 1147–92(2005)—liquid chromatography) (Ref. 20).

Method C (40 CFR 799.6756—generator column).

Water Solubility:

Method A: (ASTM E 1148–02—shake flask) (Ref. 21).

Method B (40 CFR 799.6784—shake flask).

Method C (40 CFR 799.6784—column elution).

Method D (40 CFR 799.6786—generator column).

For those chemical substances needing melting points determinations, EPA is proposing that melting points be determined according to ASTM method E 324–99. Although ASTM International indicates on its website, *http://www.astm.org/cgi-bin/SoftCart.exe/STORE/filtrexx40.cgi?U+mystore+lien2117+-L+E324+/usr6/htdocs/astm.org/DATABASE.CART/WITHDRAWN/E324.htm* that ASTM E 324–99 has been withdrawn, ASTM International's withdrawal of the method means only that ASTM International no longer continues to develop and improve the method. It does not mean that ASTM International no longer considers the method to be valid. ASTM International has explained that ASTM E 324–99 was withdrawn because:

> The standard utilizes old, well-developed technology; it is highly unlikely that any additional [changes] and/or modifications will ever be pursued by the E15 [committee]. The time and effort needed to maintain these documents detract from the time available to develop new standards which use modern technology.
> (Ref. 22)

ASTM International still makes the method available for informational purposes and it can still be purchased from ASTM International at the address listed in § 799.5089(h) of the proposed regulatory text.

EPA concludes that ASTM International's withdrawal of ASTM E 324–99 does not have negative implications on the validity of the method, and EPA is proposing that melting points be determined according to ASTM E 324–99.

For the "*n*-Octanol/Water Partition Coefficient (log 10 basis)" and water solubility endpoints, EPA is proposing that certain "Special Conditions" be considered by test sponsors in determining the appropriate test method that would be used from among those included for these endpoints in Table 3 in § 799.5089(j) of the proposed regulatory text.

For the "*n*-Octanol/Water Partition Coefficient (log 10 basis)" endpoint, also known as log K_{ow}, EPA proposes that an appropriate selection be made from among three alternative methods for measuring the chemical substance's *n*-Octanol/Water Partition Coefficient (log 10 basis; "log K_{ow}"). Prior to determining the appropriate standard to use, if any, to measure the *n*-Octanol/Water Partition Coefficient, EPA is recommending that the log K_{ow} be quantitatively estimated. EPA recommends that the method described in "Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients" (Ref. 23) be used in making such estimation. EPA is proposing that test sponsors must submit with the final study report the underlying rationale for the test standard selected for this endpoint. EPA is proposing this approach recognizing that, depending on the chemical substance's log K_{ow}, one or more test methods may provide adequate information for determining the log K_{ow}, but that in some instances one particular test method may be more appropriate. In general, EPA believes that the more hydrophobic a subject chemical is, the less well Method A (40 CFR 799.6755—shake flask) will work and Method B (ASTM E 1147–92(2005)) and Method C (40 CFR 799.6756—generator column) become more suitable, especially Method C. The proposed test methodologies have been developed to meet a wide variety of

needs; and, as such, are silent on experimental conditions related to pH. Therefore, EPA proposes that all required *n*-Octanol/Water Partition Coefficient tests be conducted at pH 7 to ensure environmental relevance. The proposed test standards and log K_{ow} ranges that would determine which tests must be conducted for this endpoint are shown in Table 2 of this unit.

TABLE 2.—TEST REQUIREMENTS FOR THE N-OCTANOL/WATER PARTITION COEFFICIENT ENDPOINT

Testing Category	Test Requirements and References	Special Conditions
Physical/chemical properties	*n*-Octanol/Water Partition Coefficient (log 10 basis) or log K_{ow}: The appropriate log K_{ow} test, if any, would be selected from those listed in this column—see Special Conditions in the adjacent column. Method A: 40 CFR 799.6755 (shake flask) Method B: ASTM E 1147–92(2005) (liquid chromatography) Method C: 40 CFR 799.6756 (generator column)	*n*-Octanol/Water Partition Coefficient or log K_{ow}: Which method is required, if any, is determined by the test substance's estimated log K_{ow} as follows: log K_{ow} < 0: no testing required. log K_{ow} range 0–1: Method A or B. log K_{ow} range > 1–4: Method A or B or C. log K_{ow} range > 4–6: Method B or C. log K_{ow} > 6: Method C. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted at pH 7.

For the "Water Solubility" endpoint, EPA proposes an appropriate selection be made from among four alternative methods for measuring that endpoint. The test method used, if any, would be determined by first quantitatively estimating the test substance's water solubility. One recommended method for estimating water solubility is described in "Improved Method for Estimating Water Solubility From Octanol/Water Partition Coefficient" (Ref. 24). EPA is also proposing that test sponsors be required to submit in the final study report the underlying rationale for the test standard selected for this endpoint. The proposed test methodologies have been developed to meet a wide variety of needs and, as such, are silent on experimental conditions related to pH. Therefore, EPA proposes that all required water solubility tests be conducted starting at pH 7 to ensure environmental relevance. The estimated water solubility ranges that EPA is proposing for use in selecting an appropriate proposed test standard are shown in Table 3 of this unit.

TABLE 3.—TEST REQUIREMENTS FOR THE WATER SOLUBILITY ENDPOINT

Testing Category	Test Requirements and References	Special Conditions
Physical/chemical properties	Water solubility: The appropriate method to use, if any, to test for water solubility would be selected from those listed in this column—see Special Conditions in the adjacent column. Method A: ASTM E 1148–02 (shake flask) Method B: 40 CFR 799.6784 (shake flask) Method C: 40 CFR 799.6784 (column elution) Method D: 40 CFR 799.6786 (generator column)	Water solubility: Which method is required, if any, would be determined by the test substance's estimated water solubility. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted starting at pH 7. > 5,000 milligram/Liter (mg/L): Method A or B. > 10 mg/L—5,000 mg/L: Method A, B, C, or D. > 0.001 mg/L—10 mg/L: Method C or D. ≤ 0.001 mg/L: No testing required.

2. *Environmental Fate and Pathways.*

Ready Biodegradation:

Method A: ASTM E 1720–01 (Sealed vessel CO_2 production test) (Ref. 25).

Method B: International Organization for Standardization (ISO) 14593 (CO_2 headspace test) (Ref. 26).

Method C: ISO 7827 (Method by analysis of dissolved organic carbon (DOC)) (Ref. 27).

Method D: ISO 9408 (Determination of oxygen demand in a closed respirometer) (Ref. 28).

Method E: ISO 9439 (Carbon dioxide evolution test) (Ref. 29).

Method F: ISO 10707 (Closed bottle test) (Ref. 30).

Method G: ISO 10708 (Two-phase closed bottle test) (Ref. 31).

For the "Ready Biodegradation" endpoint, EPA proposes an appropriate selection be made from among seven alternative methods for measuring the substance's ready biodegradability. For most test substances, EPA considers Method A (ASTM E 1720–01) and Method B (ISO 14593) to be generally applicable, cost effective, and widely accepted internationally. However, the test method used, if any, will depend on the physical and chemical properties of the test substance, including its water solubility. An additional document, ISO 10634 (Ref. 32), provides guidance for selection of an appropriate test method for a given test substance considering the substances physical and chemical properties. EPA is also proposing that test sponsors be required to submit in the final study report the underlying rationale for the test standard selected for this endpoint.

3. *Aquatic Toxicity.*

Test Group 1:

Acute toxicity to fish (ASTM E 729–96(2002)) (Ref. 33),

Acute toxicity to Daphnia (ASTM E 729–96(2002)) (Ref. 33), and

Toxicity to plants (algae) (ASTM E 1218–04e1) (Ref. 34).

Test Group 2:

Chronic toxicity to Daphnia (ASTM E 1193–97(2004)) (Ref. 35) and

Toxicity to plants (algae) (ASTM E 1218–04e1) (Ref. 34).

For the "Aquatic Toxicity" endpoint, the OECD HPV SIDS Program recognizes that, for certain chemical substances, acute toxicity studies are of limited

value in assessing the substances' aquatic toxicity. This issue arises when considering chemical substances with high log K_{ow} values. In such cases, toxicity is unlikely to be observed over the duration of acute toxicity studies because of reduced uptake and the extended amount of time required for such substances to reach steady state or toxic concentrations in the test organism. For such situations, the OECD HPV SIDS Program recommends use of chronic toxicity testing in Daphnia in place of acute toxicity testing in fish and Daphnia. EPA is proposing that the aquatic toxicity testing requirement be determined based on the test substance's measured log K_{ow} as determined by using the approach outlined in Unit IV.A.1., in the discussion of "*n*-Octanol/Water Coefficient," and in Table 3 in § 799.5089(j) of the proposed regulatory text. For test substances determined to have a log K_{ow} of less than 4.2, one or more of the following tests (described as "Test Group 1" in Table 3 in § 799.5089(j) of the proposed regulatory text) are proposed: Acute toxicity to fish (ASTM E 729–96(2002)); Acute toxicity to Daphnia (ASTM E 729–96(2002)); and Toxicity to plants (algae) (ASTM E 1218–04e1). For test substances determined to have a log K_{ow} that is greater than or equal to 4.2, one or both of the following tests (described as "Test Group 2" in Table 3 in § 799.5089(j) of the proposed regulatory text) are proposed: Chronic toxicity to Daphnia (ASTM E 1193–97(2004)) and Toxicity to plants (algae) (ASTM E 1218–04e1). As outlined in Table 3 in § 799.5089(j) of the proposed regulatory text, depending on the testing proposed in Test Group 1, the Test Group 2 chronic Daphnia test may substitute for either or both the acute fish toxicity test and the acute Daphnia test.

Using SAR, a log K_{ow} of 4.2 corresponds with a fish bioconcentration factor (BCF) of about 1,000 (Refs. 24, 36, and 37). A chemical with a fish BCF value of 1,000 or more is characterized as having a tendency to accumulate in living organisms relative to the concentration of the chemical substance in the surrounding environment (Ref. 37). For the purposes of this proposed rule, EPA's use of a log K_{ow} equal to or greater than 4.2 (which corresponds with a fish BCF value of 1,000) is consistent with the approach taken in the Agency's Final Policy Statement under TSCA section 5 entitled "Category for Persistent, Bioaccumulative, and Toxic New Chemical Substances" (Ref. 38). EPA has also used a measured BCF that is equal to or greater than 1,000 or, in the absence of bioconcentration data, a log P [same as log K_{ow}] value equal to or greater than 4.3 to help define the potential of a new chemical substance to cause significant adverse environmental effects ("Significant New Use Rules; General Provisions For New Chemical Follow-Up" under TSCA sections 5 and 26(c) (Ref. 39; see also 40 CFR 721.3)). EPA considers the difference between the log K_{ow} of 4.3 cited in the 1989 **Federal Register** document (Ref. 39) and the log K_{ow} value of 4.2 cited in this proposed TSCA section 4 test rule to be negligible.

EPA recognizes that in some circumstances, acute aquatic toxicity testing (Test Group 1) may be relevant for certain chemical substances having a log K_{ow} equal to or greater than 4.2. Chemical substances that are dispersible in water (e.g., surfactants, detergents, aliphatic amines, and cationic dyes) may have log K_{ow} values greater than 4.2 and may still be acutely toxic to aquatic organisms. For any chemical substance listed in Table 3 in § 799.5089(j) of the proposed regulatory text for which a test sponsor believes that an alternative to the log K_{ow} threshold of 4.2 is appropriate, the test sponsor may request a modification of the test standard in the final rule as described in 40 CFR 790.55. Based upon the supporting rationale provided by the test sponsor, EPA may allow an alternative threshold or method to be used for determining whether acute or chronic aquatic toxicity testing must be performed for a specific test substance. EPA is soliciting public comment on this approach as well as other alternative approaches in this area.

4. *Mammalian Toxicity—Acute*.

Acute Inhalation Toxicity (rat): Method A (40 CFR 799.9130)

Acute Oral Toxicity (rat): Method B (ASTM E 1163–98(2002) (Ref. 53) or 40 CFR 799.9110(d)(1)(i)(A))

For the "Mammalian Toxicity—Acute" endpoint, EPA is proposing that certain "Special Conditions" in the form of the chemical substance's physical/chemical properties or physical state be considered in determining the appropriate test method that would be used from among those included for this endpoint in Table 3 in § 799.5089(j) of the proposed regulatory text. The OECD HPV SIDS Program recognizes that, for most chemical substances, the oral route of administration will suffice for this endpoint. However, consistent with the approach taken under the voluntary HPV Challenge Program, EPA is proposing that, for test substances that are gases at room temperature (25° C), the acute mammalian toxicity study be conducted using inhalation as the exposure route (described as Method A (40 CFR 799.9130) in Table 3 in § 799.5089(j) of the proposed regulatory text). In the case of a potentially explosive test substance, care must be taken to avoid the generation of explosive concentrations. For all other chemicals (i.e., those that are either liquids or solids at room temperature), EPA is proposing that the acute toxicity testing be conducted via oral administration using an "Up/Down" test method (described as Method B (ASTM E 1163–98 (2002) or 40 CFR 799.9110(d)(1)(i)(A)) in Table 3 in § 799.5089(j) of the proposed regulatory text). Consistent with the voluntary HPV Challenge Program, EPA is proposing to allow the use of the Neutral Red Uptake (NRU) basal cytotoxicity assay to select the starting dose for the acute oral toxicity test (Ref. 52). This test is included as a Special Condition in Table 3 of the proposed regulatory text. A document developed by National Institutes of Health/National Insitute of Environmental Health Sciences (NIH/NIEHS) provides guidance on how to use the NRU assay to estimate a starting dose for an acute oral toxicity test (Ref. 44). Recent versions of the standardized protocols for the NRU assay are available at the NIEHS/Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) website, *http://iccvam.niehs.nih.gov/methods/acutetox/invitrocyto/invcyt_proto.htm* (Refs. 45–47).

Dermal toxicity testing is not proposed in this rulemaking, and the Agency does not intend to include any dermal toxicity testing in any TSCA section 4 HPV SIDS rulemakings.

5. *Mammalian Toxicity—Genotoxicity*.

Gene Mutations:

Bacterial Reverse Mutation Test (*in vitro*): 40 CFR 799.9510

Chromosomal Damage:

In Vitro Mammalian Chromosome Aberration Test (40 CFR 799.9537), or the *In Vivo* Mammalian Bone Marrow Chromosomal Aberration Test (rodents: mouse (preferred species), rat, or Chinese hamster) (40 CFR 799.9538), or the *In Vivo* Mammalian Erythrocyte Micronucleus Test (sampled in bone marrow) (rodents: mouse (preferred species), rat, or Chinese hamster) (40 CFR 799.9539).

Persons who would be required to conduct testing for chromosomal damage are encouraged to use *in vitro* genetic toxicity testing (i.e., the Mammalian Chromosome Aberration Test) to generate the needed genetic toxicity screening data, unless known

chemical properties preclude its use. These could include, for example, physical chemical properties or chemical class characteristics. A primary focus of both the voluntary HPV Challenge Program and this proposed rule is to implement this program in a manner consistent with the OECD HPV SIDS Program and as part of a larger international activity with global involvement. This proposed approach provides the same degree of flexibility as that which currently exists under the OECD HPV SIDS testing program (Ref. 6). A subject person who uses one of the *in vivo* methods instead of the *in vitro* method to address this end-point would be required to submit to EPA a rationale for conducting that alternate test in the final study report.

6. *Mammalian Toxicity—Repeated Dose/Reproduction/Developmental.*

Combined Repeated Dose Toxicity Study with the Reproduction/ Developmental Toxicity Screening Test: 40 CFR 799.9365

Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9355

Repeated Dose 28–Day Oral Toxicity Study: 40 CFR 799.9305

For the "Mammalian Toxicity—Repeated Dose/Reproduction/ Developmental" endpoint, EPA recommends the use of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365) as the test of choice. EPA recognizes, however, that there may be reasons to test a particular chemical using both the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9355) and the Repeated Dose 28–Day Oral Toxicity Study (40 CFR 799.9305) instead of the Combined Repeated Dose Toxicity Study with the Reproduction/ Developmental Toxicity Screening Test (40 CFR 799.9365). With regard to such cases, EPA is proposing that a subject person who uses the combination of the Reproduction/Developmental Toxicity Screening Test and the Repeated Dose 28–Day Oral Toxicity Study in place of the Combined Repeated Dose Toxicity Study with Reproduction/ Developmental Toxicity Screen would be required to submit to EPA a rationale for conducting these alternate tests in the final study reports.

Certain of the chemicals for which Mammalian Toxicity—Repeated Dose/ Reproduction/Developmental testing is proposed may be used solely as "closed system intermediates," as described in the EPA guidance document developed for the voluntary HPV Challenge Program (Ref. 40). As described in that guidance, such chemicals may be eligible for a reduced testing battery which substitutes a developmental toxicity study for the SIDS requirement to address repeated dose (e.g., subchronic), reproductive, and developmental toxicity. In other words, since only the developmental toxicity study would be conducted for those chemicals that qualify for a reduced testing battery, repeated dose (e.g., subchronic) and reproductive studies would not be conducted. At the present time, EPA does not have sufficient information to know with any degree of certainty which if any of the chemicals that are listed in the proposed regulatory text are solely closed system intermediates as defined in the voluntary HPV Challenge Program guidance document (Ref. 40). Persons who believe that a chemical fully satisfies the terms outlined in the guidance document are encouraged to submit appropriate information along with their comments on this proposed rule which substantiate this belief. If, based on submitted information and other information available to EPA, the Agency believes that a chemical is considered likely to meet the requirements for use solely as a closed system intermediate; EPA would not address any developmental toxicity testing needs in this proposed rule.

B. When Would any Testing Imposed by this Proposed Rule Begin?

The testing requirements contained in this proposed rule are not effective until and unless the Agency issues a final rule. Based on the effective date of the final rule, which is typically 30 days after the publication of a final rule in the **Federal Register**, the test sponsor may plan the initiation of any required testing as appropriate to submit the required final report by the deadline indicated as the number of months after the effective date that would be shown in § 799.5089(j) of the proposed regulatory text.

C. How Would the Studies Proposed under this Test Rule be Conducted?

Persons required to comply with the final rule would have to conduct the necessary testing in accordance with the testing and reporting requirements established in the regulatory text of the final rule, with 40 CFR Part 790—Procedures Governing Testing Consent Agreements and Test Rules (except for paragraphs (a), (d), (e), and (f) of § 790.45; § 790.48; paragraph (a)(2) and paragraph (b) of § 790.80; paragraph (e)(1) of § 790.82; and § 790.85), and with 40 CFR Part 792—Good Laboratory Practice Standards.

D. What Forms of Test Substances Would be Tested Under this Rule?

EPA is proposing two distinct approaches for identifying the specific substances that would be tested under this proposed rule, the application of which would depend on whether the substance is considered to be a "Class 1" or a "Class 2" chemical substance. First introduced when EPA compiled the TSCA Chemical Substance Inventory, the term Class 1 chemical substance refers to a chemical substance having a chemical composition that consists of a single chemical species (not including impurities) that can be represented by a specific, complete structure diagram. By contrast, the term Class 2 chemical substance refers to a chemical substance having a composition that cannot be represented by a specific, complete chemical structure diagram, because such a substance generally contains two or more different chemical species (not including impurities). Table 2 in § 799.5089(j) of the proposed regulatory text identifies the listed substances as either Class 1 or Class 2 chemical substances.

EPA is proposing that, for the Class 1 chemical substances that are listed in the proposed rule, the test substance have a purity of 99% or greater. EPA has generally applied this standard of purity to the testing of Class 1 chemical substances in the past under TSCA section 4(a) testing actions, except for chemical substances where it has been shown that such purity is unattainable. EPA is soliciting comment on whether a purity level of 99% or greater cannot be attained for any of the Class 1 chemical substances listed in this proposed rule. For the Class 2 chemical substances that are listed in the proposed rule, EPA is proposing that the test substance be any representative form of the chemical substance, to be defined by the test sponsor(s).

Under both of the approaches described in this unit, manufacturers and processors of each chemical substance listed in this proposed rule would be jointly responsible for the testing of a representative form of each Class 2 chemical substance.

To facilitate EPA's review of exemption applications under this alternative, the Agency would require the submission of certain chemical substance-identifying data, including characteristics and properties of the exemption applicant's substance, such as boiling point, melting point, chemical analysis, additives (if any), and spectral data information.

EPA solicits comment on the proposed alternative approaches to the

testing of Class 2 chemical substances included in this proposed rule.

E. Would I Be Required to Test Under this Rule?

Under TSCA section 4(a)(1)(B)(ii), EPA has made preliminary findings that there are insufficient data and experience to reasonably determine or predict health and environmental effects resulting from the manufacture, processing, or use of the chemical substances listed in this proposed rule. As a result, under TSCA section 4(b)(3)(B), manufacturers and processors of these chemical substances, and those who intend to manufacture or process them, would be subject to the rule with regard to those listed chemicals which they manufacture or process.

1. *Would I be subject to this rule?* You would be subject to this rule and may be required to test if you manufacture (which is defined by statute to include import) or process, or intend to manufacture or process, one or more chemical substances listed in this proposed rule during the time period discussed in Unit IV.E.2. However, if you do not know or cannot reasonably ascertain that you manufacture or process a listed test rule chemical substance (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you would not be subject to the rule for that listed chemical substance.

2. *When would my manufacture or processing (or my intent to do so) cause me to be subject to this rule?* You would be subject to this rule if you manufacture or process, or intend to manufacture or process, a chemical substance listed in the rule at any time from the effective date of the final test rule to the end of the test data reimbursement period. The term "reimbursement period" is defined at 40 CFR 791.3(h) and may vary in length for each substance to be tested under a final TSCA section 4(a) test rule, depending on what testing is required and when testing is completed. See Unit IV.E.4.

3. *Would I be required to test if I were subject to the rule?* It depends on the nature of your activities. All persons who would be subject to this TSCA section 4(a) test rule, which, unless otherwise noted in the regulatory text, incorporates EPA's generic procedures applicable to TSCA section 4(a) test rules (contained within 40 CFR part 790), would fall into one of two groups, designated here as Tier 1 and Tier 2. Persons in Tier 1 (those who would have to initially comply with the final rule) would either:

- Submit to EPA letters of intent to conduct testing, conduct this testing, and submit the test data to EPA, or
- Apply to and obtain from EPA exemptions from testing.

Persons in Tier 2 (those who would not have to initially comply with the final rule) would not need to take any action unless they are notified by EPA that they are required to do so (because, for example, no person in Tier 1 had submitted a letter of intent to conduct testing), as described in Unit IV.E.3.d. Note that both persons in Tier 1 who obtain exemptions and persons in Tier 2 would nonetheless be subject to providing reimbursement to persons who actually conduct the testing, as described in Unit IV.E.4.

a. *Who would be in Tier 1 and Tier 2?* All persons who would be subject to the final rule are considered to be in Tier 1 unless they fall within Tier 2. Table 4 of this unit describes who is in Tier 1 and Tier 2.

TABLE 4.—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Tier 1 (Persons initially required to comply)	Tier 2 (Persons not initially required to comply)
Persons who manufacture (as defined at TSCA section 3(7)), or intend to manufacture, a test rule substance, and who are not listed under Tier 2	A. Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a test rule substance solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring chemical substance (as defined at 40 CFR 710.4(b));—As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kilograms (kg) (1,100 lbs.) annually (as described at 40 CFR 790.42(a)(4)); or —In small quantities solely for research and development (R and D) (as described at 40 CFR 790.42(a)(5)). B. Persons who process (as defined at TSCA section 3(10)) or intend to process a test rule substance (see 40 CFR 790.42(a)(2)).

Under 40 CFR 790.2, EPA may establish procedures applying to specific test rules that differ from the generic procedures governing TSCA section 4(a) test rules in 40 CFR part 790. For purposes of this proposed rule, EPA is proposing to establish certain requirements that differ from those under 40 CFR part 790.

In this proposed test rule, EPA has configured the tiers in 40 CFR 790.42 as in previous HPV test rules (Refs. 3 and 7). In addition to processors, manufacturers of less than 500 kg (1,100 lbs.) per year (''small-volume manufacturers''), and manufacturers of small quantities for research and development (''R&D manufacturers''), EPA has added the following persons to Tier 2: Byproduct manufacturers, impurity manufacturers, manufacturers of naturally occurring chemical substances, manufacturers of non-isolated intermediates, and manufacturers of components of Class 2 chemical substances. The Agency took administrative burden and complexity into account in determining who was to be in Tier 1 in this proposed rule. EPA believes that those persons in Tier 1 who would conduct testing under this proposed rule, when finalized, would generally be large chemical manufacturers who, in the experience of the Agency, have traditionally conducted testing or participated in testing consortia under previous TSCA section 4(a) test rules.

The Agency also believes that byproduct manufacturers, impurity manufacturers, manufacturers of naturally occurring chemical substances, manufacturers of non-isolated intermediates, and manufacturers of components of Class 2 chemical substances historically have not themselves participated in testing or contributed to reimbursement of those persons who have conducted testing. EPA understands that these manufacturers may include persons for

whom the marginal transaction costs involved in negotiating and administering testing arrangements are deemed likely to raise the expense and burden of testing to a level that is disproportional to the additional benefits of including these persons in Tier 1. Therefore, EPA does not believe that the likelihood of the persons proposed to be added to Tier 2 actually conducting the testing is sufficiently high to justify burdening these persons with Tier 1 requirements (e.g., submitting requests for exemptions). Nevertheless, these persons, along with all other persons in Tier 2, would be subject to reimbursement obligations to persons who actually conduct the testing, as described in Unit IV.E.4.

TSCA section 4(b)(3)(B) requires all manufacturers and/or processors of a chemical substance to test that chemical substance if EPA has made findings under TSCA sections 4(a)(1)(A)(ii) or 4(a)(1)(B)(ii) for that chemical substance, and issued a TSCA section 4(a) test rule requiring testing. However, practicality must be a factor in determining who is subject to a particular test rule. Thus, persons who do not know or cannot reasonably ascertain that they are manufacturing or processing a chemical substance subject to this proposed rule, e.g., manufacturers or processors of a chemical substance as a trace contaminant who are not aware of and cannot reasonably ascertain these activities, would not be subject to the rule. See Unit IV.E.1. and § 799.5089b)(2) of the proposed regulatory text.

b. *Subdivision of Tier 2 entities.* The Agency is proposing to prioritize which persons in Tier 2 would be required to perform testing, if needed. Specifically, the Agency is proposing that Tier 2 entities be subdivided into:

i. Tier 2A–manufacturers, i.e., those who manufacture, or intend to manufacture, a test rule chemical substance solely as one or more of the following: A byproduct, an impurity, a naturally occurring chemical substance, a non-isolated intermediate, a component of a Class 2 chemical substance, in amounts less than 1,100 lbs. annually, or in small quantities solely for research and development.

ii. Tier 2B–processors, i.e., those who process, or intend to process, a test rule chemical substance (in any form). The terms ''process'' and ''processor'' are defined by TSCA sections 3(10) and 3(11), respectively.

If the Agency needs testing from persons in Tier 2, EPA would seek testing from persons in Tier 2A before proceeding to Tier 2B. It is appropriate to require manufacturers in Tier 2A to submit letters of intent to test or exemption applications before processors are called upon because the Agency believes that testing costs are traditionally passed by manufacturers along to processors, enabling them to share in the costs of testing (Ref. 48). In addition, ''[t]here are [typically] so many processors [of a given test rule chemical] that it would be difficult to include them all in the technical decisions about the tests and in the financial decisions about how to allocate the costs'' (Ref. 49).

c. *When would it be appropriate for a person who would be required to comply with the rule to apply for an exemption rather than to submit a letter of intent to conduct testing?* You may apply for an exemption if you believe that the required testing will be performed by another person (or a consortium of persons formed under TSCA section 4(b)(3)(A)). You can find procedures relating to exemptions in 40 CFR 790.80 through 790.99, and § 799.5089(c)(2), (c)(5), (c)(7), and (c)(11) of the proposed regulatory text. In this proposed rule, EPA would not require the submission of equivalence data (i.e., data demonstrating that your chemical substance is equivalent to the chemical substance actually being tested) as a condition for approval of your exemption. Therefore, 40 CFR 790.82(e)(1) and 40 CFR 790.85 would not apply to this proposed rule.

d. *What would happen if I submitted an exemption application?* EPA believes that requiring the collection of duplicative data is unnecessarily burdensome. As a result, if EPA has received a letter of intent to test from another source or has received (or expects to receive) the test data that would be required under this rule, the Agency would conditionally approve your exemption application under 40 CFR 790.87.

The Agency would terminate conditional exemptions if a problem occurs with the initiation, conduct, or completion of the required testing, or with the submission of the required data to EPA. EPA may then require you to submit a notice of intent to test or an exemption application. See 40 CFR 790.93 and § 799.5089(c)(8) of the proposed regulatory text. In addition, the Agency would terminate a conditional exemption if no letter of intent to test has been received by persons required to comply with the rule. See, e.g., § 799.5089(c)(6) of the proposed regulatory text. Note that the provisions at 40 CFR 790.48(b) have been incorporated into the regulatory text of this proposed rule; thus, persons subject to this rule are not required to comply with 40 CFR 790.48 itself (see § 799.5089(c)(4)–(c)(7) and § 799.5089(d)(3) of the proposed regulatory text). Persons who obtain exemptions or receive them automatically would nonetheless be subject to providing reimbursement to persons who do actually conduct the testing, as described in Unit IV.E.4.

e. *What would my obligations be if I were in Tier 2?* If you are in Tier 2, you would be subject to the rule and you would be responsible for providing reimbursement to persons in Tier 1, as described in Unit IV.E.4. There is no difference whether you are in Tier 2A or Tier 2B as regards reimbursement. Concerning testing, if you are in Tier 2, you are considered to have an automatic conditional exemption. You would not need to submit a letter of intent to test or an exemption application unless you are notified by EPA that you are required to do so. As previously noted, Tier 2A manufacturers would be notified to test before Tier 2B processors (Unit IV.E.3.ii.).

If a problem occurs with the initiation, conduct, or completion of the required testing, or with the submission of the required data to EPA, the Agency may require you to submit a notice of intent to test or an exemption application. See 40 CFR 790.93 and § 799.5089(c)(10) of the proposed regulatory text.

In addition, you would need to submit a notice of intent to test or an exemption application if:

- No manufacturer in Tier 1 has notified EPA of its intent to conduct testing.
- EPA has published a **Federal Register** document directing persons in Tier 2 to submit to EPA letters of intent to conduct testing or exemption applications. See § 799.5089(c)(4), (c)(5), (c)(6), and (c)(7) of the proposed regulatory text. The Agency would conditionally approve an exemption application under 40 CFR 790.87, if EPA has received a letter of intent to test or has received (or expects to receive) the test data required under this rule. EPA is not aware of any circumstances in which test rule Tier 1 entities have sought reimbursement from Tier 2 entities either through private agreements or by soliciting the involvement of the Agency under the reimbursement regulations at 40 CFR part 791.

f. *What would happen if no one submitted a letter of intent to conduct testing?* EPA anticipates that it will receive letters of intent to conduct testing for all of the tests specified and chemical substances included in the

final rule. However, in the event it does not receive a letter of intent for one or more of the tests required by the final rule for any of the chemical substances in the final rule within 30 days after the publication of a **Federal Register** document notifying Tier 2 processors of the obligation to submit a letter of intent to conduct testing or to apply for an exemption from testing, EPA would notify all manufacturers and processors of the chemical substance of this fact by certified letter or by publishing a **Federal Register** document specifying the test(s) for which no letter of intent has been submitted. This letter or **Federal Register** document would additionally notify all manufacturers and processors that all exemption applications concerning the test(s) have been denied, and would give them an opportunity to take corrective action. If no one has notified EPA of its intent to conduct the required testing of the chemical substance within 30 days after receipt of the certified letter or publication of the **Federal Register** document, all manufacturers and processors subject to the final rule with respect to that chemical substance who are not already in violation of the final rule would be in violation of the final rule.

4. *How do the reimbursement procedures work?* In the past, persons subject to test rules have independently worked out among themselves their respective financial contributions to those persons who have actually conducted the testing. However, if persons are unable to agree privately on reimbursement, they may take advantage of EPA's reimbursement procedures at 40 CFR part 791, promulgated under the authority of TSCA section 4(a). These procedures include: The opportunity for a hearing with the American Arbitration Association; publication by EPA of a document in the **Federal Register** concerning the request for a hearing; and the appointment of a hearing officer to propose an order for fair and equitable reimbursement. The hearing officer may base his or her proposed order on the production volume formula set out at 40 CFR 791.48, but is not obligated to do so. Under this proposed rule, amounts manufactured as impurities would be included in production volume (40 CFR 791.48(b)), subject to the discretion of the hearing officer (40 CFR 791.40(a)). The hearing officer's proposed order may become the Agency's final order, which is reviewable in Federal court (40 CFR 791.60).

F. What Reporting Requirements are Proposed Under this Test Rule?

You would be required to submit a final report for a specific test by the deadline indicated as the number of months after the effective date of the final rule, which would be shown in § 799.5089(j) of the proposed regulatory text. EPA is also proposing that a robust summary of the final report for each specific test would be required to be submitted electronically in addition to and at the same time as the final report. The term "robust summary" is used to describe the technical information necessary to adequately describe an experiment or study and includes the objectives, methods, results, and conclusions of the full study report which can be either an experiment or in some cases an estimation or prediction method. Guidance for the compilation of robust summaries is described in a document entitled "Draft Guidance on Developing Robust Summaries" (Ref. 13). Persons who respond to this request to submit robust summaries are also encouraged to submit the robust summary electronically via the HPVIS to allow for its ready incorporation into HPVIS. Directions for electronic submission of robust summary information into HPVIS are provided at *https://iaspub.epa.gov/oppthpv/metadata.html*. This link will direct you to the ''HPVIS Quick Start and User's Guide.'' EPA is soliciting comment on this proposed reporting requirement.

G. What Would I Need to Do if I Cannot Complete the Testing Required by the Final Rule?

A company who submits a letter of intent to test under the final rule and who subsequently anticipates difficulties in completing the testing by the deadline set forth in the final rule may submit a modification request to the Agency, pursuant to 40 CFR 790.55. EPA will determine whether modification of the test schedule is appropriate, and may first seek public comment on the modification.

H. Would There be Sufficient Test Facilities and Personnel to Undertake the Testing Proposed Under this Test Rule?

EPA's most recent analysis of laboratory capacity (Ref. 41) indicates that available test facilities and personnel would adequately accommodate the testing proposed in this rule.

I. Might EPA Seek Further Testing of the Chemicals in this Proposed Test Rule?

If EPA determines that it needs additional data regarding any of the chemical substances included in this proposed rule, the Agency would seek further health and/or environmental effects testing for these chemical substances. Should the Agency decide to seek such additional testing via a test rule, EPA would initiate a separate action for this purpose.

V. Export Notification

Any person who exports, or intends to export, one of the chemical substances contained in this proposed rule in any form (e.g., as byproducts, impurities, components of Class 2 chemical substances, etc.) will be subject to the export notification requirements in TSCA section 12(b)(1) and at 40 CFR part 707, subpart D, but only after the final rule is issued and only if the chemical substance is contained in the final rule. Export notification is generally not required for articles, as provided by 40 CFR 707.60(b). Section 12(b) of TSCA states, in part, that any person who exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under TSCA section 4 must notify the EPA Administrator of such export or intent to export. The EPA Administrator in turn will notify the government of the importing country of EPA's regulatory action with respect to the chemical substance.

VI. Economic Impacts

EPA has prepared an economic assessment entitled "Economic Impact Analysis for the Proposed Section 4 Test Rule for High Production Volume Chemicals-3" (Ref. 14), a copy of which has been placed in the docket for this proposed rule. This economic assessment evaluates the potential for significant economic impacts as a result of the testing that would be required by this proposed rule. The analysis covers 29 chemical substances. The total social cost of providing test data on the 29 chemical substances that were evaluated in this economic analysis is estimated to be $10.30 million assuming an average cost scenario. Total costs of compliance to industry are estimated at $10.21 million (Ref. 14).

While legally subject to this test rule, processors of a subject chemical would be required to comply with the requirements of the final rule only if they are directed to do so by EPA as described in § 799.5089(c)(5) and (c)(6) of the proposed regulatory text. EPA would only require processors to test if no person in Tier 1 has submitted a notice of its intent to conduct testing, or if under 40 CFR 790.93, a problem occurs with the initiation, conduct, or

completion of the required testing or the submission of the required data to EPA. Because EPA has identified at least one manufacturer in Tier 1 for each subject chemical substance, the Agency assumes that, for each chemical substance in this proposed rule, at least one such person will submit a letter of intent to conduct the required testing and that person will conduct such testing and will submit the test data to EPA. Because processors would not need to comply with the proposed rule initially, the economic assessment does not address processors.

To evaluate the potential for an adverse economic impact of testing on manufacturers of the chemical substances in this proposed rule, EPA employed an initial screening approach that estimated the impact of testing requirements as a percentage of each chemical substance's sale price. This measure compares annual revenues from the sale of a chemical substance to the annualized compliance cost for that chemical substance to assess the percentage of testing costs that can be accommodated by the revenue stream generated by that chemical substance over a number of years. Compliance costs include costs of testing and administering the testing, as well as reporting costs. In addition, they include the estimated cost of the TSCA section 12(b) export notification requirements, which, under the final rule, would be required for the first export to a particular country of a chemical substance subject to the final rule, estimated to range from $26.86 per notice to $85.70 per notice (Ref.14). These export notification requirements (included in the total and annualized cost estimates) that would be triggered by the final rule are expected to have a negligible impact on exporters.

Annualized compliance costs divide testing expenditures into an equivalent, constant yearly expenditure over a longer period of time. To calculate the percent price impact, testing costs (including laboratory and administrative expenditures) are annualized over 15 years using a 7% discount rate.

These annualized testing costs are then divided by the estimated annual revenue of the chemical substance to derive a cost-to-sales ratio.

The screening results suggest that under a least cost scenario, 17 out of the 29 chemical substances (59%) would have a price impact at less than the 1% level. Similarly, 16 out of the 29 chemical substances (55%) would be impacted at less than the 1% level under an average cost scenario.

EPA believes, on the basis of these calculations, that the proposed testing of the chemical substances presents a low potential for adverse economic impact for the majority of chemical substances. Because the subject chemical substances have relatively large production volumes, the annualized costs of testing, expressed as a percentage of annual revenue, are very small for most chemical substances. There are, however, some chemical substances for which the price impact is expected to exceed 1% of the revenue from that chemical substance. The potential for adverse economic impact is expected to be higher for these chemical substances. EPA, therefore, compared the annualized costs of testing to company revenue for those chemical substances because in these cases, companies may choose to use revenue sources other than the profits from the individual chemical substances to pay for testing. EPA estimates that the costs of testing will exceed 1% of company revenue for one of the affected companies. Smaller businesses are less likely to have additional revenue sources to cover the compliance costs in this situation. Therefore, the Agency also compared the costs of compliance to company sales for small businesses.

The benefits resulting from this proposed test rule are discussed qualitatively in "Economic Impact Analysis for the Proposed Section 4 Test rule for High Production Volume Chemicals-3" (Ref. 14). EPA believes that the net benefits of this proposed rule are positive, but quantification of the benefits of the proposed rule would require more specific information about use patterns and preferences than is available.

VII. Public Comment

As discussed in Units III.C. and III.D., the Agency solicits comment regarding additional information pertaining to potential exposure of workers and consumers, respectively, to the chemical substances identified in this proposed rule. Also, as discussed in Unit III.E., the Agency solicits comment regarding additional information pertaining to environmental releases of the chemical substances identified in this proposed rule.

As discussed in Unit III.G., EPA is soliciting comments which identify existing data that may meet the requirements of studies under this proposed rule. To the extent that data relevant to the testing specified in this proposed rule are known to exist, EPA strongly encourages the submission of this information as comments to the proposed rule. Data submitted to EPA to meet the requirements of testing under this proposed rule must be in the form of full copies of unpublished studies or full citations of published studies, and may be accompanied by a robust summary (Ref. 13). To the extent that studies required under this proposed rule are currently available, and the data are judged sufficient by EPA, testing for the endpoint/chemical combination will not be required in the final rule based on this proposed rule.

EPA is also soliciting public comment on the proposed requirement for submission of robust summaries, the test methods proposed, and the analysis detailing the burdens and costs for the regulatory impacts resulting from this proposed rule.

In addition, EPA solicits comment on the proposed and alternative approaches to the testing of Class 2 chemical substances, whether the proposed approach for testing Class 1 chemical substances (i.e., that each Class 1 chemical substance be tested at a purity of 99% or more) should be applied to any Class 2 chemical substances, and whether the proposed or alternative approaches for the testing of Class 2 chemical substances (i.e., that a representative sample of each Class 2 substance be tested) should be applied to any Class 1 chemical substances.

VIII. Materials in the Docket

As indicated under **ADDRESSES**, a docket has been established for this proposed rule under docket ID number EPA–HQ–OPPT–2009–0112. The following is a listing of the documents that have been placed in the docket for this proposed rule. The docket includes information considered by EPA in developing this proposed rule, including the documents listed in this unit, which are physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, please consult either technical person listed under **FOR FURTHER INFORMATION CONTACT**. The docket is available for review as specified under **ADDRESSES**.

1. EPA. Data Collection and Development on High Production Volume (HPV) Chemicals; Notice. **Federal Register** (65 FR 81686, December 26, 2000) (FRL–6754–6).

2. EPA. Testing of Certain High Production Volume Chemicals; Proposed Rule. **Federal Register** (65 FR 81658, December 26, 2000) (FRL–6758–4).

3. EPA. Testing of Certain High Production Volume Chemicals; Final Rule. **Federal Register** (71 FR 13708, March 16, 2006) (FRL–7335–2).

4. EPA. TSCA Section 4(a)(1)(B) Final Statement of Policy; Criteria for Evaluating Substantial Production, Substantial Release, and Substantial or Significant Human Exposure; Notice. **Federal Register** (58 FR 28736, May 14, 1993).

5. EPA. OPPT. HPV Challenge Program Chemical List. This list is available on-line at: *http://www.epa.gov/oppt/chemrtk/pubs/update/hpvchmlt.htm*.

6. OECD Secretariat. Manual for the Investigation of HPV Chemicals. OECD Programme on the Co-Operative Investigation of High Production Volume Chemicals. Paris, France. September 2004. Available on-line at: *http://www.oecd.org/document/7/0,2340,en_2649_34379_1947463_1_1_1_1,00.htm*.

7. ICCA. ICCA HPV Working List of Chemicals. October 2005. This list is updated periodically, and is available on-line at: *http://www.cefic.org/activities/hse/mgt/hpv/hpvinit.htm*.

8. EPA. TSCA Section 4(a)(1)(B) Proposed Statement of Policy; Notice. **Federal Register** (56 FR 32294, July 15, 1991).

9. EPA. Sixty-Third Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice. **Federal Register** (73 FR 65486, November 3, 2008) (FRL–8387–6).

10. EPA. Preliminary Assessment Information Reporting; Addition of Certain Chemicals. Final Rule and Technical Corrections. **Federal Register** (71 FR 47122, August 16, 2006) (FRL–7764–9).

11. EPA. Testing of Certain High Production Volume Chemicals; Second Group of Chemicals; Proposed Rule. **Federal Register** (73 FR 43314, July 24, 2008) (FRL–8373–9).

12. EPA. Office of Pollution Prevention and Toxics (OPPT). Chemical Hazard Data Availability Study: What Do We Really Know About the Safety of High Production Volume Chemicals? April 1998. Available on-line at: *http://www.epa.gov/chemrtk/pubs/general/hazchem.htm*.

13. EPA. OPPT. Draft Guidance on Developing Robust Summaries. October, 22, 1999. Available on-line at: *http://www.epa.gov/chemrtk/pubs/general/robsumgd.htm*.

14. EPA. OPPT. Economic Impact Analysis for the Proposed Section 4 Test Rule for High Production Volume Chemicals-3. Prepared by the OPPT Economic and Policy Analysis Branch. December 2009.

15. EPA. OPPT. Testing of Certain High Production Volume Chemicals-3 (Exposure Findings Supporting Information). Prepared by OPPT Economics, Exposure and Technology Division. September 2009.

16. NIOSH. National occupational exposure survey field guidelines. Vol. I. Seta JA, Sundin DS, Pedersen DH, eds. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 88–106. Available on-line at: *http://www.cdc.gov/niosh/88-106.html*. 1988.

17. ASTM International. Standard Test Method for Relative Initial and Final Melting Points and the Melting Range of Organic Chemicals. ASTM E 324–99. 1999.

18. ASTM International. Standard Test Method for Vapor Pressure of Liquids by Ebulliometry. ASTM E 1719–05. 2005.

19. ASTM International. Standard Test Method for Determining Vapor Pressure by Thermal Analysis. ASTM. E 1782–03. 2003.

20. ASTM International. Standard Test Method for Partition Coefficient (*n*-Octanol/Water) Estimation by Liquid Chromatography. ASTM E 1147–92(2005). 2005.

21. ASTM International. Standard Test Method for Measurements of Aqueous Solubility. ASTM E 1148–02. 2002.

22. ASTM International. Question about ASTM E 324. E-mail from Diane Rehiel, ASTM, to Greg Schweer, CITB, CCD, OPPT, EPA. September 15, 2004.

23. Meylan, W.M. and Howard, P.H. Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients. *Journal of Pharmaceutical Sciences.* Vol. 84(1):83–92. 1995.

24. Meylan, W.M., Howard, P.H., and Boethling, R.S. Improved Method for Estimating Water Solubility From Octanol/Water Partition Coefficient. *Environmental Toxicology and Chemistry*. Vol. 15(2):100–106. 1996.

25. ASTM International. Standard Test Method for Determining Ready, Ultimate, Biodegradability of Organic Chemicals in a Sealed Vessel CO_2 Production Test. ASTM E 1720–01. 2001.

26. ISO. Water quality — Evaluation of ultimate aerobic biodegradability of organic compounds in aqueous medium — Method by analysis of inorganic carbon in sealed vessels (CO_2 headspace test). ISO 14593. 1999.

27. ISO. Water quality — Evaluation in an aqueous medium of the "ultimate" aerobic biodegradability of organic compounds — Method by analysis of dissolved organic carbon (DOC). ISO 7827. 1994.

28. ISO. Water quality — Evaluation of ultimate aerobic biodegradability of organic compounds in aqueous medium by determination of oxygen demand in a closed respirometer. ISO 9408. 1999.

29. ISO. Water quality — Evaluation of ultimate aerobic biodegradability of organic compounds in aqueous medium — Carbon dioxide evolution test. ISO 9439. 1999.

30. ISO. Water quality — Evaluation in an aqueous medium of the "ultimate" aerobic biodegradability of organic compounds — Method by analysis of biochemical oxygen demand (closed bottle test). ISO 10707. 1994.

31. ISO. Water quality — Evaluation in an aqueous medium of the ultimate aerobic biodegradability of organic compounds — Determination of biochemical oxygen demand in a two-phase closed bottle test (available in English only). ISO 10708. 1997.

32. ISO. Water quality — Guidance for the preparation and treatment of poorly water-soluble organic compounds for the subsequent evaluation of their biodegradability in an aqueous medium. ISO 10634. 1995.

33. ASTM International. Standard Guide for Conducting Acute Toxicity Tests on Test Materials with Fishes, Macroinvertebrates, and Amphibians. ASTM E 729–96(2002). 2002.

34. ASTM International. Standard Guide for Conducting Static Toxicity Tests with Microalgae. ASTM E 1218–04e1. 2004.

35. ASTM International. Standard Guide for Conducting Daphnia magna Life-Cycle Toxicity Tests. ASTM E 1193–97(2004). 2004.

36. Veith, G.D. and Kosian, P. Estimating bioconcentration potential from Octanol/Water Partition Coefficients, in Physical Behavior of PCB's in the Great Lakes (MacKay, Paterson, Eisenreich, and Simmons, eds.), Ann Arbor Science, Ann Arbor, MI. 1982.

37. Bintein, S.; DeVillers, J.; and Karcher, W. Nonlinear dependence of fish bioconcentration on *n*-Octanol/Water Partition Coefficient. *SAR and QSAR in Environmental Research*. Vol. 1, pp. 29–39. 1993.

38. EPA. Category for Persistent, Bioaccumulative, and Toxic New Chemical Substances; Notice. **Federal Register** (64 FR 60194, November 4, 1999) (FRL–6097–7). Available on-line at: *http://www.epa.gov/oppt/newchems/pubs/pbtpolcy.htm*.

39. EPA. Significant New Use Rules; General Provisions for New Chemical

Follow-Up; Final Rule. **Federal Register** (54 FR 31298, July 27, 1989).

40. EPA. OPPT. Guidance for Testing Closed System Intermediates for the HPV Challenge Program (Draft) (March 17, 1999). Available on-line at: *http://www.epa.gov/oppt/chemrtk/pubs/general/closed9.htm*.

41. EPA. Analysis of Laboratory Capacity to Support U.S. EPA Chemical Testing Program Initiatives. Economic and Policy Analysis Branch. Washington, DC. August 2004.

42. EPA. OPPT. The Use of Structure-Activity Relationships (SAR) in the High Production Volume Chemicals Challenge Program. August 26, 1999. Available on-line at: *http://www.epa.gov/chemrtk/pubs/general/sarfinl1.htm*.

43. EPA. Economic Analysis in Support of the TSCA 12(b) Information Collection Request, OPPT/EETD/EPAB. Washington, DC. October 30, 1998.

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IX. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this proposed rule is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

EPA has prepared an economic analysis of this proposed action, which is contained in a document entitled "Economic Impact Analysis for the Proposed Section 4 Test Rule for High Production Volume Chemicals-3" (Ref. 14). A copy of the economic analysis is available in the docket for this proposed rule and is summarized in Unit VI.

B. Paperwork Reduction Act

This proposed rule does not impose any new or amended paperwork collection requirements that would require additional review and/or approval by OMB under the Paperwork Reduction Act (PRA) 44 U.S.C. 3501 *et seq*. Although the activities are approved, OMB has specified that the additional burden associated with a new test rule is not covered by the ICR until the final rule is effective. The information collection requirements contained in TSCA section 4 test rules have already been approved by OMB under PRA, and have been assigned OMB control number 2070–0033 (EPA ICR No. 1139). In the context of developing a new test rule, the Agency must determine whether the total annual burden covered by the approved ICR needs to be amended to accommodate the burden associated with the new test rule. If so, the Agency must submit an Information Correction Worksheet (ICW) to OMB and obtain OMB approval of an increase in the total approved annual burden in the OMB inventory. The Agency's estimated burden for this proposed test rule is provided in the economic analysis (Ref. 14).

The information collection activities related to export notification under TSCA section 12(b)(1) are already approved under OMB control number 2070–0030 (EPA ICR No. 0795). This proposed rule does not propose any new or changes to the export notification requirements, and is not expected to result in any substantive changes in the burden estimates for EPA ICR No. 0795 that would require additional review and/or approval by OMB.

Under PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to approval under PRA, unless it displays a currently valid OMB control number. The OMB control numbers for the EPA regulations codified in chapter 40 of the CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, 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.

The standard chemical testing program involves the submission of letters of intent to test (or exemption applications), study plans, semi-annual progress reports, test results, and some administrative costs. For this proposed rule, EPA estimates the public reporting burden for all 29 chemical substances is 52,184 hours (average cost scenario). EPA assumes that industry will form a "task force" or panel to coordinate testing where appropriate. A panel may often represent groups of chemical substances. EPA estimates 16 panels for the proposed rule; with an estimated burden per panel of 3,262 hours (average cost scenario) (Ref.14).

The estimated burden of the information collection activities related to export notification is estimated to average 1 burden hour for each chemical/country combination for an initial notification and 0.5 hours for each subsequent notification (Ref. 14). In estimating the total burden hours approved for the information collection activities related to export notification, the Agency has included sufficient

burden hours to accommodate any export notifications that may be required by the Agency's issuance of final chemical test rules. As such, EPA does not expect to need to request an increase in the total burden hours approved by OMB for export notifications.

As defined by PRA and 5 CFR 1320.3(b), "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; 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.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments to EPA as part of your overall comments on this proposed rule in the manner specified under **ADDRESSES**. In developing the final rule, the Agency will address any comments received regarding the information collection requirements contained in this proposed rule.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, after considering the potential economic impacts of this proposed rule on small entities, the Agency hereby certifies that this proposed rule would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analysis for this proposed rule (Ref. 14), which is summarized in Unit VI., and a copy of which is available in the docket for this proposed rule. The following is a brief summary of the factual basis for this certification.

Under RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined in accordance with RFA as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Based on the industry profile that EPA prepared as part of the economic analysis for this proposed rule (Ref. 14), EPA has determined that this proposed rule is not expected to impact any small not-for-profit organizations or small governmental jurisdictions. As such, the Agency's analysis presents only the estimated potential impacts on small business.

Two factors are examined in EPA's small entity impact analysis (Ref. 14) in order to characterize the potential small entity impacts of this proposed rule on small business:

- The size of the adverse economic impact (measured as the ratio of the cost to sales or revenue).
- The total number of small entities that experience the adverse economic impact.

Section 601(3) of RFA establishes as the default definition of "small business" the definition used in section 3 of the Small Business Act, 15 U.S.C. 632, under which SBA establishes small business size standards (13 CFR 121.201). For this proposed rule, EPA has analyzed the potential small business impacts using the size standards established under this default definition. The SBA size standards, which are primarily intended to determine whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101), "seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation." (13 CFR 121.102(b)). See section 632(a)(1) of the Small Business Act. In analyzing potential impacts, RFA recognizes that it may be appropriate at times to use an alternate definition of small business. As such, section 601(3) of RFA provides that an agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. Even though the Agency has used the default SBA definition of small business to conduct its analysis of potential small business impacts for this proposed rule, EPA does not believe that the SBA size standards are generally the best size standards to use in assessing potential small entity impacts with regard to TSCA section 4(a) test rules.

The SBA size standard is generally based on the number of employees an entity in a particular industrial sector may have. For example, in the chemical manufacturing industrial sector (i.e., NAICS code 325 and NAICS code 324110), approximately 98% of the firms would be classified as small businesses under the default SBA definition. The SBA size standard for 75% of this industry sector is 500 employees, and the size standard for 23% of this industry sector is either 750, 1,000, or 1,500 employees. When assessing the potential impacts of test rules on chemical manufacturers, EPA believes that a standard based on total annual sales may provide a more appropriate means to judge the ability of a chemical manufacturing firm to support chemical testing without significant costs or burdens.

EPA is currently determining what level of annual sales would provide the most appropriate size cutoff with regard to various segments of the chemical industry usually impacted by TSCA section 4(a) test rules, but has not yet reached a determination. As stated in this unit, therefore, the factual basis for the RFA determination for this proposed rule is based on an analysis using the default SBA size standards. Although EPA is not currently proposing to establish an alternate definition for use in the analysis conducted for this proposed rule, the analysis for this proposed rule also presents the results of calculations using a standard based on total annual sales (40 CFR 704.3). EPA is interested in receiving comments on whether the Agency should consider establishing an alternate definition for small business to use in the small entity impact analyses for future TSCA section 4(a) test rules, and what size cutoff may be appropriate.

SBA has developed 6–digit NAICS code-specific size standards based on employment thresholds. These size standards range from 500 to 1,500 employees for the various 6–digit NAICS codes that are potentially affected (Ref. 14). For a conservative estimate of the number of small businesses affected by the HPV rules, the Agency uses an employment threshold of less than 1,500 employees for all businesses regardless of the NAIC-specific threshold to determine small business status.

For each manufacturer of the 29 chemical substances covered by this

proposed rule, the parent company (ultimate corporate entity or UCE) was identified and sales and employment data were obtained for companies where data was publicly available. The search determined that there were 54 affected UCEs. Sales and employment data could be found for 52 of these UCEs (96%). Two companies could not be classified as small or large because there were no employment data available, but were still included in the small business impact analysis.

Parent company sales data were collected to identify companies that qualified as a "small business" for purposes of RFA analysis. Based on the SBA size standard applied (1,500 employees or less), 21 companies (39%) were identified as small.

The potential significance of this proposed rule's impact on small businesses was analyzed by examining the number of small entities that experienced different levels of costs as a percentage of their sales. Small businesses were placed in the following categories on the basis of cost-to sales ratios: Less than 1%, greater than 1%, and greater than 3%. This analysis was conducted under both a least and average cost scenario.

Of the 21 businesses designated as small business, none had cost-to-sales ratios of greater than 1% and 3% under both the least and average cost scenarios. For the chemical substances where sales data were unavailable, EPA used the median sales value sales of all other small businesses equal to $24.7 million. The costs for the two companies were estimated to be well below 1% of this sales level. Given these results, the Agency has determined that there is not a significant economic impact on a substantial number of small entities as a result of this proposed rule, if finalized.

The estimated cost of the TSCA section 12(b)(1) export notification, which, as a result of the final rule, would be required for the first export to a particular country of a chemical substance subject to the final rule, is estimated to be $85.70 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $26.86 for each subsequent export notification submitted by that exporter (Refs. 14, 42, and 43). EPA has concluded that the costs of TSCA section 12(b)(1) export notification would have a negligible impact on exporters of the chemical substances in the final rule, regardless of the size of the exporter.

Any comments regarding the impacts that this action may impose on small entities, or regarding whether the Agency should consider establishing an alternate definition of small business to be used for analytical purposes for future test rules and what size cutoff may be appropriate, should be submitted to the Agency in the manner specified under **ADDRESSES**.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. It is estimated that the total aggregate costs of this proposed rule to the private sector, which are summarized in Unit VI., would be $10.21 million. The total annualized costs of this proposed rule to the private sector are estimated to be $3.61 and 3.89 million using a 3% and 7% discount rate over 3 years (average cost scenario). In addition, since EPA does not have any information to indicate that any State, local, or tribal government manufactures or processes the chemical substances covered by this action such that the final rule would apply directly to State, local, or tribal governments, EPA has determined that this proposed rule would not significantly or uniquely affect small governments. Accordingly, this proposed rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 13132

Under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have "federalism implications" because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. This proposed rule would establish testing and recordkeeping requirements that apply to manufacturers (including importers) and processors of certain chemical substances. Because EPA has no information to indicate that any State or local government manufactures or processes the chemical substances covered by this action, this proposed rule does not apply directly to States and localities and will not affect State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175

Under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have any affect on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in the Executive Order. As indicated previously, EPA has no information to indicate that any tribal government manufactures or processes the chemical substances covered by this action. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045

This proposed rule is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it does not establish an environmental standard intended to mitigate health or safety risks, will not have an annual effect on the economy of $100 million or more, nor does it otherwise have a disproportionate effect on children. This proposed rule would establish testing and recordkeeping requirements that apply to manufacturers (including importers) and processors of certain chemical substances, and would result in the development of data about those chemical substances that can subsequently be used to assist the Agency and others in determining whether the chemical substances in this proposed rule present potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because it is unlikely to have any significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent

with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule involves technical standards because it proposes to require the use of particular test methods. If the Agency makes findings under TSCA section 4(a), EPA is required by TSCA section 4(b) to include specific standards or test methods that are to be used for the development of the data required in the test rules issued under TSCA section 4. For some of the testing that would be required by the final rule, EPA is proposing the use of voluntary consensus standards issued by ASTM International and ISO which evaluate the same type of toxicity as the TSCA 799 test guidelines and OECD test guidelines, where applicable. Copies of the 17 ASTM International and ISO standards referenced in the proposed regulatory text at § 799.5089(h) have been placed in the docket for this proposed rule. You may obtain copies of the ASTM International standards from the American Society for Testing and Materials International, 100 Bar Harbor Dr., West Conshohocken, PA 19428–2959, and copies of the ISO standards from the International Organization for Standardization, Case Postale, 56 CH-1211 Genève 20 Switzerland. In the final rule, EPA intends to seek approval from the Director of the **Federal Register** for the incorporation by reference of the ASTM International and ISO standards used in the final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

EPA is not aware of any potentially applicable voluntary consensus standards which evaluate partition coefficient (*n*-octanol/water) generator column, water solubility (column elution and generator column), acute inhalation toxicity, bacterial reverse mutations, *in vivo* mammalian bone marrow chromosomal aberrations, combined repeated dose with reproductive/developmental toxicity screen, repeated dose 28–day oral toxicity screen, or the reproductive developmental toxicity screen which could be considered in lieu of the TSCA 799 test guidelines, 40 CFR 799.6756, 799.6784, 799.6786, 799.9130, 799.9510, 799.9538, 799.9365, 799.9305, and 799.9355, respectively, upon which the test standards in this proposed rule are based. The Agency invites comment on the potential use of voluntary consensus standards in this proposed rule, and, specifically, invites the public to identify potentially applicable consensus standard(s) and to explain why such standard(s) should be used here.

J. Executive Order 12898

This proposed rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities that require special consideration by the Agency under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). The Agency believes that the information collected under this proposed rule, if finalized, will assist EPA and others in determining the potential hazards and risks associated with the chemical substances covered by this proposed rule. Although not directly impacting environmental justice-related concerns, this information will enable the Agency to better protect human health and the environment, including in low-income and minority communities.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

Dated: February 17, 2010.

James Jones,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 799— IDENTIFICATION OF SPECIFIC CHEMICAL SUBSTANCE AND MIXTURE TESTING REQUIREMENTS

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Add § 799.5089 to subpart D of part 799 to read as follows:

§ 799.5089 Chemical testing requirements for certain high production volume chemicals; third group of chemicals.

(a) *What substances will be tested under this section?* Table 2 in paragraph (j) of this section identifies the chemical substances that must be tested under this section. For the chemical substances identified as "Class 1" chemical substances in Table 2 in paragraph (j) of this section, the purity of each chemical substance must be 99% or greater, unless otherwise specified in this section. For the chemical substances identified as "Class 2" chemical substances in Table 2 in paragraph (j), a representative form of each chemical substance must be tested. The representative form selected for a given Class 2 chemical substance should meet industry or consensus standards where they exist.

(b) *Am I subject to this section?* (1) If you manufacture (including import) or intend to manufacture, or process or intend to process, any chemical substance listed in Table 2 in paragraph (j) of this section at any time from the effective date of the final rule to the end of the test data reimbursement period as defined in 40 CFR 791.3(h), you are subject to this section with respect to that chemical substance.

(2) If you do not know or cannot reasonably ascertain that you manufacture or process a chemical substance listed in Table 2 in paragraph (j) of this section during the time period described in paragraph (b)(1) of this section (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you are not subject to this section with respect to that chemical substance.

(c) *If I am subject to this section, when must I comply with it?* (1) (i) Persons subject to this section are divided into two groups, as set forth in Table 1 of this paragraph: Tier 1 (persons initially required to comply) and Tier 2 (persons not initially required to comply). If you are subject to this section, you must determine if you fall within Tier 1 or Tier 2, based on Table 1 of this paragraph.

TABLE 1.—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Tier 1 (Persons initially required to comply with this section)	Tier 2 (Persons not initially required to comply with this section)
Persons not otherwise specified in column 2 of this table that manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section.	Tier 2A. Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kilogram (kg) (1,100 lbs.) annually (as described at 40 CFR 790.42(a)(4)); or —For research and development (as described at 40 CFR 790.42(a)(5)). B. Persons who process (as defined at TSCA section 3(10)) or intend to process a chemical substance included in this section (see 40 CFR 790.42(a)(2)).

(ii) Table 1 of paragraph (c)(1)(i) of this section expands the list of persons in Tier 2, that is those persons specified in § 790.42(a)(2), (a)(4) and (a)(5) of this chapter, who, while legally subject to this section, must comply with the requirements of this section only if directed to do so by EPA under the circumstances set forth in paragraphs (c)(4), (c)(5), (c)(6), (c)(7), and (c)(10) of this section.

(2) If you are in Tier 1 with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, you must, for each test required under this section for that chemical substance, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after the effective date of the final rule.

(3) If you are in Tier 2 with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, you are considered to have an automatic conditional exemption and you will be required to comply with this section with regard to that chemical substance only if directed to do so by EPA under paragraphs (c)(5), (c)(7), or (c)(10) of this section.

(4) If no person in Tier 1 has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2 in paragraph (j) of this section within 30 days after the effective date of the final rule, EPA will publish a **Federal Register** document that would specify the test(s) and the chemical substance(s) for which no letter of intent has been submitted and notify manufacturers in Tier 2A of their obligation to submit a letter of intent to test or to apply for an exemption from testing.

(5) If you are in Tier 2A (as specified in Table 1 in paragraph (c) of this section) with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, and if you manufacture, or intend to manufacture, this chemical substance as of [*30 days after date of publication of the final rule in the* **Federal Register**], or within 30 days after publication of the **Federal Register** document described in paragraph (c)(4) of this section, you must, for each test specified for that chemical substance in the document described in paragraph (c)(4) of this section, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after publication of the **Federal Register** document described in paragraph (c)(4) of this section.

(6) If no manufacturer in Tier 1 or Tier 2A has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2 in paragraph (j) of this section within 30 days after the publication of the **Federal Register** document described in paragraph (c)(4) of this section, EPA will publish another **Federal Register** document that would specify the test(s) and the chemical substance(s) for which no letter of intent has been submitted, and notify processors in Tier 2B of their obligation to submit a letter of intent to test or to apply for an exemption from testing.

(7) If you are in Tier 2B (as specified in Table 1 in paragraph (c) of this section) with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, and if you process, or intend to process, this chemical substance as of [*30 days after date of publication of the final rule in the* **Federal Register**], or within 30 days after publication of the **Federal Register** document described in paragraph (c)(6) of this section, you must, for each test specified for that chemical substance in the **Federal Register** document described in paragraph (c)(6) of this section, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after publication of the **Federal Register** document described in paragraph (c)(6) of this section.

(8) If no manufacturer or processor has notified EPA of its intent to conduct one or more of the tests required by this section for any of the chemical substances listed in Table 2 in paragraph (j) of this section within 30 days after the publication of the **Federal Register** document described in paragraph (c)(6) of this section, EPA will notify all manufacturers and processors of those chemical substances of this fact by certified letter or by publishing a **Federal Register** document specifying the test(s) for which no letter of intent has been submitted. This letter or **Federal Register** document will additionally notify all manufacturers and processors that all exemption applications concerning the test(s) have been denied, and will give the manufacturers and processors of the chemical substance(s) an opportunity to take corrective action.

(9) If no manufacturer or processor has notified EPA of its intent to conduct one or more of the tests required by this section for any of the chemical substances listed in Table 2 in paragraph (j) of this section within 30 days after receipt of the certified letter or publication of the **Federal Register** document described in paragraph (c)(8) of this section, all manufacturers and processors subject to this section with respect to that chemical substance who are not already in violation of this

section will be in violation of this section.

(10) If a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, under the procedures in §§ 790.93 and 790.97 of this chapter, EPA may initiate termination proceedings for all testing exemptions with respect to that chemical substance and may notify persons in Tier 1 and Tier 2 that they are required to submit letters of intent to test or exemption applications within a specified period of time.

(11) If you are required to comply with this section, but your manufacture or processing of, or intent to manufacture or process, a chemical substance listed in Table 2 in paragraph (j) of this section begins after the applicable compliance date referred to in paragraphs (c)(2), (c)(5), or (c)(6) of this section, you must either submit a letter of intent to test or apply to EPA for an exemption. The letter of intent to test or the exemption application must be received by EPA no later than the day you begin manufacture or processing.

(d) *What must I do comply with this section?* (1) To comply with this section you must either submit to EPA a letter of intent to test, or apply to and obtain from EPA an exemption from testing.

(2) For each test with respect to which you submit to EPA a letter of intent to test, you must conduct the testing specified in paragraph (h) of this section and submit the test data to EPA.

(3) You must also comply with the procedures governing test rule requirements in part 790 of this chapter, as modified by this section, including the submission of letters of intent to test or exemption applications, the submission of study plans prior to testing, the conduct of testing, and the submission of data; Part 792—Good Laboratory Practice Standards of this chapter; and this section. The following provisions of 40 CFR part 790 do not apply to this section: Paragraphs (a), (d), (e), and (f) of § 790.45; § 790.48; paragraph (a)(2) and paragraph (b) of § 790.80; paragraph (e)(1) of § 790.82; and § 790.85.

(e) *If I do not comply with this section, when will I be considered in violation of it?* You will be considered in violation of this section as of 1 day after the date by which you are required to comply with this section.

(f) *How are EPA's data reimbursement procedures affected for purposes of this section?* If persons subject to this section are unable to agree on the amount or method of reimbursement for test data development for one or more chemical substances included in this section, any person may request a hearing as described in 40 CFR part 791. In the determination of fair reimbursement shares under this section, if the hearing officer chooses to use a formula based on production volume, the total production volume amount will include amounts of a chemical substance produced as an impurity.

(g) *Who must comply with the export notification requirements?* Any person who exports, or intends to export, a chemical substance listed in Table 2 in paragraph (j) of this section is subject to part 707, subpart D, of this chapter.

(h) *How must I conduct my testing?* The tests that are required for each chemical substance are indicated in Table 2 in paragraph (j) of this section. The test methods that must be followed are provided in Table 3 in paragraph (j) of this section. You must proceed in accordance with these test methods as required according to Table 3 in paragraph (j) of this section, or as appropriate if more than one alternative is allowed according to Table 3 in paragraph (j) of this section.

(i) *Reporting requirements.* A final report for each specific test for each subject chemical substance must be received by EPA by [*13 months after the effective date of the final rule*] unless an extension is granted in writing pursuant to 40 CFR 790.55. A robust summary of the final report for each specific test shall be submitted electronically in addition to and at the same time as the final report. The term "robust summary" is used to describe the technical information necessary to adequately describe an experiment or study and includes the objectives, methods, results, and conclusions of the full study report which can be either an experiment or in some cases an estimation or prediction method. Guidance for the compilation of robust summaries is described in a document entitled "Draft Guidance on Developing Robust Summaries" which is available on-line at: *http://www.epa.gov/chemrtk/pubs/general/robsumgd.htm*.

(j) *Designation of specific chemical substances and testing requirements.* The chemical substances identified by chemical name, Chemical Abstract Service Registry number (CAS No.), and class in Table 2 of this paragraph must be tested in accordance with the requirements designated in Tables 2 and 3 of this paragraph, and the requirements described in 40 CFR Part 792–Good Laboratory Practice Standards:

TABLE 2.—CHEMICAL SUBSTANCES AND TESTING REQUIREMENTS

CAS No.	Chemical Name	Class	Required Tests (See Table 3 of this section)
83–41–0	Benzene, 1,2-dimethyl-3-nitro-	1	A1, A2, A3, A4, A5, D, E2, F1
96–22–0	3-Pentanone	1	E1, F2
98–09–9	Benzenesulfonyl chloride	1	C2, E1, E2, F1
98–56–6	Benzene, 1-chloro-4-(trifluoromethyl)-	1	A4, B, C1, F2
111–44–4	'Ethane, 1,1'-oxybis[2-chloro-	1	C6, F1
127–68–4	Benzenesulfonic acid, 3-nitro-, sodium salt (1:1)	1	A3, F2
506–51–4	1-Tetracosanol	1	A2, A3, A4, A5, B, C1, D, E1, E2, F1
506–52–5	1-Hexacosanol	1	A2, A3, A4, A5, C1, D, E1, E2, F1
515–40–2	Benzene, (2-chloro-1,1-dimethylethyl)-	1	A1, A3, A4, A5, B, C1, D, E1, E2, F1

TABLE 2.—CHEMICAL SUBSTANCES AND TESTING REQUIREMENTS—Continued

CAS No.	Chemical Name	Class	Required Tests (See Table 3 of this section)
2494–89–5	Ethanol, 2-[(4-aminophenyl)sulfonyl]-, 1-(hydrogen sulfate)	1	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
5026–74–4	2-Oxiranemethanamine, *N*-[4-(2-oxiranylmethoxy)phenyl]-*N*-(2-oxiranylmethyl)-	1	A1, A2, A3, A4, A5, B, C2, F1
22527–63–5	Propanoic acid, 2-methyl-, 3-(benzoyloxy)-2,2,4-trimethylpentyl ester	1	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
24615–84–7	2-Propenoic acid, 2-carboxyethyl ester	1	A1, A2, A3, A4, A5, B, C1, E1, E2, F1
25321–41–9	Benzenesulfonic acid, dimethyl-	1	A2, A3, A4, A5, B, C1, D, E1, E2, F1
25646–71–3	Methanesulfonamide, *N*-[2-[(4-amino-3-methylphenyl)ethylamino]ethyl]-, sulfate (2:3)	1	A1, A2, A3, A4, A5, B, C1, F1
52556–42–0	1-Propanesulfonic acid, 2-hydroxy-3-(2-propenyloxy)-, sodium salt (1:1)	1	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
61788–76–9	Alkanes, chloro	2	A2, A3, A4, A5, B,
65996–79–4	Solvent naphtha (coal)	2	A3, A4, A5, B, C1, D, E1, E2, F1
65996–82–9	Tar oils, coal	2	A3, A4, A5, B, C1, D, E1, E2, F1
65996–89–6	Tar, coal, high-temperature	2	A4, A5, B, C1, D, E1, E2, F1
65996–92–1	Distillates (coal tar)	2	A3, A4, A5, B, C1, D, E1, E2, F2
68082–78–0	Lard, oil, Me esters	2	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
68187–57–5	Pitch, coal tar-petroleum	2	A4, A5, B, C6, D, E1, E2, F1
68442–60–4	Acetaldehyde, reaction products with formaldehyde, by-products from	2	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
68610–90–2	2-Butenedioic acid (2E)-, di-C8–18-alkyl esters	2	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
68988–22–7	1,4-Benzenedicarboxylic acid, 1,4-dimethyl ester, manuf. of, by-products from	2	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
70693–50–4	Phenol, 2,4-bis(1-methyl-1-phenylethyl)-6-[2-(2-nitrophenyl)diazenyl]-	1	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
72162–15–3	1-Decene, sulfurized	2	A2, A3, A4, A5, B, C1, D, E1, E2, F1
73665–18–6	Extract residues (coal), tar oil alk., naphthalene distn. residues	2	A2, A3, A4, A5, B, C1, D, E1, E2, F1

TABLE 3.—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2 OF THIS PARAGRAPH

Testing Category	Test	Test Requirements and References	Special Conditions
Physical/Chemical Properties	A	1. Melting Point: ASTM E 324–99 (capillary tube) 2. Boiling Point: ASTM E 1719–05 (ebulliometry) 3. Vapor Pressure: ASTM E 1782–03 (thermal analysis) 4. *n*-Octanol/Water Partition Coefficient (log 10 basis) or log K_{ow}: (See Special Conditions for the log K_{ow} test requirement and select the appropriate method to use, if any, from those listed in this column.) Method A: 40 CFR 799.6755 (shake flask) Method B: ASTM E 1147–92(2005) (liquid chromatography) Method C: 40 CFR 799.6756 (generator column) 5. Water Solubility: (See Special Conditions for the water solubility test requirement and select the appropriate method to use, if any, from those listed in this column.) Method A: ASTM E 1148-02 (shake flask) Method B: 40 CFR 799.6784 (shake flask) Method C: 40 CFR 799.6784 (column elution) Method D: 40 CFR 799.6786 (generator column)	*n-Octanol/Water Partition Coefficient* or log K_{ow}: Which method is required, if any, is determined by the test substance's estimated [i] log K_{ow} as follows: log K_{ow} < 0: no testing required. log K_{ow} range 0–1: Method A or B. log K_{ow} range > 1–4: Method A or B or C. log K_{ow} range > 4–6: Method B or C. log K_{ow} > 6: Method C. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted at pH 7. *Water Solubility*: Which method is required, if any, is determined by the test substance's estimated [ii] water solubility. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted starting at pH 7. > 5,000 mg/L: Method A or B. > 10 mg/L—5,000 mg/L: Method A, B, C, or D. > 0.001 mg/L—10 mg/L: Method C or D. ≤ 0.001 mg/L: no testing required.
Environmental Fate and Pathways—Ready Biodegradation	B	For B, consult ISO 10634 for guidance, and choose one of the methods listed in this column: 1. ASTM 1720–01 (sealed vessel CO_2 production test) OR 2. ISO 14593 (CO_2 headspace test) OR 3. ISO 7827 (analysis of DOC) OR 4. ISO 9408 (determination of oxygen demand in a closed respirometer) OR 5. ISO 9439 (CO_2 evolution test) OR 6. ISO 10707 (closed bottle test) OR 7. ISO 10708 (two-phase closed bottle test)	Which method is required, if any, is determined by the test substance's physical and chemical properties, including its water solubility. ISO 10634 provides guidance for selection of an appropriate test method for a given test substance. Test sponsors must provide in the final study report the underlying rationale for the method selected.
Aquatic Toxicity	C1	For C1, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—see Special Conditions. *Test Group 1 for C1*: 1. Acute Toxicity To Fish: ASTM E 729–96(2002) 2. Acute Toxicity To Daphnia: ASTM E 729–96(2002) 3. Toxicity To Plants (Algae): ASTM E 1218–04e1 *Test Group 2 for C1*: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97(2004) 2. Toxicity To Plants (Algae): ASTM E 1218–04e1	The following are the Special Conditions for C1, C2, C3, C4, C5, and C7 testing; there are no Special Conditions for C6. Which test group is required is determined by the test substance's measured log K_{OW} as obtained under Test Category A, or using an existing measured log K_{OW}. [iii] If log K_{ow} < 4.2: Test Group 1 is required. If log K_{ow} ≥ 4.2: Test Group 2 is required.

TABLE 3.—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2 OF THIS PARAGRAPH—Continued

Testing Category	Test	Test Requirements and References	Special Conditions
	C2	For C2, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—see Special Conditions.. *Test Group 1 for C2*: 1. Acute Toxicity To Daphnia: ASTM E 729–96(2002) 2. Toxicity To Plants (Algae): ASTM E 1218–04e1 *Test Group 2 for C2*: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97(2004) 2. Toxicity To Plants (Algae): ASTM E 1218–04e1	
	C3	For C3, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—see Special Conditions. *Test Group 1 for C3*: 1. Acute Toxicity To Fish: ASTM E 729–96(2002) 2. Toxicity To Plants (Algae): ASTM E 1218–04e1 *Test Group 2 for C3*: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97(2004) 2. Toxicity To Plants (Algae): ASTM E 1218–04e1	
	C4	For C4, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—see Special Conditions. *Test Group 1 for C4*: 1. Acute Toxicity To Fish: ASTM E 729–96(2002) 2. Acute Toxicity To Daphnia: ASTM E 729–96(2002) *Test Group 2 for C4*: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97(2004) 2. [Reserved]	
	C5	For C5, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—see Special Conditions. *Test Group 1 for C5*: 1. Acute Toxicity To Daphnia: ASTM E 729–96(2002) 2. [Reserved] *Test Group 2 for C5*: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97(2004) 2. [Reserved]	
	C6	Toxicity To Plants (Algae): ASTM E 1218–04e1	

TABLE 3.—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2 OF THIS PARAGRAPH—Continued

Testing Category	Test	Test Requirements and References	Special Conditions
	C7	For C7, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—see Special Conditions. *Test Group 1 for C7*: 1. Acute Toxicity To Fish: ASTM E 729–96(2002) 2. [Reserved] *Test Group 2 for C7*: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97(2004) 2. [Reserved]	
Mammalian Toxicity—Acute	D	See Special Conditions for this test requirement and select the method that must be used from those listed in this column. *Method A*: Acute Inhalation Toxicity (rat): 40 CFR 799.9130 *Method B*: EITHER: 1. Acute (Up/Down) Oral Toxicity (rat): ASTM E 1163–98(2002) OR 2. Acute (Up/Down) Oral Toxicity (rat): 40 CFR 799.9110(d)(1)(i)(A)	Which testing method is required is determined by the test substance's physical state at room temperature (25°C). For those test substances that are gases at room temperature, Method A is required; otherwise, use either of the two methods listed under Method B. In Method B, 40 CFR 799.9110(d)(1)(i)(A) refers to the OECD 425 Up/Down Procedure. [iv] Estimating starting dose for Method B: Data from the neutral red uptake basal cytotoxicity assay [v] using normal human keratinocytes or mouse BALB/c 3T3 cells may be used to estimate the starting dose.
Mammalian Toxicity—Genotoxicity	E1	Bacterial Reverse Mutation Test (*in vitro*): 40 CFR 799.9510	None
	E2	Conduct any one of the following three tests for chromosomal damage: *In vitro* Mammalian Chromosome Aberration Test: 40 CFR 799.9537 OR Mammalian Bone Marrow Chromosomal Aberration Test (*in vivo* in rodents: mouse (preferred species), rat, or Chinese hamster): 40 CFR 799.9538 OR Mammalian Erythrocyte Micronucleus Test [sampled in bone marrow] (*in vivo* in rodents: mouse (preferred species), rat, or Chinese hamster): 40 CFR 799.9539	Persons required to conduct testing for chromosomal damage are encouraged to use the *in vitro* Mammalian Chromosome Aberration Test (40 CFR 799.9537) to generate the needed data unless known chemical properties (e.g., physical/chemical properties, chemical class characteristics) preclude its use. A subject person who uses one of the *in vivo* methods instead of the *in vitro* method to address a chromosomal damage test requirement must submit to EPA a rationale for conducting that alternate test in the final study report.
Mammalian Toxicity—Repeated Dose/Reproduction/Developmental	F1	Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9365 OR Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9355 AND Repeated Dose 28–Day Oral Toxicity Study in rodents: 40 CFR 799.9305	Where F1 is required, EPA recommends use of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365). However, there may be valid reasons to test a particular chemical using both 40 CFR 799.9355 and 40 CFR 799.9305 to fill Mammalian Toxicity—Repeated Dose/Reproduction/Developmental data needs. A subject person who uses the combination of 40 CFR 799.9355 and 40 CFR 799.9305 in place of 40 CFR 799.9365 must submit to EPA a rationale for conducting these alternate tests in the final study reports. Where F2 or F3 is required, no rationale for conducting the required test need be provided in the final study report.
	F2	Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9355	
	F3	Repeated Dose 28–Day Oral Toxicity Study in rodents: 40 CFR 799.9305	

i. EPA recommends, but does not require, that log K_{OW} be quantitatively estimated prior to initiating this study. One method, among many similar methods, for estimating log K_{OW} is described in the article entitled "Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients" by W.M. Meylan and P.H. Howard in the *Journal of Pharmaceutical Sciences*. 84(1):83–92. January 1992. This reference is available under docket ID number EPA–HQ–OPPT–2007–0531 at the EPA Docket Center, Rm. 3334 in the EPA West Bldg. located at 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

ii. EPA recommends, but does not require, that water solubility be quantitatively estimated prior to initiating this study. One method, among many similar methods, for estimating water solubility is described in the article entitled "Improved Method for Estimating Water Solubility From Octanol/Water Partition Coefficient" by W.M. Meylan, P.H. Howard, and R.S. Boethling in *Environmental Toxicology and Chemistry*. 15(2):100–106. 1996. This reference is available under docket ID number EPA–HQ–OPPT–2007–0531 at the EPA Docket Center, Rm. 3334 in the EPA West Bldg. located at 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

iii. Chemical substances that are dispersible in water may have log K_{ow} values greater than 4.2 and may still be acutely toxic to aquatic organisms. Test sponsors who wish to conduct Test Group 1 studies on such chemical substances may request a modification to the test standard as described in 40 CFR 790.55. Based upon the supporting rationale provided by the test sponsor, EPA may allow an alternative threshold or method be used for determining whether acute or chronic aquatic toxicity testing be performed for a specific substance.

iv. The OECD 425 Up/Down Procedure, revised by OECD test guidelines in December 2001, is available under docket ID number EPA–HQ–OPPT–2007–0531 at the EPA Docket Center, Rm. 3334 in the EPA West Bldg. located at 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

v. The neutral red uptake basal cytotoxicity assay, which may be used to estimate the starting dose for the mammalian toxicity-acute endpoint, is available under docket ID number EPA–HQ–OPPT–2007–0531 at the EPA Docket Center, Rm. 3334 in the EPA West Bldg. located at 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

(k) *Effective date.* This section is effective on [*30 days after date of publication of the final rule in the* **Federal Register**].

[FR Doc. 2010–3734 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2008–0059; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Sonoran Desert Population of the Bald Eagle as a Threatened or Endangered Distinct Population Segment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Sonoran Desert Area population of the bald eagle (*Haliaeetus leucocephalus*) as a distinct population segment (DPS). In the petition, we were asked that the DPS be recognized, listed as endangered, and that critical habitat be designated under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that the Sonoran Desert Area population of the bald eagle does not meet the definition of a DPS and, therefore, is not a listable entity under the Act. As a result, listing is not warranted, and we intend to publish a separate notice to remove this population from the List of Threatened and Endangered Wildlife once the District Court for the District of Arizona has been notified. We ask the public to continue to submit to us any new information that becomes available concerning the taxonomy, biology, ecology, and status of this population of the bald eagle and to support cooperative conservation of the bald eagle within the Sonoran Desert Area.

DATES: The finding announced in this document was made on February 25, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number [FWS–R2–ES–2008–0044]. Supporting documentation for this finding is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above address, Attention: Sonoran Desert Area bald eagle.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Office (*see* **ADDRESSES**); telephone, 602–242–0210; facsimile, 602–242–2513. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring that we make a subsequent finding within 12 months. Such 12-month findings must be published in the **Federal Register**.

This notice constitutes our 12-month finding on a petition to list the Sonoran Desert Area bald eagle. In this document, the Sonoran Desert Area population is the name given to the entity under evaluation for designation as a DPS. For the purposes of this assessment, the Sonoran Desert Area population includes all bald eagle territories within Arizona, the Copper Basin breeding area in California near the Colorado River, and the territories of interior Sonora, Mexico, that occur within the Sonoran Desert or adjacent, transitional communities. For more detail on the boundary of the DPS, *see* the discussion below under *Determination of the Area for Analysis.*

Previous Federal Action

Bald eagles gained protection under the Bald Eagle Protection Act (16 U.S.C. 668–668d) in 1940 and the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712) in 1972. A 1962 amendment to the Bald Eagle Protection Act added protection for the golden eagle and the amended statute became known as the Bald and Golden Eagle Protection Act (BGEPA). On March 11, 1967 (32 FR 4001), the Secretary of the Interior listed bald eagles south of 40 north latitude as endangered under the Endangered Species Preservation Act of 1966 (Pub. L. 89–699, 80 Stat. 926) due to a population decline caused by dichlorodiphenyltrichloroethane (DDT) and other factors. On February 14, 1978, the Service listed the bald eagle as an endangered species under the Act (16 U.S.C. 1531 *et seq.*) in 43 of the contiguous States, and as a threatened species in the States of Michigan, Minnesota, Wisconsin, Oregon, and Washington (43 FR 6230). Sub-specific designations for northern and southern eagles were removed.

On February 7, 1990, we published an advance notice of proposed rulemaking (55 FR 4209) to reclassify the bald eagle from endangered to threatened in the 43 States where it had been listed as endangered and retain the threatened status for the other five States. On July 12, 1994, we published a proposed rule to accomplish this reclassification (59 FR 35584), and the final rule was published on July 12, 1995 (60 FR 36000).

On July 6, 1999, we published a proposed rule to delist the bald eagle throughout the lower 48 States due to recovery (64 FR 36454). On February 16, 2006, we reopened the public comment period to consider new information received on our July 6, 1999 (71 FR 8238), proposed rule to delist the bald eagle in the lower 48 States. The reopening notice contained updated information on several State survey efforts and population numbers. Simultaneously with the reopening of the public comment period on the proposed delisting, we also published two **Federal Register** documents soliciting public comments on two new items intended to clarify the BGEPA protections for the bald eagle after delisting: (1) A proposed rule for a regulatory definition of "disturb" (71 FR 8265), and (2) a notice of availability for draft National Bald Eagle Management Guidelines (71 FR 8309). On May 16, 2006, we published three separate notices in the **Federal Register** that extended the public comment period on the proposed delisting (71 FR 28293), the proposed regulatory definition of "disturb" (71 FR 28294), and the draft guidelines (71 FR 28369). The comment period for all three documents was extended to June 19, 2006.

Between publication of the July 6, 1999, proposed rule to delist the bald eagle and the February 16, 2006, reopening of the comment period on the proposed rule to delist the bald eagle, we received a petition regarding bald eagles in the southwestern United States. On October 6, 2004, we received a petition from the Center for Biological Diversity (CBD), the Maricopa Audubon Society, and the Arizona Audubon Council requesting that the "Southwestern desert nesting bald eagle population" be classified as a DPS, that this DPS be reclassified from a threatened species to an endangered species, and that we concurrently designate critical habitat for the DPS under the Act.

On March 27, 2006, the CBD and the Maricopa Audubon Society filed a lawsuit against the U.S. Department of the Interior and the Service for failing to make a timely finding on the petition. The parties reached a settlement, and the Service agreed to complete its petition finding by August 2006. We announced in our 90-day finding on August 30, 2006 (71 FR 51549), that the petition did not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

On January 5, 2007, the CBD and the Maricopa Audubon Society filed a lawsuit challenging the Service's 90-day finding that the "Sonoran Desert population" of the bald eagle did not qualify as a DPS, and further challenging the Service's 90-day finding that the population should not be uplisted to endangered status.

On July 9, 2007 (72 FR 37346), we published the final delisting rule for bald eagles in the lower 48 States. This final delisting rule also constituted the Service's final determination on the status of the Sonoran Desert population of bald eagles. In that final delisting rule, we stated that our findings on the status of the Sonoran Desert population of bald eagles superseded our 90-day petition finding because the final delisting rule constituted a final decision on the DPS determination. This determination was based on a thorough review of the best available data, which indicated that the threats to the species had been eliminated or reduced to the point that the species had recovered and no longer met the definition of a threatened or endangered species under the Act. It addressed the same issues that the Service would have considered as part of a 12-month finding had the Service made a positive 90-day finding on the petition and then subsequently conducted the required status review. We determined that the final delisting rule therefore rendered moot any issues regarding the 90-day petition finding.

On August 17, 2007, the CBD and the Maricopa Audubon Society filed a Motion for Summary Judgment, requesting the court to make a decision on their January 5, 2007, lawsuit. In early 2008, several Native American Tribes submitted *amicus curiae* ("friend of the court") briefs in support of the August 17, 2007, Motion for Summary Judgment. The San Carlos Apache Tribe, Yavapai-Apache Nation, and Tonto Apache Tribe submitted an *amicus curiae* brief to the court on January 29, 2008; the Salt River Pima-Maricopa Indian Community submitted an *amicus curiae* brief to the court on February 4, 2008; and the Fort McDowell Yavapai Nation submitted an *amicus curiae* brief to the court on February 7, 2008.

On March 5, 2008, the U.S. District Court for the District of Arizona made a final decision in the case and ruled in favor of the CBD and the Maricopa Audubon Society. The court order (*Center for Biological Diversity* v. *Kempthorne,* CV 07–0038–PHX–MHM (D. Ariz)), was filed on March 6, 2008.

The court:

(1) Ordered the Service to conduct a status review of the Desert bald eagle population pursuant to the Act to determine whether listing that population as a DPS is warranted, and if so, whether listing that DPS as threatened or endangered pursuant to the Act is warranted;

(2) Ordered the Service to issue a 12-month finding on whether listing the Desert bald eagle population as a DPS is warranted, and if so, whether listing that DPS as threatened or endangered is warranted;

(3) Ordered the Service to issue the 12-month finding within 9 months of the court order pursuant to 16 U.S.C. 1533(b)(3)(B), which translates to on or before December 5, 2008;

(4) Enjoined the Service's application of the July 9, 2007 (72 FR 37346), final delisting rule to the Sonoran Desert population of bald eagles pending the outcome of our status review and 12-month petition finding.

On May 1, 2008, we published a final rule designating bald eagles within the Southwest as a DPS for purposes of conforming to the court-ordered requirement to retain listing status as threatened for those bald eagles in the petitioned area (73 FR 23966). A map of the DPS for that action was included in the rule.

On May 20, 2008, we published a **Federal Register** notice (73 FR 29096) initiating a status review for the bald eagle in the Sonoran Desert Area of central Arizona and Northwestern Mexico. The information collection period remained open until July 7, 2008. Additional comments were received and considered beyond this date as discussed below.

On August 27, 2008, the CBD and Maricopa Audubon Society filed an unopposed motion (CV07–0038–PHX–MHM) to amend the March 6, 2008, court order by extending the completion date of the status review of the Desert bald eagle population until October 12, 2009. Supporting declarations were filed by the Salt River Pima-Maricopa Indian Community, the Inter Tribal Council of Arizona, and Joe P. Sparks. The motion was granted on August 29, 2008.

On September 14, 2009, the Service filed an unopposed motion to amend the March 6, 2008, court order by extending the completion date of the status review of the Sonoran Desert bald eagle population until February 12,

2010 (CV07–0038–PHX–MHM). The motion was granted on September 25, 2009, and a second extension was put in place.

On February 11, 2010, the Service filed, and was granted, an unopposed motion for a one week extension, extending the completion date to February 19, 2010.

Public Information

As noted above, on May 20, 2008, the Service published a notice to initiate a 12-month status review for the Sonoran Desert population of bald eagle in central Arizona and northwestern Mexico, and a solicitation for new information. To allow adequate time to consider the information, we requested that information be submitted on or before July 7, 2008. On January 15, 2009, a second **Federal Register** notice (74 FR 2465) was published announcing the continuation of information collection for the 12-month status review. In order to allow us adequate time to consider and incorporate submitted information, we requested that we receive information on or before July 10, 2009. Between May 2008 and the time that we published this document, 31 responses were submitted to *http://www.regulations.gov* and 5 letters were received by U.S. mail.

Tribal Information

In accordance with Secretarial Order 3206, the Service acknowledges our responsibility to consult with Federally recognized Tribes on a government-to-government basis. Over the course of the bald eagle status review, we have corresponded and met with various Tribes in Arizona, all of whom support protection of the bald eagle under the Act. On July 2, 2008, the Service and Tribal representatives from four Western Apache Tribes and one Nation (White Mountain Apache, San Carlos Apache, Tonto Apache Tribes, and Yavapai-Apache Nation) met to hear testimony from cultural authorities on a variety of subjects including the history of the eagle in Arizona, and the importance of the eagle to the Apache people. At the request of Tribal representatives, this meeting was recorded and incorporated into the administrative record for the 12-month finding. On July 3, 2008, the Service met with members of the Salt River Pima-Maricopa Indian Community, Gila River Indian Community, Tohono O'Odham Nation, Ak-Chin Indian Community, Tonto Apache Tribe, Fort McDowell Yavapai Nation, the Hopi Tribe, Pascua Yaqui Tribe, Zuni Tribe, and the InterTribal Council of Arizona. This meeting was held in Phoenix, Arizona, and a court reporter was present recording the meeting minutes. Members of the Tribes and nations present, however, did not consider this meeting government-to-government consultation pursuant to Secretarial Order 3206. On July 20, 2009, an official consultation meeting between the Service and Salt River Pima-Maricopa Indian Community occurred. Written comments were provided by the Western Apache Tribes and Nation and the Salt River Pima-Maricopa Indian Community on July 10, 2009.

Although comments from the Native American communities were provided in writing, much of the knowledge about the bald eagle was offered during the above-referenced face-to-face meetings. Native American knowledge about the eagle is passed down orally from one generation to the next, which is often referred to in the literature as traditional ecological knowledge. Traditional ecological knowledge refers to the knowledge base acquired by indigenous and local peoples over many hundreds of years through direct contact with the environment. Traditional knowledge is based in the ways of life, belief systems, perceptions, cognitive processes, and other means of organizing and transmitting information in a particular culture. Traditional ecological knowledge includes an intimate and detailed knowledge of plants, animals, and natural phenomena; the development and use of appropriate technologies for hunting, fishing, trapping, agriculture, and forestry; and a holistic knowledge, or "world view," which parallels the scientific discipline of ecology (Inglis 1993, p. vi).

Testimony by the Western Apache Tribes and Nation and Salt River Pima-Maricopa Indian Community clearly demonstrates the importance of the bald eagle to their culture, its relevance to their well-being, and their respect for its power. Their testimony also demonstrates the Western Apache and Salt-River Pima Maricopa knowledge base of the bald eagle and its habitat. The Native American relationship with the bald eagle in the Sonoran Desert Area predates modern Western scientific knowledge of the bald eagle by thousands of years (Lupe *et al.* pers. comm. 2008, p. 1). Given the expertise and traditional ecological knowledge about the bald eagle in the Southwest by the Western Apache Tribes and Nation and Salt-River Pima Maricopa Indian Community, we have attempted to incorporate their indigenous knowledge and information into our status review and 12-month finding.

Species Information

The bald eagle (*Haliaeetus leucocephalus*) is the only species of sea eagle regularly occurring in North America (60 FR 35999; July 12, 1995). Literally translated, *H. leucocephalus* means white-headed sea eagle. Bald eagles are birds of prey of the Order Falconiformes and Family Accipitridae. They vary in length from 28 to 38 inches (in) (71 to 96 centimeters (cm)), weigh between 6.6 and 13.9 pounds (lbs) (3.0 and 6.3 kilograms (kg)), and have a 66- to 96-in (168- to 244-cm) wingspan. Distinguishing features of adult bald eagles include a white head, tail, and upper- and lowertail-coverts; a dark brown body and wings; and a yellow iris, beak, leg, and foot. Immature bald eagles are mostly dark brown and lack a white head and tail until they reach approximately 5 years of age (Buehler 2000, p. 2).

Biology and Distribution

Though once considered endangered, the bald eagle population in the lower 48 States has increased considerably in recent years. Regional bald eagle populations in the Northwest, Great Lakes, Chesapeake Bay, and Florida have increased five-fold in the past 20 years. Bald eagles are now repopulating areas throughout much of the species' historical range that were unoccupied only a few years ago.

The bald eagle ranges throughout much of North America, nesting on both coasts from Florida to Baja California, Mexico in the south, and from Labrador to the western Aleutian Islands, Alaska, in the north. Fossil records indicate that bald eagles inhabited North America approximately 1 million years ago, but they may have been present before that (Stahlmaster 1987, p. 5). An estimated quarter to a half million bald eagles lived on the North American continent before the first Europeans arrived.

In many Western Apache groups, the bald eagle is called *Istlgáí,* which translates to "the white eagle" and is distinguished from the golden eagle, which is called *Itsa Cho* or "the big eagle." The bald eagle was first described in Western culture in 1766 as *Falco leucocephalus* by Linnaeus. This South Carolina specimen was later renamed as the southern bald eagle, subspecies *Haliaeetus leucocephalus leucocephalus* (Linnaeus) when Townsend identified the northern bald eagle as *Haliaeetus leucocephalus alascanus* in 1897 (Buehler 2000, p. 4). By the time the bald eagle was listed throughout the lower 48 States under the Endangered Species Act in 1978, ornithologists no longer recognized the

subspecies (American Ornithologists Union 1983, p. 106).

The bald eagle is a bird of aquatic ecosystems. It frequents estuaries, large lakes, reservoirs, major rivers, and some seacoast habitats. Fish is the major component of its diet, but waterfowl, gulls, and carrion are also eaten. The species may also use prairies if adequate food is available. Bald eagles usually nest in trees near water, but are known to nest on cliffs and (rarely) on the ground. The trees must be sturdy and open to support a nest that is often 5 feet (ft) (1.52 meters (m)) wide and 3 ft (0.91 m) deep. Adults tend to use the same breeding areas year after year, and often the same nest, though a breeding area may include one or more alternate nests. Nest shape and size vary, but typical nests are approximately 4.9 to 5.9 ft (1.5 to 1.8 m) in diameter and 2.3 to 4.3 ft (0.7 to 1.2 m) tall (Stahlmaster 1987, p. 53). In winter, bald eagles often congregate at specific wintering sites that are generally close to open water and offer good perch trees and night roosts.

Bald eagles are long-lived. One of the longest-living bald eagles known in the wild was reported near Haines, Alaska, as 28 years old (Schempf 1997, p. 150). In 2009, a female eagle nesting at Alamo Lake in Arizona turned 30 years old (J. Driscoll, Arizona Game and Fish Department (AGFD), pers. comm. 2009). In captivity, bald eagles may live 40 or more years. It is presumed that once they mate, the bond is long-term. Variations in pair bonding are known to occur. If one mate dies or disappears, the other will accept a new partner.

Bald eagle pairs begin courtship about a month before egg-laying. In the south, courtship occurs as early as September, and in the north, as late as May. The nesting season lasts about 6 months. Incubation lasts approximately 35 days, and fledging takes place at 11 to 12 weeks of age. Parental care may extend 4 to 11 weeks after fledging (Hunt *et al.* 1992, p. C9; Wood *et al.* 1998, pp. 336–338). The fledgling bald eagle is generally dark brown except the underwing linings, which are primarily white. Between fledging and adulthood, the bald eagle's appearance changes with feather replacement each summer. Young, dark bald eagles may be confused with the golden eagle, *Aquila chrysaetos.* The bald eagle's distinctive white head and tail are not apparent until the bird fully matures, usually at 4 to 5 years of age.

The migration strategies for breeding, nonbreeding, and juvenile or subadult age classes of bald eagles will vary depending on geographic location. Young eagles may wander widely for years before returning to nest in natal areas. Northern bald eagles winter in areas such as the Upper Mississippi River, Great Lakes shorelines, and river mouths in the Great Lakes area. For midcontinent bald eagles, wintering grounds may be the southern States, and for southern bald eagles, whose nesting may begin in the winter months, the nonbreeding season foraging areas may be the Chesapeake Bay or Yellowstone National Park during the summer. Eagles seek wintering (nonnesting) areas offering an abundant and readily available food supply with suitable night roosts. Night roosts typically offer isolation and thermal protection from winds. Carrion and easily scavenged prey provide important sources of winter food in terrestrial habitats far from open water.

The first major decline in the bald eagle population probably began in the mid to late 1800s. Widespread shooting for feathers and trophies led to extirpation of eagles in some areas. Shooting also reduced part of the bald eagle's prey base. Big game animals like bison, which were seasonally important to eagles as carrion, were decimated. Hunters also reduced the numbers of waterfowl, shorebirds, and small mammals. Ranchers used carrion treated with strychnine, thallium sulfate, and other poisons as bait to kill livestock predators and ultimately killed many eagles as well. These were the major factors, in addition to loss of nesting habitat from forest clearing and development, which contributed to a reduction in bald eagle numbers through the 1940s. In 1940, Congress passed the Bald Eagle Protection Act (16 U.S.C. 668–668d). This law prohibits the take, possession, sale, purchase, barter, or offer to sell, purchase or barter, transport, export or import, of any bald eagle, alive or dead, including any part, nest, or egg, unless allowed by permit (16 U.S.C. 668(a)). "Take" includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb (16 U.S.C. 668c; 50 CFR 22.3). The Bald Eagle Protection Act and increased public awareness of the bald eagle's status resulted in partial recovery or at least a slower rate of decline of the species in most areas of the country.

In the late 1940s, the use of dichlorodiphenyltrichloroethane (DDT) and other organochlorine compounds became widespread. Initially, DDT was sprayed extensively along coastal and other wetland areas to control mosquitoes (Carson 1962, pp. 28–29, 45–55). Later farmers used it as a general crop insecticide. As DDT accumulated in individual bald eagles from ingesting prey containing DDT and its metabolites, reproductive success plummeted. In the late 1960s and early 1970s, it was determined that dichlorophenyl-dichloroethylene (DDE), the principal breakdown product of DDT, accumulated in the fatty tissues of adult female bald eagles. DDE impaired calcium release necessary for normal eggshell formation, resulting in thin shells and reproductive failure.

In response to this decline, the Secretary of the Interior, on March 11, 1967 (32 FR 4001), listed bald eagles south of the 40th parallel as endangered under the Endangered Species Preservation Act of 1966 (16 U.S.C. 668aa–668cc). Bald eagles north of this line were not included in that action primarily because the Alaskan and Canadian populations were not considered endangered in 1967. On December 31, 1972, the Environmental Protection Agency banned the use of DDT in the United States. The following year, Congress passed the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

Nationwide bald eagle surveys, conducted in 1973 and 1974 by the Service, other cooperating agencies, and conservation organizations, revealed that the eagle population throughout the lower 48 States was declining. We responded in 1978 by listing the bald eagle throughout the lower 48 States as endangered except in Michigan, Minnesota, Wisconsin, Washington, and Oregon, where it was designated as threatened (43 FR 6233, February 14, 1978).

To facilitate the recovery of the bald eagle and the ecosystems upon which it depends, we divided the lower 48 States into five recovery regions. Separate recovery teams composed of experts in each geographic area prepared recovery plans for their region. The teams established goals for recovery and identified tasks to achieve those goals. Coordination meetings were held regularly among the five teams to exchange data and other information. We used these five recovery plans to provide guidance to the Service, States, and other partners on methods to minimize and reduce the threats to the bald eagle and to provide measurable criteria that would be used to help determine when the threats to the bald eagle had been reduced so that the bald eagle could be removed from the Federal List of Endangered and Threatened Wildlife and Plants.

Recovery plans in general are not regulatory documents and are instead intended to provide a guide on how to achieve recovery. There are many paths to accomplishing recovery of a species.

The main goal is to remove the threats to a species, which may occur without meeting all recovery criteria contained in a recovery plan. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. In that instance, the Service may judge that, overall, the threats have been reduced sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or perhaps to delist the species. In other cases, recovery opportunities may be recognized that were not known at the time the recovery plan was finalized. Achievement of these opportunities may be counted as progress toward recovery in lieu of methods identified in the recovery plan. Likewise, we may learn information about the species that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management, and judging the degree of recovery of a species is also an adaptive management process that may, or may not, fully follow the guidance provided in a recovery plan.

Recovery of the bald eagle has been a dynamic process. During the recovery implementation process the Service used new information as it became available, to help determine whether recovery was on track. For instance, after the bald eagle was downlisted in 1995, the Southeastern Recovery Plan did not have specific delisting goals, and the Service used the recovery team to help determine the appropriate goal. This new delisting goal, developed by a team of individuals with bald eagle expertise, was the best guidance available to the Service for use in determining whether threats had been removed and whether to move forward with delisting was appropriate.

Between 1990 and 2000, the bald eagle population had a national average productivity of at least one fledgling per nesting pair per year. As a result, the bald eagle's nesting population increased at a rate of about eight percent per year during this time period. Since 1963, when the Audubon Society estimated that there were 487 nesting pairs, bald eagle breeding in the lower 48 States has expanded to more than 9,789 nesting pairs (Service 1995, p. 36001; Service 1999, p. 36457). By 2007, the bald eagles bred in each of the lower 48 States, with the greatest number of breeding pairs occurring in Minnesota (1,313), Florida (1,133), Wisconsin (1,065), and Washington (848) (Service 2007, p. 37349).

Regional bald eagle populations in the Northwest, Great Lakes, Chesapeake Bay, and Florida have increased five-fold from the late 1970s to the late 1990s. Bald eagles are now repopulating areas throughout much of the species' historical range that were unoccupied only a few years ago (64 FR 36454; July 6, 1999). The nationwide recovery of the bald eagle is due in part to the reduction in levels of persistent organochlorine pesticides (such as DDT) and habitat protection and management actions.

Historical and Current Status of the Sonoran Desert Area Population

Below we discuss the status of eagles in the Sonoran Desert Area population and in the States surrounding the Sonoran Desert Area population because it provides a context for our evaluation of whether the Sonoran Desert Area is a distinct population segment of bald eagles. As described above, the Sonoran Desert Area refers to all Sonoran Desert bald eagle territories within Arizona, the Copper Basin breeding area along the Colorado River just into California, and the territories of interior Sonora, Mexico. Bald eagles in Baja California are not included in our definition of the Sonoran Desert Area population because (1) they are associated with a marine, rather than inland, environment (Figure 1), (2) there is no documentation of Baja bald eagles interchanging with those in the Sonoran Desert Area, and (3) currently extant nests in Baja are limited to the Magdalena Bay region along the coast of the Pacific Ocean (Arnaud *et al.* 2001, p. 136; and King 2006, p. 4), in a coastal, rather than inland, climate.

Arizona

Hunt *et al.* (1992, pp. A11–A12) summarized the earliest records from the literature for bald eagles in Arizona. Coues noted bald eagles in the vicinity of Fort Whipple (now Prescott) in 1866, and Henshaw reported bald eagles south of Fort Apache in 1875. Bent (1937, pp. 321–333) reported breeding eagles at Fort Whipple in 1866 and on the Salt River Bird Reservation (since inundated by Roosevelt Lake) in 1911. Breeding eagle information was also recorded in 1890 near Stoneman Lake by S.A. Mearns. Additionally, there are reports of bald eagles along rivers in the White Mountains from 1937, and reports of nesting bald eagles along the Salt and Verde Rivers as early as 1930. Hunt *et al.* (1992, pp. D41–D46, D291–D326, Figures D4.0–1, D5.0–1, F3, F4, and F5) determined from reports and personal communications dating back to 1866 that historically there were 28 known breeding areas, 22 known and probable nest sites, and at least 60 unverified reports of possible nests/nest sites and unverified reports of bald eagles located across the State of Arizona. Many of the 60 possible nests/nest sites reported by Hunt *et al.* (1992) could be a collection of nests belonging to the same breeding territory. These reported locations ranged to the boundaries of the State from the Grand Canyon near Lake Powell, to the lower Colorado River where it separates Arizona and California, to the upper San Pedro River near the international border with Mexico, and east near the boundary with New Mexico (Hunt *et al.* 1992, Figures D4.0–1, D5.0–1, F3, F4, and F5).

More recent survey and monitoring efforts have increased our knowledge of bald eagle distribution in Arizona. The number of known breeding areas in Arizona in 1971 was 3; the number known in 2009 is 59. The number of bald eagle pairs occupying these sites increased from 3 in 1971 to 48 in 2009. The number of young hatched increased from a low of zero in 1972 to a high of 55 in 2006 (Driscoll *et al.* 2006, pp. 48–49; McCarty and Johnson 2009, p. 8, in draft). Productivity has also changed at the bald eagle breeding areas since the 1970s. Between 1975 and 1984, average annual productivity was 0.95 young per occupied breeding area. Between 1987 and 2005, average annual productivity was 0.78 young per occupied breeding area (derived from Table 7, pp. 48–50 in Driscoll *et al.* 2006). (These data take into account productivity for breeding areas throughout Arizona, and are not restricted to the Sonoran Desert population of bald eagles evaluated under the petition.)

Hunt *et al.* (1992, p. A155) conclude that it is likely that bald eagles nested on rivers throughout the Southwest in more pristine times, as reports on the nature of river systems and the assemblage of prey fishes both seem conducive to nesting success and suggest "richer and more extensive habitat in the lower desert" than would have been available on the Mogollon Plateau, where bald eagles are known to have occurred historically. Recent reoccupation of some of these historical breeding areas by bald eagles lends credibility to these reports. We evaluated a subset of the Allison *et al.* (2008, pp. 17–18) data to determine the status of 43 breeding areas within the Sonoran Desert Area of Arizona and concluded that 16 (37 percent) were pioneer breeding areas, or occupied for the first time. An additional 27 (63 percent) were either reoccupied, meaning they were known to have been occupied in the past, then vacated, and

subsequently reoccupied, or are considered to have been existing before their discovery (Allison *et al.* 2008, pp. 15–16).

The Salt River Pima-Maricopa Indian Community states that the O'odham have inhabited the Sonoran Desert and have known eagles since "time immemorial" (Anton and Garcia-Lewis 2009, p. 1). Although anthropologists debate what this means, at least one noted archaeologist has documented detailed evidence of cultural remains in the nearby Pinacate area that date back more than 40,000 years (Hayden and Dykinga 1988, p. XIV). A local, informal consensus of 10,000 years is less controversial (Toupal 2003, p. 11). Bald eagles have been documented historically within the culture of the Four Southern Tribes of Arizona, which includes the Salt River Pima-Maricopa Indian Community, Ak-Chin Indian Community, Gila River Indian Community, and Tohono O'odham Nation (Anton and Garcia-Lewis 2009, p. 2). Because eagles are considered to have equal or greater standing to humans, eagle burials were carried out identical to human burial practices (Anton and Garcia-Lewis 2009, p. 2), and bald eagle burials have been recovered from archaeological sites ancestral to the O'odham culture. In addition, eagles are extremely prominent in the O'odham song culture (Anton and Garcia-Lewis 2009, p. 2). A paired set of songs recorded by Underhill (1938, p. 109) for a Tohono O'odham eagle purification ceremony recognized the bald eagle as the "white-headed eagle."

More recent evidence exists to demonstrate the importance and use of bald eagles in Apache culture. Herrington *et al.* (1939, pp. 13–15) noted the use of eagle feathers in religious practices and ceremonial dances. The Apache Tribes have documented numerous artifacts that were collected from the Tribes at Cibecue and East Fork/Whiteriver on the White Mountain Apache Reservation and on the San Carlos Reservation between 1901 and 1945. These Tribes note that these artifacts were made, in part, with eagle feathers, and include hats or caps; shields; medicine rings, shirts, and strings; amulets; war bonnets; armbands; hair ornaments; and wooden figurines and crosses. The Tribes note that these ceremonial items are of deep historical and ongoing importance, such that they are actively pursuing their return from the museums to the Tribes. The existence of these items demonstrates the use of eagle feathers by the Tribes for at least the last 100 years (Apache Tribes 2009, Tabs 6–10).

Traditional ecological knowledge from the Apache Tribes report more breeding bald eagles 150 years ago than are present today. Specifically, Tribal representatives note that many areas that were considered nesting sites on the San Carlos Apache Reservation such as Warm Springs Canyon, Black River Canyon, and Salt Creek Canyon no longer contain active bald eagle nests. Bald eagles are no longer found at four out of seven areas that have Apache place-names that reference bald eagles (Lupe *et al.* pers. comm. 2008, p. 4). The traditional ecological knowledge shared by the Tribes at a July 2, 2008, meeting indicate that more bald eagles were observed below Coolidge Dam and at Talkalai Lake than currently exist.

Nevada

There are few historical or current breeding records for the State of Nevada. The lone historical record describes bald eagles that nested in a cave on an island at Pyramid Lake in northwestern Washoe County in northwestern Nevada in 1866 (Service 1986, p. 7; Detrich 1986, p. 11; S. Abele, Service, pers. comm. 2008a; 2008b). Over 100 years later, the next verified nesting record occurred in 1985 along Salmon Falls Creek in Elko County in northeastern Nevada near the Idaho border. More modern nesting records are limited to approximately five breeding sites associated with human-made water impoundments. Reproductive performance and persistence of bald eagle pairs in Nevada has been varied. No breeding has been observed at the Salmon Falls site since 1985.

Colorado

According to the Northern Bald Eagle Recovery Plan, bald eagles in Colorado historically nested in the mountainous regions up to 10,000 ft (3,048 m). Successful nesting records exist for nests found in southwestern and west-central Colorado. Bald eagles were considered common residents in the 1940s and 1950s in and around Rocky Mountain National Park (Service 1983, p. 12). For southwestern Colorado, there were no verified records of nesting bald eagles in the 1960s (Bailey and Niedrach 1965 in Stahlecker and Brady 2004, p. 2). The first confirmed record for southwestern Colorado occurred in 1974 at Electra Lake (Winternitz 1998 in Stahlecker and Brady 2004, p. 2). In 1974, the Colorado Division of Wildlife reported that only a single nesting pair was known (Colorado Division of Wildlife 2008, p. 1). However, by 1981, there were five known occupied bald eagle territories in the State of Colorado (Service 1983, p. 23), and from the early 1980s to 2008, the known bald eagle population increased to nearly 80 territories, of which 60 are currently known to be active. Concentrations of breeding eagles are found east of the Continental Divide within the South Platte River watershed, on the Yampa River, on the White River, and on the Colorado River. Greater than 40 territories are monitored annually, with near 70 percent nest success, 1.19 young fledged per occupied site, and 1.72 young fledged per successful site (Colorado Division of Wildlife 2008, p. 1).

New Mexico

Available information indicates there was no specific, first-hand information on bald eagles nesting in New Mexico prior to 1979. Unverified reports (Bailey 1928, p. 180; Ligon 1961, p. 75) suggest one or two pairs may have nested in southwestern New Mexico, on the upper Gila River and possibly the San Francisco River, prior to 1928. These second-hand reports lacked specifics and may have referred to other species (Williams 2000, p. 1).

Since completion of the 1982 Recovery Plan, seven bald eagle territories have been discovered, five in northern New Mexico in Colfax and Rio Arriba Counties and two in southwest New Mexico in Sierra and Catron Counties. Four have been recently occupied and productivity has been fair with young produced in at least 6 to 15 years, depending on the territory (H. Walker, New Mexico Department of Game and Fish, pers. comm. 2008).

Southern California

In southern California, historical bald eagle records are known from the Channel Islands and mainland counties along the Pacific Ocean (Detrich 1986, pp. 9–27). Prior to 1900, three bald eagle territory records were known (Detrich 1986, pp. 10–13). From 1900 to 1940, reports of 24 to 60 nest sites existed on islands off the coast of California, and are believed to have been extirpated from the islands soon after 1958 (Detrich 1986, pp. 18, 24). In inland areas in southern California, at least eight bald eagle pairs were known from Santa Barbara, Ventura, Los Angeles, Orange, and San Diego counties between 1900 and 1940, with indications of presence prior to this timeframe (Detrich 1986, pp. 13–19). By 1981, largely due to adverse changes to bald eagle habitat and the effects of the pesticide DDT on reproduction, no breeding eagles were detected on the southern California mainland (Detrich

1986, pp. 32, 33, 36, 39; California Department of Fish and Game 2008, p. 2).

Beginning in 1980, bald eagles were translocated to Santa Catalina Island as chicks or eggs from wild nests on the mainland, or from captive breeding. Pairs of bald eagles have been breeding on the island since 1987. In a subsequent relocation effort between 1987 and 1995 in the central coast mountains of Monterey Bay, 66 eaglets were translocated and released. A nesting pair first formed from those releases in 1993, and there are currently three nesting pairs (California Department of Fish and Game 2008, pp. 2–3). Releases of birds occurred through 2000, with no releases conducted between 2002 and 2008 (Ventana Wildlife Society 2009, p. 1). Currently, there are approximately six pairs of bald eagles on Catalina Island, with an additional three pairs at Santa Cruz Island, and one pair at Santa Rosa Island. There are approximately 35 to 40 bald eagles around the Northern Channel Islands, and another 20 birds around Catalina, for a total of approximately 60 birds among the Channel Islands (A. Little, pers. comm. 2008).

Presently, mainland southern California nesting bald eagles occur at inland isolated manmade reservoirs. Bald eagle breeding sites can be found in northwestern San Luis Obispo County (San Antonio and Nacimiento Lakes), central Santa Barbara County (Lake Cachuma), southwestern San Bernardino County (Silverwood Lake), extreme eastern San Bernardino County near the Colorado River (Copper Basin Lake), southwestern Riverside County (Hemet and Skinner lakes), and central San Diego County (Lake Henshaw) (AGFD 2008, California Department of Fish and Game 2008, pp. 2–3; Driscoll and Mesta in prep. 2005, p. 110; Ventana Wildlife Society 2008, p. 1).

Nesting attempts at Silverwood and Hemet Lakes are considered sporadic (Service 2005, p. 110). At Skinner Lake, reproduction efforts in the mid-1990s were affected by DDT, and the nest area subsequently burned down (Driscoll and Mesta in prep. 2005; AGFD 2008). Nest sites in northwestern San Luis Obispo County appear to be very productive, producing eaglets in all but one year from 1993 to 2006 (Ventana Wildlife Society 2008, p. 7). For 2001 to 2008, two or three young have fledged annually from the Copper Basin breeding area, with the exception of 2004 when the nest was blown down (M. Melanson, Metropolitan Water District of Southern California, pers. comm. 2006a, 2007, 2008). The blue aluminum leg bands of one of the adult bald eagles at the Copper Basin site indicate that the bird likely originated in Arizona (M. Melanson, Metropolitan Water District of Southern California, pers. comm. 2006b).

Utah

Bald eagles were recorded as "more or less frequent" by Allen in 1871 (p. 164) in the vicinity of Ogden in northern Utah. There are seven historical records for Utah between 1875 and 1928, with five records of nesting bald eagles, and two other records of nonbreeding bald eagle observations, all located between Great Salt Lake and Utah Lake in northern Utah. In 1967, a nest was found to the south in Wayne County at Bicknell, and in 1972, an additional nest was located at Joes Valley Reservoir in San Pete County in central Utah, but it has since fallen. Additional records from the 1970s were of nests along the Colorado River at Westwater Canyon in 1975, and at the head of Westwater Canyon between 1973 and 1977. Beginning in 1983, nesting attempts occurred at three nesting territories in southeast Utah. Two of the territories were along the Colorado River near the eastern border of Utah, with the third near Castle Dale in the center of the State (Boschen 1995, pp. 7–8). Three known nest sites (Cisco, Bitter Creek, and Castle Dale) were reported following survey work completed in 1994. These three nest sites produced an average of approximately 1.4 nestlings, with 1.05 successfully fledged between 1983 and 1994 (Boschen 1995, p. 103). Approximately 11 breeding areas were known, considered active, and monitored between 1983 and 2005 (Darnell, Service, pers. comm. 2008).

West Texas

Historically, there were five nesting records for bald eagles west of the 100th Meridian in Texas. Lloyd (1887, p. 189) reported nesting in Tom Green and Concho counties in 1886. Oberholser (1974, p. 246) and Boal (2006, p. 46) reported eggs collected in Potter County near Amarillo by E.W. Gates in 1916. Oberholser (1974, in Service 1982, p. 8) additionally reported eggs collected by Smissen in 1890 in Scurry County south of Lubbock. Oberholser also reported an undated sight record of breeding eagles in Armstrong County near Amarillo. Kirby (pers. comm., in Service 1982) reported an active nest in nearby Wheeler County in 1938, and indicated it had been active for approximately 20 years. Throughout the 1980s and early 1990s there were no known breeding bald eagles in western Texas (Mabie *et al.* 1994, p. 215; Service 1982, p. 9). In 2004 and 2005, two adult bald eagles and a nestling were observed at a nest in the southern Great Plains of the Texas Panhandle. One young was produced in 2004, and two in 2005. No leg bands were readily observable on the adult eagles (Boal *et al.* 2006, pp. 246–247).

Sonora, Mexico

Bald eagle territories were first recorded in Sonora along the Rio Yaqui drainage in 1986 (Brown *et al.* 1986, pp. 7–14). Since that time, a total of seven bald eagle breeding areas were verified (Brown *et al.* 1986, pp. 7–14; Brown *et al.* 1987b, pp. 1–2, 1987b, p. 279; Brown 1988, p. 30; Brown and Olivera 1988, pp. 13–16; Brown *et al.* 1989, pp. 13–15; Brown *et al.* 1990, pp. 7, 9; Mesta *et al.* 1993, pp. 8–12; Russell and Monson 1998, pp. 62–63; Driscoll and Mesta 2005 in prep., pp. 78–90). Four of these bald eagle breeding areas have remained occupied (Driscoll and Mesta, in prep., pp. 78–90). However, reproductive performance of these nests has been relatively poor. Only a single nestling was recorded fledging in 2000 and 2001, and no successful nests were observed in 1999, 2002, and 2005 (Driscoll and Mesta in prep., p. 43). In 2008, no occupancy was detected at bald eagle territories (R. Mesta, Service, pers. comm. 2008). A bald eagle pair was observed in 2009; however, the previously used cliff nest is gone, and a new nest was not confirmed. Illegal drug activity in the area has increased human presence, making survey work difficult to accomplish. The area is also affected by extensive water withdrawals, and drought and dam operations, leaving the future of this site uncertain (R. Mesta, Service, pers. comm. 2009).

Defining a Species Under the Act

Section 3(16) of the Act defines "species" to include "any species or subspecies of fish and wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature" (16 U.S.C. 1532(16)). To interpret and implement the distinct vertebrate population segment provisions of the Act and congressional guidance, the Service and the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries Service), published the *Policy Regarding the Recognition of Distinct Vertebrate Population Segments* (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). The DPS Policy sets forth a three-step process: First, the Policy requires the Service to determine that a vertebrate population is discrete

and, if the population is discrete, then a determination is made as to whether the population is significant. Lastly, if the population is determined to be both discrete and significant then the Policy requires a conservation-status determination to determine if the DPS is an endangered or threatened species.

Distinct Vertebrate Population Segment Analysis

In accordance with our DPS Policy, this section details our analysis of whether the vertebrate population segment under consideration for listing may qualify as a DPS. Specifically, we determine (1) the population segment's discreteness from the remainder of the species to which it belongs and (2) the significance of the population segment to the species to which it belongs. Discreteness refers to the ability to delineate a population segment from other members of a taxon based on either (1) physical, physiological, ecological, or behavioral factors, or (2) international boundaries that result in significant differences in control of exploitation, management, or habitat conservation status, or regulatory mechanisms that are significant in light of section 4(a)(1)(B) of the Act.

Under our DPS Policy, if we have determined that a population segment is discrete under one or more of the discreteness conditions, we consider its significance to the larger taxon to which it belongs in light of congressional guidance (*see* Senate Report 151, 96th Congress, 1st Session) that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity. In carrying out this examination, we consider available scientific evidence of the population's importance to the taxon to which it belongs. This consideration may include, but is not limited to the following: (1) The persistence of the population segment in an ecological setting that is unique or unusual for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The first step in our DPS analysis was to identify populations of the Sonoran Desert Area population to evaluate. The petition from CBD, the Maricopa Audubon Society, and the Arizona Audubon Council requested that the "Southwestern desert nesting bald eagle population" be classified as a DPS, that this DPS be reclassified from a threatened species to an endangered species, and that we concurrently designate critical habitat for the DPS under the Act.

Determination of the Area for Analysis

The March 6, 2008, court order directed the Service to conduct a status review of the "Desert bald eagle population." The population referenced in the court order consists of those bald eagles in the Sonoran Desert of the southwest that reside in central Arizona and northwestern Mexico. While we had specific clarification from the petitioners with respect to elevational boundaries, bald eagle breeding areas, the Upper and Lower Sonoran Life Zones, and the State of Arizona, they provided ambiguous clarification with respect to the boundaries of "central Arizona" and which transition areas outside of the Upper and Lower Sonoran Life Zones to include. Because of these ambiguities and lack of a specific map in the petition, we were left to interpret them, primarily at the perimeters of the boundary.

In responding to the court order, we published a rule on May 1, 2008, reinstating threatened status under the Act to the bald eagle in the Sonoran Desert Area of Central Arizona in eight Arizona counties: (1) Yavapai, Gila, Graham, Pinal, and Maricopa Counties in their entirety; and (2) southern Mohave County (that portion south and east of the centerline of Interstate Highway 40 and east of Arizona Highway 95), eastern LaPaz County (that portion east of the centerline of U.S. and Arizona Highways 95), and northern Yuma County (that portion east of the centerline of U.S. Highway 95 and north of the centerline of Interstate Highway 8). We limited the reinstatement of threatened status to these areas because Sonoran Desert bald eagles were only listed under the Act in Arizona (and not in Mexico) at the time of the petition. Therefore, the court's order enjoining our final delisting decision applied only to those eagles that reside in the Sonoran Desert of central Arizona.

For this status review, we revisited the issue of defining the potential DPS based on a more in-depth review of information received from the public, Tribes, and information in our files. We determined that an appropriate delineation for this analysis includes all Sonoran Desert bald eagle territories within Arizona, the Copper Basin breeding area along the Colorado River just into California, and the territories of Sonora, Mexico. This expanded boundary was developed using vegetation community boundaries, elevation, and breeding bald eagle movement. This interpretation combines geographic proximity and recognized Sonoran Desert vegetation and transition life zones. We determined the transition areas based on our knowledge of their proximity to the Sonoran Desert itself, excluding territories more properly classified as montane or grassland habitat. Bald eagles in Baja California, Mexico, occur in an area where the Sonoran Desert vegetation community abuts a coastal environment. We excluded bald eagles in this area because they depend on marine resources rather than inland fisheries. We based delineation of the potential DPS on the best available scientific information, including the parameters provided by CBD (*i.e.,* bald eagle territories, elevation, life zones, and transition areas), and the resulting expanded boundary includes known bald eagle breeding areas within the Sonoran Desert vegetation community and transition areas, as defined by Brown (1994, pp. 181–221), except Baja California.

As noted above, we included Sonora, Mexico, in the potential DPS because both areas have the same vegetation and climate. Bald eagles in Sonora use Sonoran Desert and transition vegetation communities as do bald eagles in the Sonoran Desert areas of Arizona and southern California. In addition, breeding season chronology in both areas appears to be similar (Driscoll *et al.* 2005 in prep., pp. 31–32), occurring between December and June. Bald eagles in Sonora also nest in riparian trees and cliffs, as they do in Arizona (Driscoll *et al.* 2005 in prep., p. 31).

When based strictly on vegetation or elevation lines, the expanded boundary is irregular and complex, and would be difficult to interpret. For this reason, we delineated the boundary with more easily identifiable road, county, and State lines.

Discreteness

Under the DPS Policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation,

management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Boundaries of the Potential DPS

Many terms have been used in describing the bald eagles that occupy the desert southwest, and we identify here the geographic area covered by the various terms. At the broadest geographic scale, bald eagles were managed under the Southwest Bald Eagle Recovery Region, which encompassed Oklahoma, Texas west of the 100th meridian, all of New Mexico and Arizona, and those portions of southeastern California that border the lower Colorado River. Bald eagles within this area were called "southwestern bald eagles" (Service 1982, p. 1). Much of the data used in the development of the potential DPS boundary for this discreteness analysis came from those eagles within the boundaries of the State of Arizona. The petition that initiated this 12-month status review referred to the Southwestern Desert Nesting Bald Eagle Population, which included those eagles that breed predominantly in the upper and lower Sonoran life zone habitat. In our August 30, 2006, analysis at the 90-day petition finding stage (71 FR 51549), we evaluated "Sonoran Desert bald eagles," which included those bald eagles in the Sonoran Desert of central Arizona and northwest Mexico.

In analyzing the potential DPS under this 12-month status review, we considered habitat use by bald eagles breeding in the Southwest, vegetation communities in which breeding areas occur, and elevation levels at which breeding areas occur, as we did at the 90-day petition finding stage. However, we have reevaluated all potential areas including those considered in the 90-day finding to include any areas that meet the criteria described below. As a result, in this review, we did not restrict the boundary to the State of Arizona and have expanded the area covered by our previous analysis to include portions of southeastern California along the Colorado River, Arizona, and Sonora, Mexico. We now refer to this expanded potential DPS area as the Sonoran Desert Area population, which replaces the term "Sonoran Desert Area of central Arizona," as described in our May 1, 2008, **Federal Register** rule (73 FR 23966) to list the Sonoran Desert bald eagle as threatened.

To determine which areas should be included within the expanded boundary for the Sonoran Desert Area, we considered three factors: (1) The Sonoran Desert vegetation community (Brown 1994, pp. 180–221; Brown and Lowe 1994, map), (2) an elevational range for known breeding areas within the Sonoran Desert (excluding Baja California), and (3) movement patterns of breeding bald eagles both into and out of the Sonoran Desert Area. We included within the boundary portions of the Sonoran Desert, including its subdivisions and "transition areas." Subdivisions of the Sonoran Desert include the Lower Colorado River Valley, Arizona Upland, Vizcaino, Central Gulf Coast, Plains of Sonora, and Magdalena (Brown 1994, pp. 190–221). Transition areas are those vegetation communities adjacent to the Sonoran Desert community. Brown (1994, p. 181) includes as transition areas semidesert grasslands, Sinaloan thornscrub, and chaparral. The majority of the breeding areas within the boundary occur in the Arizona Upland Subdivision of the Sonoran Desert. Exceptions include those breeding areas in the transition communities (where 14 of 61 breeding areas are located) of Interior Chaparral, Plains & Great Basin Grassland, Semidesert Grassland, and Sinaloan Thornscrub (Brown 1994). These communities are most often adjacent to the Arizona Upland Subdivision of the Sonoran Desert, where bald eagles in these areas forage at least partially within the desertscrub.

We also based the boundary on those portions of the Southwest within the elevational range of 984 to 5,643 ft (300 to 1,720 m). This elevational range encompasses all known bald eagle breeding areas within the Sonoran Desert in the United States and Sonora, Mexico. Using Geographic Information Systems, the appropriate elevational ranges were overlapped with the Sonoran Desert vegetation community to determine where both criteria were met.

We also considered information on movement of bald eagles into and out of the Sonoran Desert, as determined through banding and monitoring information. Specifically, we included within the boundary those bald eagles known to originate in or breed in the Sonoran Desert and transition areas, excluding Baja California. The banding and monitoring information used to determine eagles originating or breeding in the Sonoran Desert Area is described in detail below.

Figure 1 below illustrates the boundary developed based on vegetation community, elevation, and breeding bald eagle movement. The boundary was modified from following strictly elevational or vegetation lines to follow more easily identifiable road, county, and State lines.

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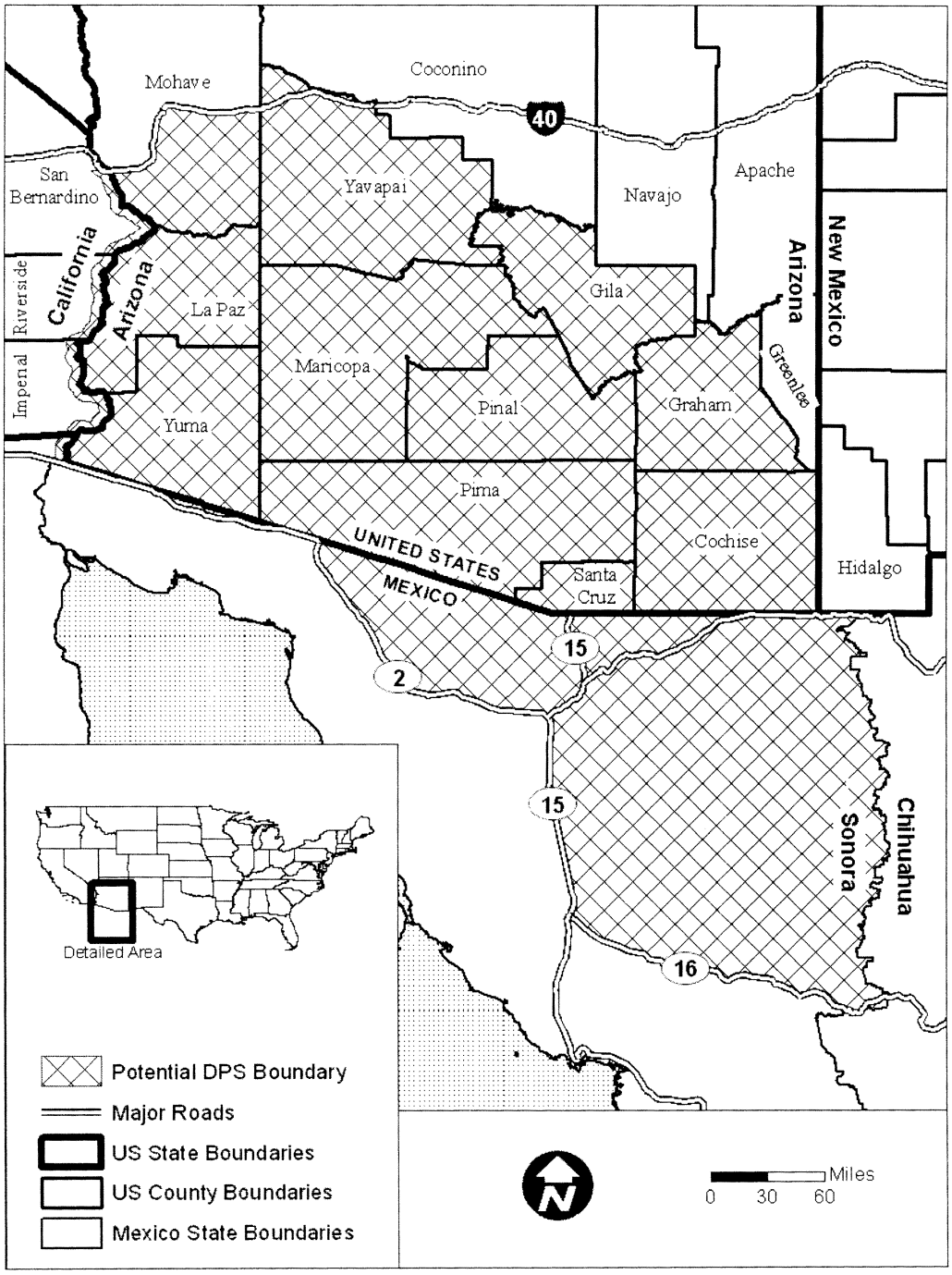

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The northern perimeter of the expanded potential DPS boundary in Arizona is the same as the potential DPS boundary that we used in our May 1, 2008, **Federal Register** notice (73 FR 23966) to list the Sonoran Desert bald eagle DPS as threatened. This boundary follows the southern edges of Coconino, Navajo, and portions of Apache Counties. It follows the Graham County line south on the east side until it reaches the Cochise County boundary.

On the west, the boundary drops south along the Mohave-Yavapai boundary until it reaches Interstate 40. The discreteness boundary then follows Interstate 40 west until its intersection with the State boundary. It continues west 5 miles (mi) (8 kilometers (km)) and then south along a line drawn 5 mi (8 km) west of and parallel to the Colorado River until it reaches Highway 2 in Sonora, Mexico.

The southern boundary of the expanded potential DPS follows Highway 2 in Mexico east until its intersection with Highway 15. It follows Highway 15 until its intersection with Highway 16. The southern boundary continues along Highway 16 until it reaches the State boundary between Sonora and Chihuahua. The eastern boundary of the expanded potential DPS follows the State line between Sonora and Chihuahua north until it reaches the international boundary between the United States and Mexico at New Mexico, and continues west to the State boundary between Arizona and New Mexico. The eastern boundary then continues north along Cochise County, turning slightly west along the northern edge of Cochise County before rejoining the northern perimeter.

Bald eagles within the boundary that constitute the expanded potential DPS include those that occur within the appropriate vegetation communities and elevational range. The breeding area located in southeastern California is within the Lower Colorado River subdivision of the Sonoran Desert. In addition, the bald eagles at that breeding area originated at the Horseshoe Breeding Area in Arizona. We have included Sonora, Mexico, within the potential DPS because bald eagles occur in Sonoran Desert and transitional communities there, as do those in Arizona and California. As discussed above, we have excluded from the expanded potential DPS bald eagles occurring in Baja California, Mexico.

There are additional bald eagle breeding areas within Arizona but outside of the expanded potential DPS boundary. These breeding areas include Canyon de Chelly, Luna, Becker, Crescent, Greer, Woods Canyon, and Lower Lake Mary. These breeding areas were excluded because they are not located within the Sonoran Desert.

Banding and Monitoring Information

Bird banding and resighting are important tools used to answer questions regarding the biology and movement of individual birds (U.S. Geological Survey 2008, p. 1). The techniques used on bald eagles in the Southwest are consistent with marking technique standards (Varland *et al.* 2007, pp. 222–228). Within this analysis, we use banding and resighting data for bald eagles to determine if bald eagles in the Sonoran Desert Area are markedly separate from other breeding populations of bald eagles. Specifically, we use banding and resighting data to determine if bald eagles originating in areas outside the Sonoran Desert Area have moved into the Sonoran Desert Area to breed (immigration), or if bald eagles originating in the Sonoran Desert Area have moved out of the Sonoran Desert Area to breed (emigration).

We used bald eagle banding and resighting information collected between 1987 and 2007 as this is the time period during which banding and resighting efforts were most thorough in the Southwest. Banding of bald eagle nestlings began prior to this time in Arizona, starting in approximately 1977, and multiple researchers contributed to early banding efforts (Hildebrandt and Ohmart 1978; Haywood and Ohmart 1980, 1981, 1982, 1983; Grubb 1986), as summarized in Hunt *et al.* 1992 (pp. C181–C202). However, early banding efforts were opportunistic, and the bands used at that time were difficult to read without capturing birds or recovering dead birds. As a result, little resight information was gained. Beginning in 1987, biologists increased efforts to band all nestlings and improved the effectiveness of banding and resighting by using color visual identification bands, which are more easily identified (Hunt *et al.* 1992, pp. C181–C202; Driscoll *et al.* 2006, p. 26). In total, the banding and resighting effort for bald eagles in Arizona has continued for 30 years with the last 20 years using the more informative color bands.

To determine the movement of breeding bald eagles in our target time period of 1987 to 2007, we relied on data from two datasets. The first dataset, called the Bird Banding Lab (BBL) dataset, is derived from data collected and collated by the U.S. Geological Survey Bird Banding Laboratory (U.S. Geological Survey 2008). The BBL dataset consists of over 19,000 records for bald eagles throughout the species' range, including those banded in the Southwest. The second dataset, called the AGFD dataset, is derived from data compiled and used by Allison *et al.* (2008) in a demographic analysis for bald eagles in Arizona.

Because our analysis focused on determining whether or not there is immigration or emigration of bald eagles to and from the Sonoran Desert Area, we analyzed bald eagles banded as nestlings and resighted as adults. Using only those birds banded as nestlings ensures that the origin of the banded birds is known, and that young birds originating in other areas are not included in the analysis. Using only resight information for breeding bald eagles eliminates data associated with juvenile migrants, which would not be contributing to the breeding population. Generally, age five is accepted as the age at which adult bald eagles breed throughout most of the species' range. For this reason, when evaluating the nationwide BBL dataset, we considered bald eagles 5 years of age or older as breeding adults. However, for the AGFD dataset, where there are numerous instances of bald eagles breeding at 4 years of age in Arizona (Allison *et al.* 2008), we considered bald eagles 4 years of age or older as breeding adults.

Immigration Into the Sonoran Desert Area

For purposes of this analysis, immigration is defined as the movement of individuals banded as nestlings outside of the Sonoran Desert Area that are subsequently resighted as breeding birds inside the Sonoran Desert Area. In our analysis of the likelihood of bald eagle immigration into the Sonoran Desert Area from areas in closest proximity to the Sonoran Desert Area, we used data from the AGFD and the broader BBL dataset and considered bald eagle banding and resighting information from the States in proximity to the Sonoran Desert Area, including California, Colorado, Nevada, New Mexico, Texas, and Utah, as well as birds in Arizona but outside of the Sonoran Desert Area (*see* Table 1).

TABLE 1—RECORDS FOR BALD EAGLES BANDED AS NESTLINGS IN AREAS OUTSIDE THE SONORAN DESERT AREA AND RESIGHTED AS BREEDING BIRDS FROM 1987 TO 2007 (U.S. GEOLOGICAL SURVEY 2008; K. MCCARTY, AGFD, PERS. COMM. 2009; DRISCOLL *et al.* 2006, P. 49)

[Please note that the table summarizes data from 1987 to 2007. Available data from 2008 are not as thorough, but they are consistent with the findings from the data reported. Further, the Texas bird resighted in Arizona occurs at a high-elevation nest outside of the Sonoran Desert area. Note we know of no banding information for birds banded in Mexico outside the Sonoran Desert area]

State where banded	Number of nestlings banded in areas in close proximity to the Sonoran Desert area between 1987 and 2002	Number of banded nestlings resighted as breeding birds between 1987 and 2007	States where banded eagles were re-sighted	Number of resightings in the Sonoran Desert area
Arizona outside the Sonoran Desert Area	12	0	.....	0
California	103	13 (12.6%)	British Columbia, CA, WA	0
Colorado	152	7 (4.6%)	CO, WY	0
Nevada	0	0 (0%)	.....	0

TABLE 1—RECORDS FOR BALD EAGLES BANDED AS NESTLINGS IN AREAS OUTSIDE THE SONORAN DESERT AREA AND RESIGHTED AS BREEDING BIRDS FROM 1987 TO 2007 (U.S. GEOLOGICAL SURVEY 2008; K. MCCARTY, AGFD, PERS. COMM. 2009; DRISCOLL *et al.* 2006, P. 49)—Continued

[Please note that the table summarizes data from 1987 to 2007. Available data from 2008 are not as thorough, but they are consistent with the findings from the data reported. Further, the Texas bird resighted in Arizona occurs at a high-elevation nest outside of the Sonoran Desert area. Note we know of no banding information for birds banded in Mexico outside the Sonoran Desert area]

State where banded	Number of nestlings banded in areas in close proximity to the Sonoran Desert area between 1987 and 2002	Number of banded nestlings resighted as breeding birds between 1987 and 2007	States where banded eagles were re-sighted	Number of resightings in the Sonoran Desert area
New Mexico	0	0 (0%)		0
Texas	64	5 (7.8%)	AZ, CA, NE, NM, TX	0
Utah	6	0 (0%)	UT	0
Total	337	25 (7.4%)		0

Using the AGFD dataset, Allison *et al.* (2008, p. 25) indicate that anticipated survival rates for fledglings to age four is 28 percent. It should be noted that the mortality rates derived by Allison *et al.* (2008, p. 4) are based on modeling; however, the model was based on data collected over a 10-year period from 1993 to 2003.

The information summarized in Table 1 indicates that 337 bald eagles were banded as nestlings between 1987 and 2002 (the latest year for which a banded cohort could reach 5 years of age by 2007) in the areas outside of but in proximity to the Sonoran Desert Area. Applying the survival rate of 28 percent to the 337 bald eagles reported banded as nestlings in Table 1, we would anticipate that approximately 94 nestlings would have survived to age four. Only 25 of the banded nestlings were resighted as adults, and the fate of the remaining 69 nestlings is unknown. However, none of the 25 banded nestlings were resighted as breeding birds within the Sonoran Desert Area (*see* Table 1).

While the number of banded and resighted birds in Table 1 is small, given the intensive effort in Arizona to identify the origins of banded breeding birds, we believe some inference is possible suggesting that the probability of nestlings originating outside of the Sonoran Desert Area and immigrating into the Sonoran Desert Area to breed is low.

There is no known immigration from the Canyon de Chelly, Lower Lake Mary, Becker, Woods Canyon, Crescent, Greer, and Luna Lake breeding areas located at higher elevations within Arizona outside of the Sonoran Desert Area. To date, 29 nestlings produced at these breeding areas have been banded. Twenty-five of these were banded at the Luna breeding area from 1994–2000, 2002–2005, and in 2007, with 22 of them fledging successfully (K. McCarty, AGFD, pers. comm. 2009). As of 2008, none of these banded offspring are known to have entered the breeding population of bald eagles in the Sonoran Desert Area (AGFD 2008a, pp. 1–2). The male bird at the Crescent breeding area is from the Luna breeding area (the female is unbanded) (Jacobson *et al.* 2004, p. 16). Similarly, the male bird at the Greer breeding area is from the Luna breeding area, and the female is unbanded (McCarty and Jacobson 2008, p. 9). Lower Lake Mary fledged four young in 2005 and 2006, and the young were banded. The Woods Canyon and Greer breeding areas were first detected in 2008, and no young fledged that year from either breeding area. Six young have successfully fledged from Canyon de Chelly as of this date, none of which were banded (AGFD 2006, pp. 1–2; AGFD 2007, pp. 1–2; Jacobson *et al.* 2007, pp. 16–19; AGFD 2008a, pp. 48–49; AGFD 2008, unpubl. data; AGFD 2009, pp. 1–2).

Biologists, primarily R. Mesta, estimate that, due to difficulty in accessing territories in Sonora, Mexico, they are able to monitor approximately 40 to 60 percent of the known nest sites each year, and 20 to 30 percent of the known birds are observed while visiting these territories. Approximately 80 percent of the birds detected have been examined for auxiliary markers, such as colored bands, and biologists believe that if marked bald eagles were occupying known territories after 1990, they would likely have been detected. However, they note that, in years in which surveys are conducted, breeding areas are visited only once and for a short period of time, which would make it easy to miss an individual eagle. They note that, in 1992, an adult at the Fig Tree breeding area had a yellow wing tag (potentially indicating it had originated in Texas or Florida) that could not be read, but no one has observed the bird since ((Driscoll and Mesta 2005, in prep., p. 62; R. Mesta, Service, pers. comm. 2008, Ortego *et al.* 2009, p. 10).

Emigration From the Sonoran Desert Area

Emigration is defined here as the movement of individuals originating in the Sonoran Desert Area to areas outside the Sonoran Desert Area where they are resighted as birds of breeding age. Our analysis of data from the BBL dataset found that 41 of the 42 nestlings (97.6 percent) banded within the Arizona portion of the Sonoran Desert Area were subsequently resighted within the Sonoran Desert Area. Only one eagle (2.4 percent) of breeding age was resighted outside of the Sonoran Desert Area, near Temecula, California (*see* Table 2). The BBL dataset shows that there were 371 bald eagles banded in Arizona between 1987 and 2007. With anticipated survival rates from fledgling to 4 years of age at 28 percent, we estimate that approximately 104 nestlings should have survived to age four. While we know that 42 were resighted, the fate of the remaining 62 birds is unknown.

TABLE 2—BALD EAGLES BANDED IN ARIZONA BETWEEN 1987 AND 2002 AND RECAPTURED OR RESIGHTED AS BIRDS OF BREEDING AGE

[U.S. Geological Survey 2008)]

State	Number of birds (% recovered)	Notes
Within the Sonoran Desert Area		
Arizona	40 (95.2%)	
Sonora, Mexico	1 (2.4%)	Records indicate this bird was an adult entangled in fishing line at El Novillo Reservoir in Sonora. There was no breeding area at the reservoir, and the bird was not subsequently detected at a breeding area.
Subtotal	41 (97.6%)	
Outside of the Sonoran Desert Area		
California	1 (2.4%)	This bird established a breeding area in California near Temecula. Birds in this breeding area were not successful in reproducing, and the nest site subsequently burned down (AGFD 2008a, p. 6).
Colorado	0 (0%)	
Nevada	0 (0%)	
New Mexico	0 (0%)	
Oklahoma	0 (0%)	
Texas	0 (0%)	
Utah	0 (0%)	
Subtotal	1 (2.4%)	
Total	42 (100%)	

With respect to emigration, data in the AGFD dataset, a separate dataset than the BBL discussed above, illustrate the fate of 89 of 314 nestlings banded within the Sonoran Desert Area. Only 1 of the 89 birds was documented breeding outside the Sonoran Desert Area. Fifty returned to breed in the Sonoran Desert Area, 1 bred (unsuccessfully) in California, and 38 were known to have died before breeding (*see* Table 3) (Allison *et al.* 2008, p. 19). Allison *et al.* (2008, p. 7) note that, from 1987 through 2003, 83 percent of known fledglings in the Sonoran Desert Area were banded. Traditional ecological knowledge about bald eagles supports these data on emigration. Western Apache informants having expert knowledge of bald eagles in the Sonoran Desert Area testified that adult eagles do not leave Arizona.

TABLE 3—DISPOSITION OF ARIZONA BALD EAGLES BANDED AS NESTLINGS FROM 1987 TO 2003

[Allison *et al.* 2008, p. 19]

Fate of nestlings	Number of eagles
Dead before fledging	123
Unbanded Nestlings	62
Banded Nestlings—Fate Unknown	225
Banded Nestlings—Fate Known	
Dead before Breeding	38
Bred in Arizona	50

TABLE 3—DISPOSITION OF ARIZONA BALD EAGLES BANDED AS NESTLINGS FROM 1987 TO 2003—Continued

[Allison *et al.* 2008, p. 19]

Fate of nestlings	Number of eagles
Bred in California	1
Total	499

Banding and resighting efforts have not been as intensive in the areas in close proximity to the Sonoran Desert Area as they have been in Arizona, including the Sonoran Desert Area. We sent a questionnaire to bald eagle biologists in surrounding States in 2008 in an attempt to determine the level of banding and monitoring efforts in some of these regions. In response to the questionnaire, we determined that surveys for breeding birds occur annually at Santa Cruz and Santa Rosa Islands off the coast of California, as well as in southern California at Lake Hemet. In survey efforts for these areas, all known territories and 100 percent of the known birds are visited, and no birds have bands or markers from Arizona (Hoggan 2008, pp. 1–2; P. Sharpe, pers. comm. 2008). Additionally, less-formal monitoring occurs in other areas in California through a variety of agencies and interested groups, including the U.S. Forest Service, the California Department of Fish and Game, the Ventana Wildlife Society, and the Channel Islands Live! Web site with similar results (*i.e.,* no birds with bands from Arizona have been reported). In addition, sites known to support breeding pairs, such as the Copper Basin site, are monitored regularly.

Six New Mexico territories have been monitored closely since their discovery in 1979, with no bands or markers from Arizona observed (S. Williams, pers. comm. 2008). Beginning in 1974, the Colorado Division of Wildlife began monitoring nesting activity, and currently monitors approximately 40 of their 80 nests each year, and bands eaglets at approximately one-third of those (Colorado Division of Wildlife 2008, p. 1). No bands or markers from Arizona were observed.

We have received no data for Utah or Nevada. Information on bald eagles banded within Arizona but outside the Sonoran Desert Area is summarized above under the "Immigration into the Sonoran Desert Area" discussion above.

The data from areas in close proximity to the Sonoran Desert Area are not as thorough as those collected in Arizona, including in the Sonoran Desert Area. However, the banding and monitoring effort for breeding bald eagles in Arizona over a 30-year period has revealed only one breeding bird to date that immigrated into Arizona (Luna Lake, outside the Sonoran Desert Area).

We anticipate that, if immigration is occurring at such a low level, the same could be true of emigration as there are no known barriers that would favor emigration over immigration.

Conclusion on Banding Data

We find that the data on banding and resighting, while not extensive for areas in proximity to the Sonoran Desert Area, are collectively sufficient to document that bald eagles in the Sonoran Desert Area experience limited or rare reproductive interchange with bald eagles outside the Sonoran Desert Area. Bald eagle banding and resighting studies have been ongoing for greater than 30 years in Arizona, with the last 20 years using the more informative color bands. As reported in the BBL dataset, of the 79 nestlings banded in Arizona and later resighted, 1 emigrated to California, outside of the Sonoran Desert Area, and never successfully reproduced. This finding indicates that 97.6 percent of the bald eagles banded and resighted as breeding birds originated and returned to breed in the Sonoran Desert Area, with only 2.4 percent (one bird) of breeding birds resighted in other areas (Table 2). Similarly, the AGFD dataset indicates that, for the nestlings banded between 1987 and 2003 in areas outside of but in close proximity to the Sonoran Desert Area and resighted as breeding birds, none have immigrated to breed in the Sonoran Desert Area.

While it is not possible to band and resight all bald eagles as breeding birds, the information provided suggests that the majority of breeding bald eagles within the Sonoran Desert Area population originated in the Sonoran Desert Area population, and have not been known to emigrate elsewhere to become part of a breeding population. There is one documented case of emigration for a bald eagle that originated in Arizona and established a breeding area outside of the Sonoran Desert Area in Temecula, California. No successful reproduction occurred, and that nest subsequently burned down (AGFD 2008a, p. 6).

Data have been collected over a substantial time period under this effort, during which only one instance of a possible immigration and only one instance of emigration have been observed within the Sonoran Desert Area. We believe it is reasonable to conclude that in rare instances, immigration or emigration of an occasional bald eagle may occur; however, we consider the results from this 20-year period sufficient to document a marked separation of breeding populations. Our DPS Policy does not require complete isolation, and allows for some limited interchange among population segments considered to be discrete (61 FR 4722; February 7, 1996). Based on the results of these banding and resighting data in Arizona and in neighboring States, we conclude that the Sonoran Desert Area bald eagles are not interbreeding with other populations, although some intermixing may occur at a very small rate. We conclude that the best scientific data available indicates a marked separation of Sonoran Desert Area bald eagles from bald eagles outside of the Sonoran Desert Area.

Natal Dispersal and Fidelity

Bald eagles are known to return close to their place of birth to breed (Stahlmaster 1987, p. 41). To illustrate the potential for breeding bird exchange between populations, the Service examined the records of bald eagles that were banded as nestlings and recovered 5 or more years later at breeding age. We analyzed data associated with the eagles in the lower 48 States to derive a median dispersal distance of 43 mi (69 km) from their natal site to their breeding area. Known nesting sites were then buffered by 43 mi (69 km) to determine the amount of breeding bird exchange that typically occurs (Service 2008, pp. 17–18). Based on this analysis, Sonoran Desert Area bald eagles in the United States are separated from other southwestern populations by distances exceeding the median dispersal distance of 43 mi (69 km) for the species. The higher elevation breeding areas in Arizona are an exception to this separation, as they are less than 43 mi (69 km) from Sonoran Desert Area bald eagles; however, we believe these birds to be reproductively isolated from Sonoran Desert Area bald eagles, as described in the discussions on immigration above.

Observations of actual dispersal behavior support the same conclusion as that derived from the modeling exercise discussed above. Hunt *et al.* (1992, p. A144) surveyed biologists studying nine bald eagle populations throughout North America consisting of more than 2,000 breeding pairs of bald eagles. Of those breeding pairs, only two adults were observed to breed outside of their natal area. Mabie *et al.* (1994, p. 218) similarly concluded through their study in Texas and the Greater Yellowstone ecosystem that bald eagles tend to breed near their natal area. Gerrard *et al.* (1992, pp. 159, 164) observed four marked adults in Saskatchewan, Canada, and determined that they bred within 15.5 mi (25 km) of their natal territory.

Natal dispersal patterns for Sonoran Desert Area bald eagles are similar to those in the studies discussed above. Data from 21 female and 35 male bald eagles in Arizona indicate that adult females dispersed an average of 68.1 mi (109.7 km) from their natal areas, while males dispersed an average of 28.0 mi (45.1 km) from their natal areas to breed (Allison *et al.* 2008, p. 30), but remained within the Sonoran Desert Area.

Morphological Differences

Emigration and immigration may also be influenced by the morphology of birds in different populations. Breeding bald eagles in the Sonoran Desert Area are smaller than those in northern States, which is typical of species in different latitudes (AGFD 2008a, p. 1). This is consistent with Bergmann's Rule, which states that in the northern hemisphere, animals in warmer, southern environments are generally smaller than their counterparts in cooler northern climates (Futuyma 1986, pp. 104–105). Stahlmaster (1987, pp. 16–17) found that northern eagles are larger and heavier than their southern counterparts. Hunt *et al.* (1992, pp. A158–A161) compared the means of nine standard morphological measurements (*e.g.,* tail length, weight, beak depth) from adult eagles in Arizona to those from Alaska, northern California, and the Greater Yellowstone ecosystem. Measurements from adult Arizona eagles were smaller than mean measurements of other populations for all morphological characteristics except two: Depth of the bird's leg bone and arc of its wing. Using a statistical analysis (t-Test), 26 different comparisons were made between the nine morphological characteristics. Test results indicated that male Arizona eagles were significantly smaller than males of the other three populations in 21 of those 26 comparisons (Hunt *et al.* 1992, p. A160; Driscoll and Mesta 2005, in prep. p. 60). Adult females from Arizona were significantly smaller than females of the other populations in 14 of 26 comparisons. Gerrard and Bortolotti (1988, p. 14) note that bald eagles in Florida that are farther south than Arizona are the smallest. Hunt *et al.* (1992, p. A165) indicate the size difference was significant enough that they believed a decision to release birds into Arizona from elsewhere should be considered only as a last resort, because the size difference could potentially be an adaptation to desert conditions which could be disrupted by the introduction of foreign genes. As discussed below, given that all bald eagles in southern latitudes are smaller than those at northern latitudes, the best

available information suggests that that the Sonoran Desert Area bald eagles do not provide any unique adaptations important to the conservation of the species as a whole.

Another possible adaptation mentioned by bald eagle experts is the possible differences in egg shell characteristics of Arizona bald eagles from bald eagles in other parts of the range of the species. Hunt *et al.* (1992) discuss pores in eggshells of bald eagles in Arizona and some of the public comments (including some eagle experts) questioned whether or not these pores may have an effect on water loss from bald eagle eggs in the arid environment. Hunt *et al.* (1992) note that the pores are actually one to two orders of magnitude smaller than those in California bald eagle eggs; however, they did not reach any conclusions as to the significance that this may have to Arizona eagles. We also do not draw any conclusions from this information given the small sample size (four eggs).

Morphological differences, whether due to local adaptations due to natural selection and a small amount of gene flow (Hunt *et al.* 1992, p. A163) or simply to Bergmann's Rule, may reduce the success of immigration and emigration efforts. Bergmann's Rule holds that the surface area to body weight ratio decreases as body weight increases, meaning that a large body loses proportionately less heat than a small one, which is advantageous in a cool climate, but disadvantageous in a warm one (Allaby 1991, p. 52). Thus if birds from further north immigrated into Arizona they could be at a competitive disadvantage coping with the hot climate during the breeding season. Similarly, if Arizona birds emigrated to far northern areas they would likely be at a competitive disadvantage for resources due to an inability to compete with birds in those areas, which are larger in size (AGFD 2008a, p. 5). In addition, Driscoll *et al.* 1999 (p. 223) note that if gene flow into Arizona from the north or west, where eagles are larger, had occurred, it should at least be reflected in the overall variance of measurable characteristics (*i.e.* standard morphological measurements for raptors such as tarsus width, length of feathers, arch of wing, *etc.*), and that they found no suggestion of that variance within the Arizona sample.

For these reasons, it is unlikely that bald eagles interchange in a north-to-south direction, or vice versa. The adult eagle that immigrated from Texas to establish a high-elevation nesting in Arizona, and the eagle that left Arizona to establish a breeding area (still within the Sonoran Desert Area) in extreme southeastern California near the Colorado River both dispersed laterally, with no north or south immigration or known emigration of breeding birds.

Lack of Population Sources

The immigration of adult bald eagles into the Sonoran Desert Area population from populations in relatively close proximity to the Sonoran Desert Area is likely limited by small population sizes in surrounding States, and their separation from the Sonoran Desert Area by long distances, over unoccupied habitats. There are currently eight known breeding areas in southern California in addition to populations on Santa Cruz and Santa Rosa Islands off the coast of California (California Department of Fish and Game 2008, pp. 2–3; Ventana Wildlife Society 2008, p. 1). Colorado has a somewhat larger population, with approximately 80 active breeding areas (Colorado Division of Wildlife 2008, p. 1). Nevada has approximately one inactive and five active breeding territories. Two territories, Carson River and Lahontan Reservoir, last had eagles detected in 2002 and 2006, respectively. The occupancy of two others is not yet confirmed. The remaining breeding area produced only two young from 1996 to 2007 (K. Kritz, Service, pers. comm. 2008). Utah has approximately 10 active territories and one inactive breeding territory (N. Darnall, Service, pers. comm. 2008). For New Mexico, the population of bald eagles consists of four currently occupied territories (H. Walker, NMDGF, pers. comm. 2009). West Texas currently has one active breeding territory west of the 100th Meridian. This territory has been active since 1994 (C. Boal, pers. comm. 2009).

Marked Separation as a Consequence of Ecological Factors

A final factor isolating Sonoran Desert Area bald eagles is the unsuitability of habitat in areas surrounding the Sonoran Desert Area for occupancy by breeding birds. The majority of the bald eagle population in the Sonoran Desert Area occurs in central Arizona within the riparian areas of the Sonoran Desert as described in Brown (1994, pp. 180–221) and adjacent vegetation communities. Across the western United States, there are large geographic areas where breeding bald eagles are rarely found. These areas are associated with the Great Basin and Mohave Deserts, indicating that conditions in these desert biotic communities are not suitable for occupancy. In contrast, the Sonoran Desert and its subdivisions, where nesting bald eagles within the Sonoran Desert Area are located, are suitable for breeding areas because of the availability of water, prey, and trees suitable for nesting and perching. The Sonoran Desert scrub vegetation community is unique from other desert scrub formations in North America in its tropical and subtropical influences. Within the community, the riparian or riverine habitat occupied by breeding bald eagles is limited to areas where there is sufficient winter precipitation to support vegetation along streams (Brown 1994, p. 269).

Western Apache traditional ecological knowledge corroborates these data regarding bald eagles within the Sonoran Desert Area being ecologically separated from other populations. Three Apache place names use the term Itsa Bigow ("bald eagle's home"). Apaches use the term gowa (meaning "home") referring to the eagle's entire habitat, as opposed to the term bit'oh ("its nest"). According to Basso (1996), the Western Apaches' perception of the land works in specific ways to influence Apaches' awareness of themselves. The process of "place naming" documents where and how Apaches learned about the environment and how they incorporated these names into social and environmental ethics (Basso 1996). This concept is further exemplified by the Apache word "ni", this expression translates to mean both "mind" and "land," and thus, the two words cannot be separated (Chairman Ronnie Lupe, pers. comm., 2008). The Apache bald eagle place names evoke an entire area or ecosystem of which the bald eagle is an intrinsic part. The place names include entire mountainsides composed of chaparral, pinyon-juniper woodland, and ponderosa pine forests, always in proximity to water (*i.e.,* riparian areas) (Lupe *et al.* pers. comm. 2008).

Bald eagles, including those in the Sonoran Desert Area, typically nest within 1 mi (1.6 km) of water. Bald eagles require cliff ledges, rock pinnacles or large trees or snags in which to construct nests (Driscoll *et al.* 2006, pp. 19–20). Those areas most immediately surrounding the Sonoran Desert Area, which contain no known breeding eagles or suitable habitat, fall within the Great Basin and Mohave Deserts. Areas in the Great Basin and Mohave Deserts surrounding the Sonoran Desert Area lack the appropriate bald eagle habitat parameters of water, fish, and nesting areas. Nonbreeding bald eagles from other populations migrate through these areas to reach the Sonoran Desert Area. Therefore, we believe these desert areas result in a discontinuity of distribution of breeding birds, rather than as a barrier to dispersal, and serve to further

isolate Sonoran Desert Area bald eagles from those in other populations.

Bald eagles nesting at high elevation in Arizona in areas in proximity to the Sonoran Desert Area occupy Petran Montane Conifer Forest and Plains, and Great Basin Grassland above the Mogollon Rim (Brown and Lowe 1994, map). These eagles are not believed to have originated from within the Sonoran Desert Area, as described above. Similarly, bald eagles occupying these areas are not known to have occupied Sonoran Desert habitat within the Sonoran Desert Area. These high-elevation areas appear to be unsuitable to Sonoran Desert Area bald eagles, as indicated by the lack of emigration to these areas by eagles originating in the Sonoran Desert Area.

Conclusion on Discreteness

Based on the available information in the petition, scientific literature, traditional ecological knowledge, and information in our files regarding bald eagles in the Sonoran Desert Area, we have determined that the Sonoran Desert Area population of bald eagles is markedly separate from other populations of the species due to a lack of immigration to and emigration from surrounding bald eagle populations, and the fact that the areas immediately surrounding the Sonoran Desert Area lack the appropriate bald eagle habitat parameters of water, fish, and nesting areas and contain no known breeding bald eagles. Therefore, we have determined that the Sonoran Desert Area population meets the requirements of our DPS Policy for discreteness. Banding studies and resighting efforts demonstrate that breeding bald eagles in the Sonoran Desert Area are largely geographically separate from those in surrounding areas. Limited source populations and unsuitable habitat in surrounding areas further separate bald eagles in the Sonoran Desert Area from those in other areas. Although not absolute, we believe this separation to be marked, and to meet the intent of the DPS Policy for discreteness. We made a similar argument and drew the same conclusion for similar reasons in our final delisting rule for the species in the lower 48 States (72 FR 37246, July 9, 2007).

Significance

If we determine that a population segment is discrete under one or more of the discreteness conditions described in the DPS Policy, we then evaluate its biological and ecological significance based on "the available scientific evidence of the discrete population segment's importance to the taxon to which it belongs" (61 FR 4725). We make this evaluation in light of congressional guidance that the Service's authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity (61 FR 4722; February 7, 1996). Since precise circumstances are likely to vary considerably from case to case, the DPS Policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS Policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS Policy (61 FR 4722), consideration of the population segment's significance may include, but is not limited to the following: (1) Persistence of the population segment in an ecological setting that is unusual or unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Evidence with respect to any one of the classes of information listed in the DPS Policy may allow the Service to conclude that a population segment is significant to the taxon to which it belongs. Furthermore, the Service may consider other information relevant to the question of significance, as appropriate.

Persistence in a Unique Ecological Setting

As stated in the DPS Policy, the Service believes that occurrence in an unusual ecological setting may be an indication that a population segment represents a significant resource warranting conservation under the Act (61 FR 4724). In considering whether the population occupies an ecological setting that is unusual or unique for the taxon, we evaluate whether the habitat includes unique features not used by the taxon elsewhere and whether the habitat shares many features common to the habitats of other populations. The bald eagle: (1) Is continent wide in its distribution (stretching from the Aleutian Islands to Baja California, Mexico, and from northeastern Canada to Florida), (2) breeds from sea level to mountains as high as 10,000 feet, (3) lives in some of the driest areas in the United States and in some of the wettest, and (4) is capable of nesting in trees, on cliff faces, on the ground, and even in caves. In other words, the species is able to occupy a broad range of vegetation communities and ecosystems throughout North America. Because the bald eagle occurs in so many diverse environments, it is difficult to determine what the "usual" ecological setting is for the species, and, therefore, difficult to conclude that the bird's presence in any particular ecological setting is "unusual," possibly indicating significance under our DPS policy.

Bald eagles in the Sonoran Desert Area inhabit a desert ecosystem characterized by hot and dry summers. On its face, this seems to represent an ecological setting that is highly unusual or unique for the species. For instance, according to Hunt *et al.* (1992, p. A163) and Glinski (1998, p. 52) bald eagle nesting habitats in Arizona are among the most unusual nesting habitats occupied by the species, with many of the nests located in open desert under conditions of high heat and low humidity. As a highly adaptable species, however, bald eagles are flexible with respect to habitat selection. They inhabit many diverse environments. They inhabit hot climates elsewhere, such as in Florida. They even inhabit other desert ecosystems in Baja California Sur (Henney *et al.* 1978, 1993). Bald eagle breeding in Baja is limited, but nest sites are known from both the Pacific Ocean and Gulf of California sides of the peninsula, in arid and semi-arid ecosystems of the Sonoran Desert (Henney *et al.* 1978, 1993). Bald eagles in desert habitats, including the potential Sonoran Desert Area DPS, essentially use the same ecological niche as those in other parts of their range. Bald eagles in the Sonoran Desert Area feed primarily on fish, consistent with bald eagles in other parts of the range. With respect to nesting requirements, according to Grier and Guinn (2003, p. 44), habitat structure and proximity to a sufficient food source are usually the primary factors that determine suitability of an area for nesting. Throughout their range, bald eagles are known to nest primarily along seacoasts and lakeshores, as well as along banks of rivers and streams (Stahlmaster 1987, p. 120). Similar to the remainder of the population, bald eagle breeding areas (eagle nesting sites and the area where eagles forage) in the Sonoran Desert Area are located in close proximity to a variety of aquatic sites, including reservoirs, regulated river

systems, and free-flowing rivers and creeks.

Although the Sonoran Desert differs in some ways from other habitats that the bald eagle inhabits, every area differs somewhat from other occupied areas. Under the DPS Policy, for a population segment to qualify as a DPS it must be significant to the species to which it belongs. The Policy further lists four issues that the Service may consider in making this determination. Those considerations include whether the population segment persists in a unique or unusual ecological setting. However, the question of ecological setting is not considered in the abstract, or itself determinative as to whether a population segment is significant. As with the other considerations under the significance prong of the DPS Policy, it must be considered in the context of the population segment's importance to the taxon to which it belongs. Thus, to the extent that a population segment arguably persists in an unusual ecological setting, the Service must consider how persistence in this setting may in fact be important to the taxon. Failure to consider this context would lead to the conclusion that an unreasonable and potentially infinite number of population segments are significant. However, our DPS Policy states that the requirement that a DPS be significant is intended to carry out the expressed congressional intent that this authority be exercised sparingly as well as to concentrate conservation efforts undertaken under the Act on avoiding important losses of genetic diversity. We conclude that the best information available does not indicate that persistence in the ecosystem of the Sonoran Desert Area is important to the species as a whole.

We considered whether cliff nesting is an adaptation to the conditions in the Sonoran Desert Area that indicates that the southwest is an unusual or unique ecological setting for bald eagles. While Stahlmaster (1987, p. 121) noted that cliff nesting is common in Arizona, he also noted that exceptions to tree nests occur in other areas. Gerrard and Bortolotti (1988, p. 41) note that bald eagles in other areas may nest on cliffs if suitable trees are not available. This is supported by Buehler (2000) who states that bald eagles use ground nests (a category in which he includes nests built on cliff sides) in treeless regions such as Alaska, north Canada, islands off the coast of California, and Arizona. Bald eagles are known to nest on cliffs on the Channel Islands off California (NOAA 2006). Bald eagles in Alaska also are known to nest on cliffs, sea stacks, hillsides, and rock promontories where there are no suitable nest trees (Sherrod *et al.* 1976, p. 153). It is likely that up to 10 percent of the bald eagles in Alaska nest on the ground (Schempf pers. comm. 2007). Ground nesting has been documented in northwestern Minnesota and Florida but is the exception rather than the rule (Hines and Lipke 1991, pp. 155–157; Shea *et al.* 1979, pp. 3–5). Eagles also nest in a variety of unconventional situations, such as utility poles, abandoned heavy equipment, mangroves, cacti (in Baja), and root wads washed up on sandbars.

Cliff nesting in Sonoran Desert Area bald eagles does not seem to be an indication of a behavioral adaptation unique to the Sonoran Desert. Bald eagles will use whatever high nest sites are available near aquatic areas they inhabit; in the Sonoran Desert Area these sites often happen to be cliffs. In fact, although bald eagles use cliffs, ledges, and pinnacles for nesting in the Sonoran Desert Area, they have also nested there in cottonwood, willow, sycamore, pinyon pine, and ponderosa pine trees. Many Sonoran Desert Area eagle pairs have built and used both tree and cliff nests within their territories. This behavior demonstrates the flexibility in nest site selection that bald eagles have throughout the eagles' entire geographic range.

Bald eagles in the Sonoran Desert Area are smaller in size than many other bald eagles. However, as previously discussed, examination by latitude reveals differences between birds in the northern regions and birds in the southern regions in general. For instance, Stahlmaster (1987, pp. 16–17) notes northern eagles are much larger and heavier than their southern counterparts. This is consistent with Bergmann's Rule, which holds that animal size increases with increasing latitude due to changes in environmental temperature. Consistent with this rule, Hunt *et al.* (1992, pp. A158–A161) report that bald eagles in Arizona are smaller than those in Alaska, California, and the Greater Yellowstone Region. Gerrard and Bortolotti (1988, p. 14) note that bald eagles in Florida, which is farther south than Arizona, are the smallest, with a gradation of small to large from south to north. Although this information might be interpreted as suggesting that all southern birds are significant to the taxon as a whole (since southern birds are smaller), it does not suggest that small size of the Sonoran Desert Area bald eagle in particular is important to the taxon as a whole. This is especially true given that Florida has one of the largest breeding populations of bald eagles in the lower 48 States, and bald eagles in Florida are reported to be even smaller than those in the Sonoran Desert Area. This information suggests that there are many bald eagles outside the Sonoran Desert Area that are smaller than those within it, diminishing any potential importance of small size in the Sonoran Desert Area to the taxon as a whole.

We considered the belief of Hunt *et al.* (1992, p. A165) that the smaller size of Arizona bald eagles was significant enough that the introduction of foreign genes into the population might disrupt coadapted gene complexes (a group of genetic traits which have high fitness when they occur together, but which without each other have low fitness) specific to the population. Given there are smaller birds elsewhere in the bald eagle's range, it is unlikely small size would be considered an indicator of coadapted gene complexes specific to bald eagles within the Sonoran Desert Area. We conclude that the best available information does not suggest the Sonoran Desert Area bald eagle population possesses coadapted gene complexes specific to the population. Thus, we conclude that the best available information does not suggest the Sonoran Desert Area bald eagles are important to the taxon as a whole due to coadapted gene complexes.

Bald eagles in the Sonoran Desert Area breed earlier than many other bald eagles, which could indicate adaptation to the Sonoran Desert Area setting. However, as with bald eagle size variation, examination by latitude reveals differences between bald eagles in northern and bald eagles in southern regions, in general. Timing of various breeding events in bald eagles is tied to latitude of the nesting area, with eagles at more northern latitudes breeding at later dates (Stalmaster 1987, p. 63). Citing unpublished data, Watts *et al.* (2007) even note differences in breeding chronology with slight variation of latitude within the Chesapeake Bay region; pairs on the James River lay eggs four to six days earlier than pairs on the Potomac River. The breeding chronology of Florida birds is even earlier than those in the Sonoran Desert Area. Gerrard and Bortolotti (1988, p. 76) note that bald eagles in Florida lay eggs from early November to mid-December. Henry *et al.* (1993 p.208) report that Baja California bald eagles are already incubating by mid January, which indicates a mid-December to early-January egg laying period. In Louisiana, bald eagles lay eggs between October and mid-March, but most clutches are complete by late December (Service 1989). Even bald eagles within the Chesapeake Bay region of Virginia

and Maryland, which experience a more mild (*i.e.* coastal) climate than their inland counterparts at similar latitude, are similar in their breeding chronology to those of the Sonoran Desert Area; bald eagles in the Chesapeake Bay region typically lay eggs between mid-January and late February. Further evidence of variation in breeding chronology in bald eagles is given by Buehler (2000):

> Timing of laying varies with latitude. Bent (1937) reported range of egg dates (dates eggs were collected from nests) but because incubation is long (35 d), and eggs persist in abandoned nests, these data do not accurately document laying and incubation phenology. In Florida, breeding season is prolonged, with incubation beginning as early as Oct and as late as Apr; Apr breeding may be second attempt; most incubation initiated Dec–Jan (Broley 1947). On Chesapeake Bay, begin incubation last week in Jan to end of Feb (DAB). In Saskatchewan, laying is fairly synchronous, with 90% of pairs laying within a 10-d period in mid-Apr (Gerrard and Bortolotti 1988). In greater Yellowstone ecosystem, WY, clutch laid from early Mar–mid-Apr; later dates at greater elevations (Swenson et al. 1986). Eggs typically laid in Arizona late Jan–mid-Feb (Grubb 1983). Nests observed in Mexico had incubating adults in Jan; therefore, laying may have occurred from late Dec to early Jan (Henny et al. 1993). In Alaska and Yukon Territory, laying extends from late Apr to end of May, peaking in second week of May (Hensel and Troyer 1964, Blood and Anweiler 1990).

Given that early breeding by bald eagles in the Sonoran Desert Area is not unique among eagles, and in fact occurs in some of the largest breeding areas in the lower 48 States, it is unlikely that early breeding by bald eagles in the Sonoran Desert Area is important to the species as a whole.

Although the best available information indicates that the Sonoran Desert Area is in some ways a unique ecological setting, we know of no information suggesting bald eagle persistence in the Sonoran Desert Area is important to the species as a whole. In fact, the best information available indicates otherwise. Bald eagles are behaviorally flexible—they can and do persist in a broad range of ecological settings, and are known to nest on a variety of substrates when suitable trees are not available. As with many other vertebrates, bald eagles follow Bergmann's rule; their size decreases with decreasing latitude. In addition, Sonoran Desert Area bald eagle breeding chronology is consistent with bald eagles in general; bald eagle breeding chronology occurs earlier with decreasing latitude and increasing temperature. Rather than possessing characteristics unique to the Sonoran Desert Area ecological setting that may be important to the species as a whole, bald eagles in the Sonoran Desert Area display the behavioral variability and follow the morphological and annual cycle (such as breeding chronology) trends of bald eagles throughout North America. In other words, the variability in bald eagle nest-site selection, timing of breeding, and size differences are noted elsewhere in the range where the species confronts similar limitations, such as the absence of nesting trees or high temperatures. Even though bald eagles persist in the Southwest desert setting, they remain consistently associated with aquatic sites, including reservoirs, regulated river systems, and free-flowing rivers and creeks. Bald eagles use whatever high nest sites are available near aquatic areas they inhabit in the Sonoran Desert Area; these sites often happen to be cliffs. These aquatic areas are common to eagle habitats throughout the species' range, and the best available data indicate that the nesting preferences of the Sonoran Desert Area eagles are not unique to the taxon as a whole.

We also considered whether the juvenile migration characteristics of Arizona bald eagles may suggest genetic adaptation. Hunt *et al.* (2009, p. 125) indicates that juvenile bald eagles from Arizona exhibit similar migrating characteristics, and that the similarity of these characteristics, which were exhibited while migrating solitarily, is evidence of genetic control of migration. Bald eagles as a species exhibit a "complex pattern of migration dependent on age of the individual (immature or adult), location of breeding site (north vs. south, interior vs. coastal), severity of climate at breeding site (especially during winter but also possibly during summer), and year-round food availability (Buehler 2000)." For example, bald eagles in northeastern North America migrate south in the fall and return north in the spring, whereas bald eagles in Florida move north in late spring and early summer and return south in the fall (Kerlinger 1989, p. 12). Kerlinger (1989, p. 57) discusses that natural selection has likely shaped the migratory strategy of birds. Natural selection likely exerts pressure over time to emphasize the survival of successful migration strategies, and therefore, successful genes. In other words, birds that make errors in migration are eliminated from the population and do not go on to reproduce and pass their genes to the next generation. Thus, the birds that do survive migration and reproduce successfully may become more genetically similar. Thus, the migration characteristics of bald eagles in the Sonoran Desert Area could be interpreted as providing anecdotal evidence that there may be some genetic adaptation in this population with respect to juvenile migratory behaviors; however, we know of no information suggesting that these potential adaptations are significant to the species as a whole, especially in light of the fact that a wide variety of migration strategies are utilized throughout the range of the species.

Some members of the public questioned the future of the bald eagle given the possibilities associated with climate change. All but one model evaluating changing climatic patterns for the southwestern United States and northern Mexico predict a drying trend for the region (Seagar *et al.* 2007, pp. 1181–1184). We acknowledge that drought and the loss of surface water in riparian and aquatic communities are related to changing climatic conditions (Seagar *et al.* 2007, pp. 1181—1184). The extent to which changing climate patterns will affect bald eagles in the Sonoran Desert Area is not known. However, because bald eagles are highly adaptable, the best available information indicates it is unlikely the Sonoran Desert Area population adds resiliency to the taxon as a whole. For this reason, it is also unlikely that the Sonoran Desert Area bald eagles will be significant to the species as a whole if the southwest becomes more arid in the future as predicted.

Many biological opinions prepared by the Service in connection with section 7 consultations in the Sonoran Desert and other Service documents issued over the last 30 years stated that Arizona bald eagles live in a unique ecological setting and demonstrate unique behavioral characteristics, including the use of cliffs instead of trees as nest sites, breeding at earlier times of the year, and development of smaller body sizes. Several comment letters, including those from bald eagle experts, referred to the Service's previous management practice of recognizing the bald eagles in a Southwest Recovery Region separate unit. As stated above and in the final delisting rule (72 FR 37355), that was prior to the DPS policy of 1996, and we conclude that the DPS evaluation of significance should be evaluated per the policy, as described in this document. Some of these documents also stated that the Arizona bald eagles had been considered a distinct population for the purposes of section 7 consultation and recovery efforts under the Act. Many of these biological opinions and other documents were issued prior to the

Stahlmaster (1987) and Gerrard and Bortolotti (1988) publications, the issuance of the DPS Policy in 1996, or were abstracted from such earlier biological opinions without a reanalysis of their relevance. The term "unique ecological setting" was not used in these documents in the context of its meaning within the DPS Policy, which requires that the unique or unusual ecological setting be important to the conservation of the taxon as a whole. As discussed above, while the climate conditions differ in the Southwest compared to other parts of the range of the taxon where bald eagles are found, this attribute alone is not dispositive as to whether a population segment is significant under the DPS Policy. A unique or unusual ecological setting must also provide some element that makes the members of the population important to the taxon as a whole (61 FR 4724–4725).

In summary, Stahlmaster's (1987, p. 121) and Gerrard and Bortolotti's (1988, p. 41) studies indicate that bald eagles in other parts of their range are known to nest on cliffs if suitable trees are not available. Hunt *et al.* (1992) note that Florida bald eagles are the smallest bald eagles, and that eagle size increases as the nest sites are located farther north. Stalmaster (1987) notes that bald eagles in Florida initiate breeding activities in October, even earlier than Sonoran Desert Area bald eagles. The best available scientific information indicates that the Sonoran Desert Area bald eagles are not unusual in these behavioral aspects. Instead, bald eagle behavior and morphology gradually changes at different latitudes from north to south. In fact, even though bald eagles do persist in the Southwest desert setting, they remain consistently associated with aquatic ecosystems as they do elsewhere. Bald eagles use whatever high nest sites are available near riparian areas they inhabit in the Sonoran Desert Area; these sites often happen to be cliffs. These riparian areas are common to eagle habitats throughout the species' range. The question under the DPS Policy is whether persistence of a species in an unusual or unique ecological setting supports a conclusion that the discrete population segment is significant to the taxon to which it belongs. *See National Association of Home Builders* v. *Norton,* 340 F.3d 835, 849 (9th Cir. 2003) (emphasizing that under the DPS Policy significance must be considered in relation to the taxon as a whole). The mere fact that a species persists in an ecological setting that differs to some degree from other ecological settings in which it is found does not mandate a finding that a population is significant to the taxon to which it belongs. Here, we find that the species' persistence in the Sonoran Desert Area is not significant to the taxon as a whole because these particular eagles exhibit similar behavior and nesting adaptations to their setting as do bald eagles in other settings.

Therefore, we conclude that the discrete population of bald eagles in the Sonoran Desert Area is not "significant" within the meaning of the DPS Policy as a result of persistence in a unique or unusual ecological setting.

Significant Gap in the Taxon's Range

As stated in the DPS Policy, the Service believes that evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon, is potentially an indication that a population segment represents a significant resource warranting conservation under the Act (61 FR 4724). As the Ninth Circuit has stated, "[t]he plain language of the second significance factor does not limit how a gap could be important," *National Ass'n of Home Builders* v. *Norton,* 340 F.3d 835, 846 (9th Cir. 2003). Thus, we considered a variety of ways in which the loss of the Sonoran Desert Area population might result in a significant gap in the range of the bald eagle in the lower 48 States (although this range is itself only a portion of the broader taxon. There has been much speculation about the loss of eagles in the Sonoran Desert Area given that repopulation of this area would have to occur from northern Mexico or adjacent States in the United States and available evidence indicates that little immigration has occurred in this population. We agree that the low number of eagles in neighboring States of the United States would likely require a large amount of time to repopulate the Sonoran Desert Area, if they ever did. The small number of bald eagles and large distances between neighboring populations currently limit immigration and emigration between them, and bald eagles in the neighboring populations would have to increase their population size and expand their distribution to occupy the gaps.

Given that repopulation of the Sonoran Desert Area, if extirpated, through immigration is unlikely in the foreseeable future due to unsuitable habitat and limited population sources, we must evaluate whether loss of this population would create a significant gap in the range of the taxon. Bald eagles in the Sonoran Desert Area are neither numerous nor constitute a significant percentage of the bald eagles throughout the range of the taxon. In 2009, 48 pairs were documented in the Arizona portion of the Sonoran Desert Area (McCarty and Jacobson 2009, p. 8), which is where most of the birds in the Sonoran Desert Area population occur. This represents less than one half of 1 percent of the current estimated number of breeding pairs of bald eagles in the lower 48 States. Because the taxon as a whole also includes bald eagles in Canada and Alaska, the number of breeding pairs in the Sonoran Desert Area represents much less than one half of a percent of the number of breeding pairs throughout the range of the species. In addition, the Arizona portion of the Sonoran Desert Area did not support a large proportion of the bald eagle population historically. A small number, estimated at 15–20 breeding pairs, historically bred in this area (Tilt 1976, p. 15). Only one pair was documented in the Mexico portion of the Sonoran Desert Area population, but surveys were very limited.

Given the historical and current population number of bald eagles throughout the range of the taxon, the Sonoran Desert Area population of bald eagles represents a relatively small number of breeding pairs in comparison. On balance, having reviewed all the relevant information, we conclude that loss of eagles in the Sonoran Desert Area would not represent a significant gap in the range of the species due to a loss of biologically distinctive traits or adaptations, or genetic variability of the taxon. The actual amount of suitable bald eagle habitat in the Sonoran Desert Area is in general limited and represents a minute fraction of the total suitable habitat available for bald eagles throughout their range. The limited size of the current and historical bald eagle population in the Sonoran Desert Area directly reflects that fact. Thus, we conclude that loss of the Sonoran Desert Area would not result in a significant gap in the range of the taxon.

As discussed previously in this document, we divided the lower 48 States into five recovery regions to facilitate the recovery of the bald eagle. In the southwestern United States bald eagles were managed under the Southwest Bald Eagle Recovery Region, which encompassed Oklahoma, Texas west of the 100th meridian, all of New Mexico and Arizona, and those portions of southeastern California that border the lower Colorado River. Several comment letters, including those from bald eagle experts, referred to our previous management practice of recognizing the bald eagles in a

Southwest Recovery Region separate unit. As has been stated here and in the final delisting rule (72 FR 37355), we delineated bald eagle Recovery Regions prior to the DPS Policy of 1996. Thus, the boundaries of these units were not delineated based on the significance criteria of our DPS policy. These boundaries, therefore, may have little baring on an analysis of whether the loss of the Sonoran Desert Area population would result in a significant gap in the range of bald eagles in North America. We conclude that the DPS evaluation of significance should be evaluated per the policy, rather than evaluated per pre-DPS-Policy documents.

Natural Occurrence of a Taxon Abundant Elsewhere as an Introduced Population

As stated in the DPS Policy, the Service believes that evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historic range may be an indication that a population segment represents a significant resource warranting conservation under the Act (61 FR 4724). However, the Sonoran Desert Area population does not represent the only surviving natural occurrence of the bald eagle throughout the range of the taxon in North America.

Genetic Characteristics

As stated in the DPS Policy, the Service believes that evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics may be an indication that a population segment represents a significant resource warranting conservation under the Act (61 FR 4724). Hunt *et al.* (1992, pp. E–96 to E–110) contains the genetic work completed to date on the Arizona bald eagle population. Hunt *et al.* (1992, pp. A150–A165) suggested that the desert Arizona population, which includes the majority of bald eagles in the Sonoran Desert Area, may be reproductively isolated. Vyse (1992, p. E–100, E–101) notes that the results obtained could easily be explained by sampling procedures, and Zegers *et al.* (1992, pp. E–106 to E–109) question the reliability of the results because of the low numbers of individuals sampled from most States and because of the few loci examined. In conclusion, neither enzyme electrophoresis nor DNA fingerprinting resolved any specific genetic markers with which Arizona eagles could be differentiated from other populations.

The available genetic studies on bald eagles are dated; the sample size was small; and researchers conducting the studies found the results to be inconclusive. As discussed above, eagles in the Sonoran Desert Area do not display any biologically distinctive traits that likely signal any unique genetic characteristics. Therefore, given the assumptions and cautions in using the data, we have determined that the best available data do not support a conclusion that bald eagles in the Sonoran Desert Area have genetic characteristics that are markedly different from other bald eagles.

DPS Conclusion

On the basis of the best available information, we conclude that the Sonoran Desert Area population of the bald eagle is discrete, but it is not significant in relation to the remainder of the taxon (*i.e.,* bald eagles in North America). We believe the best scientific information provides substantial information on natal site fidelity in breeding birds and the limited number of other eagles in neighboring southwestern States. Further, we believe the results of the 30 years of monitoring data provide substantial information indicating that few, if any, eagles immigrate to or emigrate from the Sonoran Desert Area bald eagle population. These three factors lead us to conclude that the best available scientific information with respect to the discreteness requirements of the DPS Policy warrant considering the Sonoran Desert Area bald eagle population as discrete from other bald eagle populations in North America.

Although they do persist in a arid region with high heat, as discussed above, Sonoran Desert Area bald eagles do not appear to express any adaptations that are not found in bald eagles elsewhere or that a population persisting in the Sonoran Desert Area will significantly increase the resiliency of the taxon as a whole. The adaptability of the bald eagle allows its distribution to be widespread throughout the North American continent in a variety of habitat types. We considered the four classes of information listed in the DPS Policy as possible considerations in making a determination as to significance; we also considered all other information that might be relevant to making this determination for the Sonoran Desert Area population. We conclude that the discrete Sonoran Desert Area population of bald eagle does not meet the significance criteria of the DPS Policy, as detailed above, and, therefore, is not a DPS pursuant to our DPS Policy. As a result, the Sonoran Desert Area population of bald eagles is not a listable entity under section 3(16) of the Act.

Since we found that the population segment did not meet the significance element and, therefore, does not qualify as a DPS under the Service's DPS Policy, we will not proceed with an evaluation of the status of the population segment under the Act.

We note that, although we have determined that this portion of the range is not significant for the purposes of section 4 of the Act, we recognize that the bald eagles in the Sonoran Desert Area have great importance to people in this region, particularly Native Americans, and will continue to be protected under the BGEPA. We will continue to work with the States, Tribes, and conservation organizations in this region to conserve the bald eagle in the Sonoran Desert Area.

Finding

In making this finding, we considered information provided by the petitioners, as well as other information in our files, and otherwise available. We reviewed the petition, information submitted by the public and the Tribes, and available published and unpublished scientific and commercial information. We also consulted with Federal, State, and Tribal land managers, along with recognized experts in conservation and bald eagle biology. This 12-month finding reflects and incorporates information that we received from the public and through consultation, literature research, and field visits. Based on the rationale detailed above, we find that bald eagles in the Sonoran Desert Area constitute a discrete population segment.

However, on the basis of our review, we find that the best scientific and commercial information does not indicate that the Sonoran Desert Area bald eagle constitutes a valid DPS, pursuant to the DPS Policy (61 FR 4722). As described above, we believe the population to be discrete, but have determined that the Sonoran Desert Area bald eagle is not significant in relation to the remainder of the taxon (*i.e.* bald eagles in North America). Therefore, we conclude that the Sonoran Desert Area population is not a listable entity pursuant to section 3(15) of the Act. Finally, we find that the Sonoran Desert Area portion of the range of the bald eagle in North America does not constitute a significant portion of the species' range as this portion does not contribute meaningfully to the representation, resiliency, or redundancy of the entire taxon.

We encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding the bald eagle, you may submit your information or materials to the Field Supervisor, Arizona Ecological Services Office (*see* **ADDRESSES** section above). The Service continues to strongly support the cooperative conservation of the Sonoran Desert Area bald eagle.

On March 6, 2008, the U.S. District Court for the District of Arizona enjoined our application of the July 9, 2007 (72 FR 37346), final delisting rule for bald eagles to the Sonoran Desert population pending the outcome of our status review and 12-month petition finding. As a result, we put this population back on the List of Threatened and Endangered Species on May 1, 2008. In light of our 12-month finding presented above, we intend to publish a separate notice to remove this population from the List of Threatened and Endangered Wildlife. However, we will only do so once the U.S. District Court for the District of Arizona has confirmed that its injunction, which required us to add this population to the List of Threatened and Endangered Wildlife, has been dissolved. Until that time, the Sonoran Desert Area population will remain protected by the Act.

References Cited

A complete list of all references cited herein is available, upon request, from the Arizona Ecological Services Office of the U.S. Fish and Wildlife Service (*see* **ADDRESSES** section above).

Author

The primary authors of this notice are the staff of the Arizona Ecological Services Office (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 17, 2010.

Hannibal Bolton,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–3794 Filed 2–24–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2008–0128]
[MO 92210–0–0009–B4]

RIN 1018–AW72

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have determined that the proposed listing of the Southwestern Washington/Columbia River Distinct Population Segment (DPS) of coastal cutthroat trout as a threatened species under the Endangered Species Act of 1973, as amended (Act), is not warranted. We therefore withdraw our proposed rule (64 FR 16397; April 5, 1999) to list the DPS under the Act. Although we had earlier concluded that this DPS did not warrant listing under the Act, as a result of litigation we have reconsidered whether the marine and estuarine areas of the DPS may warrant listing if they constitute a significant portion of the range of the DPS. Based upon a thorough review of the best available scientific and commercial data, we have determined that the threats to coastal cutthroat trout in the marine and estuarine areas of its range within the DPS, as analyzed under the five listing factors described in section 4(a)(1) of the Act, are not likely to endanger the species now or in the foreseeable future throughout this portion of its range. We, therefore, again withdraw our proposed rule, as we have determined that the coastal cutthroat trout is not likely to become endangered now or in the foreseeable future throughout all or a significant portion of its range within the Southwestern Washington/Columbia River DPS.

ADDRESSES: This withdrawal and supporting documentation are available on the Internet at *http://www.regulations.gov;* search for Docket Number [FWS–R1–ES–2008–0128]. Supporting documentation for this determination is also available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, OR 97266; telephone 503–231–6179; facsimile 503–231–6195.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Ph.D., State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (*see* **ADDRESSES**, above). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 2002, we published a notice of our withdrawal of the proposed rule to list the Southwestern Washington/Columbia River distinct population segment (DPS) of the coastal cutthroat trout (*Oncorhynchus clarki clarki*) as threatened under the Endangered Species Act of 1973, as amended (Act) (67 FR 44934; July 5, 2002). As a result of litigation, we are required to reconsider our withdrawal of the proposed rule with specific regard to the question of whether marine and estuarine areas may constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout.

On March 24, 2009, we published a notice of reopening of a comment period on the proposed rule (74 FR 12297). In that notice, we alerted the public, other concerned governmental agencies, the scientific community, industry, and any other interested party of our request for information, data, or comments on the marine and estuarine areas of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout, with particular regard to whether these areas constitute a significant portion of the range of the DPS under the Act, and if so, whether the subspecies is threatened or endangered in those areas.

The comment period closed on April 23, 2009, and we received four comment letters. After analyzing the information received, information in our files, and all other available information, we analyzed the threats to coastal cutthroat trout in the marine and estuarine portion of the DPS to determine whether coastal cutthroat trout are threatened or endangered in that area and, if so, whether the area constitutes a significant portion of the range of the DPS. Although the Court did not ask us to revisit status, trends, and threats to anadromous cutthroat trout or other life-history forms outside of marine and estuarine areas, we have also considered any new information available for these areas that would suggest any significant change in status, trend, or threats for the

remainder of the DPS. This withdrawal of the proposed rule is the result of our determination that coastal cutthroat trout in the marine and estuarine areas of the DPS do not warrant listing as either threatened or endangered.

Previous Federal Actions

The **Federal Register** documents related to this current withdrawal action are listed in table 1 and explained further in text following the table.

TABLE 1—FEDERAL REGISTER PUBLICATIONS CONCERNING THE PROPOSED LISTING OF THE SOUTHWESTERN WASHINGTON/COLUMBIA RIVER DISTINCT POPULATION SEGMENT OF COASTAL CUTTHROAT TROUT (*Oncorhynchus clarki clarki*).

Date of Federal Register Publication	Federal Register Citation	Action
April 5, 1999	64 FR 16397	FWS and NMFS jointly issue a proposed rule to list the southwestern Washington/Columbia River distinct population segment of coastal cutthroat trout as threatened and opened a public comment period until July 6, 1999
April 14, 2000	65 FR 20123	Announced 6–month extension for publishing the final determination on the April 5, 1999, proposed rule from the normal 12–month timeframe required by the Act (extension was from April 5, 2000, to October 5, 2000)
April 21, 2000	65 FR 21376	Announced transfer of regulatory jurisdiction for coastal cutthroat trout from joint FWS and NMFS management to FWS exclusively
June 2, 2000	65 FR 35315	Reopened the comment period on the April 5, 1999, proposed rule until July 23, 2000, and announced a public hearing on June 20, 2000
July 14, 2000	65 FR 43730	Clarified the take prohibitions that would go into effect if the April 5, 1999, proposed rule was finalized
September 6, 2000	65 FR 53974	Reopened the comment period on the July 14, 2000, take clarification document until September 29, 2000, and announced a public hearing on September 21, 2000
November 23, 2001	66 FR 58706	Reopened the comment period on the April 5, 1999, proposed rule to list until December 24, 2001
July 5, 2002	67 FR 44934	Withdrew the April 5, 1999, proposed rule to list
March 24, 2009	74 FR 12297	Reconsidered the July 5, 2002, withdrawal and reopened the comment period on the April 5, 1999, proposed rule to list until April 23, 2009

As indicated in table 1, the National Marine Fisheries Service (NMFS) and the Service jointly published a proposed rule to list the Southwestern Washington/Columbia River ESU (later DPS) of coastal cutthroat trout as a threatened population under the distinct vertebrate population segment provision of the Act on April 5, 1999 (64 FR 16397). In that proposed rule, we noted the uncertainty regarding which agency, the NMFS or the Service, had jurisdiction over the coastal cutthroat trout, and we committed to notify the public once the issue had been resolved. Subsequently, the time to make a final determination on the proposed rule was extended for an additional 6 months, from April 5, 2000, to October 5, 2000, due to substantial scientific disagreement about the status of the population; this action further opened an additional 30–day comment period (65 FR 20123; April 14, 2000).

On April 21, 2000, the NMFS and the Service published a notice of the Service's assumption of sole jurisdiction for coastal cutthroat trout under the Act (65 FR 21376). On June 2, 2000, we again reopened the comment period on the proposed rule and announced a public hearing to be held in Ilwaco, Washington, on June 20, 2000, to allow all interested parties to submit oral or written comments on the proposal (65 FR 35315). On July 14, 2000, we published a notice to clarify the take prohibitions for the Southwestern Washington/Columbia River DPS of coastal cutthroat trout that would apply if the proposed listing were to be finalized, and provided a 30–day public comment period on the list of activities that would, and would not, likely constitute a violation of section 9 of the Act (65 FR 43730). The comment period on the clarification of take prohibitions was reopened on September 6, 2000 (65 FR 53974), and a hearing was held September 21, 2000, in Aberdeen, Washington, based on a request during the initial public comment period. In addition, the comment period on the proposed rule to list the Southwestern Washington/Columbia River DPS of coastal cutthroat trout was again reopened for an additional 30 days on November 23, 2001 (66 FR 58706).

On July 5, 2002, we published a notice of withdrawal of the proposed rule to list the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout as threatened (67 FR 44934; July 5, 2002). The notice set forth the following bases for our determination that the DPS did not meet the listing criteria as a threatened species: (1) new data indicating that coastal cutthroat trout are more abundant in southwest Washington than was previously thought, and that population sizes were comparable to those of healthy populations in other areas; (2) new information and analyses calling into question prior interpretation of the size of the anadromous portion of the population in the Columbia River, and indicating higher numbers than previously described; (3) new data and analyses no longer showing declining adult populations in the Grays Harbor tributaries; (4) new analyses calling into question the past interpretation of trend data, and, therefore, the magnitude of

the trend in the anadromous portion of the population in the Columbia River; (5) new information describing the production of anadromous progeny by non-anadromous and above-barrier cutthroat trout; and, (6) two large-scale Habitat Conservation Plans (HCPs) and significant changes in Washington Forest Practices Regulations, substantially reducing threats to aquatic and riparian habitat on forest lands in Washington. The withdrawal notice concluded that, based on reduced threats and new information and understanding regarding the status of the DPS, the Southwestern Washington/Columbia River DPS of coastal cutthroat trout was not in danger of becoming endangered in the foreseeable future, and, therefore, did not meet the definition of a threatened species.

On February 3, 2005, the Center for Biological Diversity, Oregon Natural Resources Council, Pacific Rivers Council, and WaterWatch filed a legal challenge to the Service's withdrawal of the proposed listing in the U.S. District Court for the District of Oregon (Center for Biological Diversity, *et al.* v. *U.S. Fish and Wildlife Service*, Case No. 05–165–KI). The Court ruled that the Service's decision to withdraw the proposed rule complied with the Act and was not arbitrary and capricious, and dismissed the action on November 16, 2005. Plaintiffs appealed. On April 18, 2008, the U.S. Court of Appeals for the Ninth Circuit affirmed the district court's decision in part and reversed the decision in part. The Ninth Circuit found no error in the Service's determination that the DPS as a whole did not merit listing, but held that the Service had failed to consider whether the marine and estuarine portions of the DPS constitute a significant portion of the range of the coastal cutthroat trout within that DPS under the Act (Center for Biological Diversity, *et al.* v. *U.S. Fish and Wildlife Service*, 274 Fed. Appx. 542 (9th Cir. 2008)). The Ninth Circuit reversed the district court's decision and remanded the matter to the district court.

On July 1, 2008, the U.S. District Court for the District of Oregon issued an amended order remanding the listing decision to the Service for further consideration in light of the opinion of the Ninth Circuit. On March 24, 2009, we reopened a comment period on the proposed rule (74 FR 12297), soliciting information on the question of whether the estuary and other marine areas constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout. The comment period closed on April 23, 2009.

Species Information

The following descriptions of the subspecies coastal cutthroat trout (*Oncorhynchus clarki clarki*), its habitat, and life history, are excerpted from our July 5, 2002, withdrawal of the proposed rule to list the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout as threatened (hereafter "withdrawal notice") (67 FR 44934; July 5, 2002). We incorporate all of the information in the withdrawal notice by reference. Where new information has become available, we have updated these descriptions to ensure we are using the best available scientific and commercial information. Where certain information is critical to the understanding of our reasoning, we have included it here. We have focused on cutthroat exhibiting anadromous life-history strategies as these are the only individuals that use the marine and estuarine areas under consideration here. Please see the withdrawal notice (67 FR 44934; July 5, 2002) for additional information.

The coastal cutthroat trout is 1 of 10 formally described subspecies of cutthroat trout (Behnke 1992) and is a member of the family Salmonidae (collectively known as salmonids). The coastal cutthroat trout is distributed along the Pacific Coast of North America from Prince William Sound in Alaska to the Eel River in California (Behnke 1992, p. 65; Trotter 2008, p. 62) and inland from the Coast Range of Alaska to roughly the crest of the Cascades of Washington and Oregon (Trotter 2008, p. 62).

The Southwestern Washington/Columbia River DPS of coastal cutthroat trout includes the Columbia River and its tributaries from the mouth to the Klickitat River on the Washington side of the river and Fifteenmile Creek on the Oregon side; the Willamette River and its tributaries from its confluence with the Columbia upstream to Willamette Falls; Willapa Bay and its tributaries; and Grays Harbor and its tributaries.

The portion of the range of the DPS being considered here includes three estuaries and areas of nearshore marine ocean habitat off the coasts of these estuaries. In the Columbia River, we have defined the estuary as extending to approximately river mile (rmi) 28 (river kilometer (rkm) 45) where the upstream extent of saltwater intrusion occurs. The Columbia River estuary, from the mouth to the extent of saltwater intrusion, covers approximately 148 square miles (sq mi) (about 383 square kilometers (sq km)). In Grays Harbor and Willapa Bay estuaries, the extent of saltwater intrusion is less distinguishable from the extent of tidal influence, largely due to the less linear shape of the water body. As a result, we define the estuary as extending approximately as far upstream as the extent of saltwater-tolerant shoreline vegetation along each of the respective tributaries. Defined this way, Grays Harbor estuary covers approximately 91 sq mi (about 236 sq km), and Willapa Bay estuary covers approximately 129 sq mi (about 334 sq km).

The marine area included is far more difficult to identify, since anadromous coastal cutthroat trout from within this DPS could potentially intermingle with coastal cutthroat trout from Olympic Peninsula populations to the north, and the Oregon coast populations to the south (Johnson *et al.* 1999, pp. 126–130). We define the nearshore marine area by considering the marine areas known or likely to be used by Columbia River anadromous coastal cutthroat trout. To the south of the mouth of the Columbia River, an acoustic-tagged coastal cutthroat trout from a study by Zydlewski *et al.* (2008, p. 34) was detected by an unrelated acoustic tracking study off the mouth of Nehalam Bay, approximately 38 miles (mi) (about 61 kilometers (km)) south of the Columbia River mouth. We can therefore reasonably assume that coastal cutthroat trout from Grays Harbor estuary in Washington might swim about the same distance north of the mouth of its bay, or approximately to the mouth of the Queets River. According to Trotter (2008, p. 71), coastal cutthroat trout have been collected as far out into the Columbia River plume as 41 mi (about 66 km) from the mouth. The "plume" refers to the area where river water extends into and mixes with the waters of the ocean at the mouth of the river.

The marine areas included in this analysis, therefore, include approximately 4,952 sq mi (about 12,826 sq km) of ocean ranging from the mouth of the Nehalam River in Oregon, out to a point approximately 30 mi (about 48 km) from shore, then to a point approximately 41 mi (about 66 km) west of the Columbia River mouth, then a point approximately 30 mi (about 48 km) west of the mouth of the Queets River, in Washington. The Columbia River plume exhibits highly variable flow and location, depending on river flow, wind patterns, El Nixntilde;o oscillations, and other oceanographic or climatic factors (Hickey *et al.* 2005, p. 1632; Thomas and Weatherbee 2006, p. 169). The area described above is heavily influenced by plume conditions, and thus might provide suitable habitat for anadromous coastal cutthroat trout

that may access the ocean from the three estuaries mentioned. Actual distribution of coastal cutthroat trout in the marine areas may be highly variable at any given time, and, as mentioned above, coastal cutthroat trout from the Southwestern Washington/Columbia River DPS may mingle with coastal cutthroat trout from other populations in this area.

Coastal cutthroat trout spend more time in the freshwater environment and make more extensive use of this habitat, particularly small streams, than do most other Pacific salmonids. The life history of coastal cutthroat trout may be one of the most complex of the Pacific salmonids (Johnson *et al.* 1999, p. 120). Coastal cutthroat trout exhibit a variety of life-history strategies across their range (Northcote 1997, p. 24; Johnson *et al.* 1999, pp. 44–45) that includes three basic variations: resident or primarily nonmigratory; freshwater migrants; and marine migrants. Residents may stay within the same stream segment their entire life. Freshwater migrants may make migrations from small tributaries to larger tributaries or rivers, or may migrate from tributary streams to lakes or reservoirs. Marine migrations (anadromy) are generally thought to be limited to nearshore marine areas; individuals may not venture out of the estuary in some cases (ODFW 2008, p. 8; Krentz 2007, pp. 71–75). There are numerous exceptions to these generalized behaviors. In areas above long-standing barriers, coastal cutthroat trout are generally limited to resident or freshwater migratory life-history strategies, though some individuals may pass the barrier and end up in the ocean but be barred from returning by the barrier. In areas accessible to the ocean, all three life-history strategies (resident, freshwater migratory, and anadromous) are likely to be expressed in the same area.

Coastal cutthroat trout appear to exhibit diverse and very flexible life-history strategies. The significance of the various life-history strategies, the extent to which each strategy is controlled by genetic versus environmental factors, and the extent to which individuals expressing these various strategies are isolated from other life-history forms is largely unknown. There is some evidence that individuals may express multiple life-history behaviors in their lifetimes (Johnson *et al.* 1999, pp. 43–44); in other words, apparently an individual fish at various times in its life may switch between these life-history forms, some years acting as a freshwater resident or migrant, and some years acting as a marine migrant (see the "Anadromy and Life History Diversity" section below for more information). For convenience we refer to individuals that migrate to marine waters as anadromous, or as the anadromous life form (also known as "sea-run" cutthroat trout). In doing so, we do not intend to imply that they represent a separate population from freshwater forms. We are treating all forms as part of a single population in this analysis, due to their flexibility in life-history expression and genetic information showing more differentiation between river or stream systems than between individuals expressing various life histories in a single system, as described below.

Coastal cutthroat trout are repeat spawners. Some individuals have been documented to spawn each year for at least 5 years (Giger 1972, p. 33), others may not spawn every year, and some do not return to seawater after spawning, remaining in fresh water for at least a year, demonstrating the flexibility of individual life history strategies. Eggs begin to hatch within 6 to 7 weeks of spawning and fry emerge between March and June, with peak emergence in mid-April. At emergence, fry appear to seek refugia near channel margins and backwater habitats, although they may use fast water habitats (riffles and glides) when exposed to competitive interactions with other native salmonids (Johnson *et al.* 1999, pp. 51–52).

Migratory coastal cutthroat trout juveniles generally remain in upper tributaries until they are 1 or 2 years of age. Like other anadromous salmonids, coastal cutthroat trout on marine-directed migrations undergo physiological changes to adapt to salt water; these changes are called "smoltification," and individuals that have undergone this process are referred to as "smolts." Smoltification of coastal cutthroat trout has been reported to occur from 1 to 6 years of age, but is most common at age 2 (Trotter 2008, p. 71). Migration of juvenile cutthroat from tributaries of the lower Columbia River occurs most months of the year, but peak movement occurs from March through June (Johnson *et al.* 2008, pp. 7–9; ODFW 2008, p. 7).

Anadromous coastal cutthroat trout that enter nearshore marine waters reportedly move moderate distances along the shoreline. Anadromous cutthroat trout along the Oregon coast may swim or be transported long distances with the prevailing currents during the summer; individual marked fish have been reported to move from 45 to 180 mi (72 to 290 km) off the Oregon Coast (Pearcy 1997, p. 30). It is unclear how far offshore coastal cutthroat trout migrate. Cutthroat trout have been routinely caught up to 4 mi (6 km off the mouth of the Nestucca River (Sumner 1953, 1972). Coastal cutthroat trout have also been captured between 6 to 41 mi (10 and 66 km) offshore of the Columbia River (Trotter 2008, p. 71), though it is unclear whether they were carried by the plume of the Columbia River or moved offshore in search of prey. Resident (non-migratory) fish appear to mature earlier (2 to 3 years), are shorter-lived than the migratory form, and are smaller and less fecund (Trotter 2008, p. 85). Sexual maturity rarely occurs before age four in anadromous coastal cutthroat trout (Johnson *et al.* 1999, p. 51). Growth rates increase during the initial period of ocean residence, but decrease following the first spawning due to energy expenditures from migration and spawning (Giger 1972, pp. 29–31). Behnke (1992, p. 70) reports the maximum age of sea-run cutthroat to be approximately 10 years.

The timing of fish returns to estuary and freshwater habitat varies considerably across the range and within river basins (Trotter 2008, p. 73; Behnke 1992, p. 70). For example, return migrations of anadromous coastal cutthroat trout in the Columbia River system usually begin as early as late June and continue through October, with peaks in late September and October. Anadromous coastal cutthroat trout spawning typically starts in December and continues through June, with peak spawning in February.

Significant progress had been made in understanding the biology of anadromous cutthroat trout in the Columbia River since 2002, when we published our initial withdrawal notice (67 FR 44934; July 5, 2002). We received new information from a suite of recent companion studies conducted on coastal cutthroat trout from tributaries on the Washington side of the lower Columbia River. Johnson *et al.* (2008, entire) examined the timing and prevalence of juvenile movement out of tributaries and timing of adult returns. Zydlewski *et al.* (2008, entire) examined movement patterns and extent of use of the mainstem and estuary by coastal cutthroat trout entering the Columbia River from four tributaries known to support anadromous life forms. Finally, Hudson *et al.* (2008, entire) examined movement of adult coastal cutthroat in the lower Columbia River mainstem and estuary. These studies, combined with similar research conducted by the Oregon Department of Fish and Wildlife (ODFW 2008, entire) on several tributaries on the Oregon side of the lower Columbia River, contribute significantly to our understanding of

coastal cutthroat trout. We summarize the findings from these studies below.

Johnson *et al.* (2008, entire) monitored cutthroat trout from three tributaries of the lower Columbia River: Abernathy Creek, rmi 54.0 (rkm 87), Chinook River, rmi 3.7 (rkm 6), and Gee Creek, rmi 87.0 (rkm 140). A total of 4,923 cutthroat were tagged with passive integrated transponders ("PIT tagged") over a 4–year period and subsequently monitored by antennas placed near the confluence of the streams with the Columbia River. Detections of tagged cutthroat followed a seasonal pattern of movement consistent among years with most emigration (downstream migration) occurring between March and May. Although some individuals in this study did not move out of the tributary in which they were tagged, and others were documented moving upstream once they entered the Columbia River, the majority of emigrating fish were assumed to migrate downstream to the Columbia River estuary, plume, and marine environments (i.e., exhibit anadromous behavior).

The number of tagged fish detected emigrating to the Columbia River varied considerably between streams, but within streams the proportion of detected migrants versus the total number tagged was generally consistent among years. In Abernathy Creek, the proportion of detected migrants (percentage of tagged fish emigrating versus total number tagged) averaged 9.0 percent over 4 years; in Chinook River, the proportion averaged 45.2 percent; and in Gee Creek, the average was 12.4 percent. Outmigrating cutthroat trout were generally age 1 or 2. Adults returned between October and December. Cutthroat trout returned from all reaches sampled during initial tagging, suggesting there was no distinct spatial separation between resident and migratory cutthroat.

Adult returns to Abernathy Creek totaled 15 individual tagged fish (2.5 percent of the total number of tagged fish detected emigrating). Subsequently, 8 of those 15 exhibited a second migration to the Columbia River, one of which subsequently returned for a third spawning migration. Adult returns to Chinook River totaled 43 tagged individuals (7.4 percent of the total number of tagged fish detected emigrating). Subsequently, 16 exhibited a second migration to the Columbia River, 10 of which returned. Of those 10 fish, 4 exhibited a third migration back to the Columbia River of which 1 individual returned for a fourth spawning season. Of the 132 fish PIT-tagged from Gee Creek, 17 emigrated to the Columbia River and none were documented returning in subsequent years.

The authors suggested the higher adult return rates and the higher likelihood of multiple migrations in the Chinook River as compared to Abernathy Creek could be due to (1) migrants from the Chinook River being larger relative to those emigrating from Abernathy Creek, which may confer a competitive advantage and predator avoidance, and (2) less loss of Chinook River fish because its confluence with the Columbia River is in the estuary at the mouth of the Columbia River, resulting in a short corridor in which migrants are less subject to anthropogenic and natural threats. The information from this study suggests a large degree of variability among streams in regards to the proportion of the population that exhibits anadromous behavior (i.e., emigrating annually to the Columbia River).

Zydlewski *et al.* (2008, entire) studied cutthroat trout from four tributaries of the lower Columbia River using radio and acoustic telemetry. Individual fish were tracked as they migrated down the Columbia River, through the estuary, and into the ocean. In 2002, cutthroat trout leaving Germany, Abernathy, and Mill creeks took a median of 6.6 days to reach the mouth of the Columbia River (i.e., where the Columbia River meets the Pacific Ocean). Many individuals in this study traveled the distance in 1 to 2 days consistent with the speeds of other species of anadromous salmonids in the Columbia River. The authors of this study suggested that rapid and directed downstream movement seaward may be the most advantageous migratory strategy in this and other large river systems. The observed directed seaward movement documented in this study differs from observations in other estuaries where cutthroat trout make greater use of the estuary (Krentz 2007, entire). The findings of Zydlewski *et al.* (2008, entire) are generally consistent with migration patterns of coastal cutthroat smolts from several tributaries on the Oregon side of the lower Columbia River by the ODFW (2008, entire). Together these data suggest less use of the Columbia River estuary by anadromous cutthroat trout on their first seaward migration than previously thought. Zydlewski *et al.* (2008, p. 35) speculated this somewhat uniform migratory pattern may be a recent condition based on a loss of life-history diversity due to estuary habitat degradation and altered hydrograph, although this speculation was not supported by any data.

Hudson *et al.* (2008, entire) investigated adult coastal cutthroat trout behavior in the lower Columbia River mainstem and estuary using radio telemetry. Post-spawning adult cutthroat trout were captured and tagged in multiple tributaries on the Washington side of the lower Columbia River. Of the 44 fish radio-tagged over 2 years, 30 left tributary habitat between February and May and utilized the lower mainstem Columbia River and estuary. Radio-tracking showed these fish utilize a variety of habitats in the mainstem Columbia River and estuary. In this study the suspected or confirmed mortality rate for tagged, post-spawning anadromous cutthroat trout that moved from spawning streams to the Columbia River and estuary was 59.1 percent.

In summary, these recent studies documented the prevalence of juvenile movements out of tributaries and migration patterns of anadromous cutthroat trout in the lower Columbia River. Cutthroat trout on their first anadromous migration utilized the estuary to a lesser degree than previously thought, although returning adults and those on second or third migrations were documented utilizing the estuary extensively. Emigration rates from natal tributaries to the Columbia River varied among tributaries with rates ranging from 3.5 percent to 45 percent, and adult returns vary from 0.0 percent to 7.4 percent. Although timing of peak outmigrations and return migrations were documented, these studies suggest cutthroat trout can be found in the Columbia River estuary year-round.

Anadromy and Life History Diversity

The presence of an anadromous life-history strategy could be valuable to the DPS for genetic mixing in the long-term and for potential recolonization after large catastrophic events, assuming some level of straying and mixing of breeding cutthroat. Genetic exchange can be important in evolutionary time scales to maintain diversity within populations, though complete genetic mixing requires that only a few individuals interbreed successfully over generation-scale timeframes. The Pacific Northwest is subject to periodic catastrophic events such as volcanic eruptions and stand replacement fires that can seriously depress, and even extirpate, local populations. These types of events occur on very long time scales and at watershed or sub-basin scales; the risk of full river basin impacts is unlikely. Anadromous cutthroat represent one possible source of individuals for recolonization, another being resident or freshwater migratory

cutthroat trout above or outside the area of the catastrophic event. However, the ability of anadromous cutthroat trout to recolonize is limited by barriers. Since the fish cannot make it past large natural barriers, there is no possibility of providing rescue above such barriers. All of these functions can be accomplished with relatively small proportions of the population expressing an anadromous life-history strategy.

The original proposal to list the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout stated that "[a] significant risk factor for coastal cutthroat trout in this [DPS] was a reduction of life-history diversity" based on serious declines in anadromous life-history forms and near extirpation in at least two rivers on the Oregon side of the basin (64 FR 16407; April 5, 1999). The proposed rule acknowledged that freshwater forms remained well distributed and in relatively high abundance (64 FR 16407; April 5, 1999). The proposed rule indicated that habitat degradation in stream reaches accessible to anadromous cutthroat trout, and poor ocean and estuarine conditions, likely had combined to severely deplete the anadromous life-history form throughout the lower Columbia River Basin. Finally, the proposed rule further stated that "Reduced abundance in anadromous fish will tend to restrict connectivity of populations in different watersheds, which can increase genetic and demographic risks. ... The significance of this reduction in life history diversity to the [*sic*] both the integrity and the likelihood of this [DPS's] long-term persistence is a major concern to NMFS." (64 FR 16407; April 5, 1999).

The ODFW and the Washington Department of Fish and Wildlife (WDFW) presented preliminary evidence to the NMFS Status Review team that freshwater cutthroat trout could produce anadromous migrants, which could mitigate risks to the anadromous portion of the population. The proposed rule did note that the presence of well-distributed freshwater forms in relatively high abundance, coupled with the possibility that freshwater forms could produce anadromous progeny "could act to mitigate risk to anadromous forms of coastal cutthroat trout," though the observation that anadromous coastal cutthroat trout population sizes remained consistently low remained a cause for concern at that time (64 FR 16407; April 5, 1999).

The extent to which each life-history expression is partitioned or isolated among and within populations is largely unknown; however, there is evidence that individuals may express multiple life-history behaviors over time (Johnson *et al.* 1999, p. 43). Coastal cutthroat trout believed to be freshwater forms one year may migrate to the sea another year; some individuals may not make their initial migration to sea until age six (Trotter 2008, p. 71). Some sea-run cutthroat trout may not enter saltwater every year after their initial seaward migration (Tomasson 1978). Existing studies show that, although both allele frequencies and morphology may differ some between populations above and below barriers, individuals exhibiting different life-history strategies within a single drainage are generally more closely related to each other than are individuals exhibiting similar life-history strategies from different drainages (Johnson *et al.* 1999, p. 75; Ardren *et al.* (in press)). In other words, a resident fish and an anadromous fish from the same drainage would be more closely related to one another than either would be to another fish with the same life-history expression in a different drainage. These results indicate that migratory and nonmigratory portions of the population of cutthroat trout likely represent a single evolutionary lineage in which the various life-history characteristics have arisen repeatedly in different geographic regions (Johnson *et al.* 1999, p. 75).

For other salmonids with multiple life-history forms, Jonsson and Jonsson (1993, p. 356) suggested that in a single mating, parents may produce offspring with different migratory strategies, though this has not been confirmed experimentally for coastal cutthroat trout (Johnson *et al.* 1999, p. 40). Studies of brown trout have demonstrated that non-anadromous adults can produce anadromous offspring, though at lower levels than anadromous adults. Both the ODFW (1998, p. 4; 2008, entire) and Anderson (2008, p. 12) presented information showing evidence of production of anadromous progeny by freshwater resident coastal cutthroat trout. Many coastal cutthroat populations are isolated above natural barriers. Studies have shown low levels of downstream migration over these natural barriers, indicating that these isolated populations likely are contributing demographically and genetically to populations below them (Griswold 1996, p. 40; Johnson *et al.* 1999, p. 75).

There is increasing evidence that coastal cutthroat trout isolated for relatively long periods of time above impassable dams retain the capacity to produce marine migrants (anadromous fish). The WDFW (2001) reported that between 476 and 1,756 smolts were produced from the freshwater form of coastal cutthroat trout above Cowlitz Falls Dam on the Cowlitz River in 1997 and 1998. A downstream migrant trap at Mayfield Dam recorded between 60 and 812 migrants per year from 1978 to 1999. There was a single release of hatchery-derived anadromous cutthroat trout above Mayfield Dam in 1981, but all cutthroat trout currently above the dam are considered to be freshwater forms (WDFW 2001b, p. 7). Mayfield Dam was built in 1962, blocking upstream migration. WDFW has marked coastal cutthroat trout smolts produced by upstream resident freshwater fish at Cowlitz Falls, which lies above Mayfield Dam. Two adults returned from smolts tagged in 1997, one of which was sacrificed and microchemistry results confirmed it had migrated to salt water and returned. Eight fish from smolts tagged returned in 1998; thus, while this portion of the DPS may contain residualized anadromous cutthroat trout trapped behind the dam, it has continued to produce downstream migrants for over 40 years (more than 10 generations). These results are consistent with the hypothesis that resident fish in anadromous fish zones are capable of producing migratory juveniles (i.e., smolts) and sea-run adults.

Information submitted by the ODFW (2008, p. 1) documents the outmigration of cutthroat trout smolts to the lower Columbia River estuary that are offspring of resident cutthroat trout isolated above a man-made barrier in Big Creek that has been in place since 1941. Despite the fact that the barrier prevented upstream passage of anadromous cutthroat for more than 65 years (until 2004), anadromy has continued to persist in this basin. The level of outmigration (about 5 percent emigration of fish tagged), although at a considerably lower level than in adjacent Bear Creek, which has no such barrier to anadromous returns (about 30 percent emigration of fish tagged), still represents a substantial demographic and genetic input to the downstream population. These reports suggest resident cutthroat trout make potentially important contributions to the anadromous portion of the population, despite extreme selective pressure against anadromy (no anadromous cutthroat had returned to spawn above the barrier for many generations).

As mentioned earlier, a few studies show that, although both allele frequencies and morphology may differ between populations above and below barriers, fish with differing life-history

forms are generally more closely related within a drainage than are populations from different drainages (Johnson *et al.* 1999, p. 75). Ardren *et al.* (In Press) examined coastal cutthroat trout to test for genetic separation of sympatric (co-occurring) life-history forms within and between two Columbia River tributaries, Abernathy Creek and the Chinook River. No distinct genetic separation was found between sympatric migratory and resident cutthroat forms within each tributary, and genetic differences were an order of magnitude higher between tributary samples than between life forms within a tributary. These results are consistent with a population that freely interbreeds within each tributary producing progeny that have the genetic capacity to express different life-history forms. Based on the results from this study the authors suggest that sympatric migrant and resident forms of coastal cutthroat trout in the lower Columbia River may be best described as a continuum of life-history forms expressed from a single population. This life history variation likely affords resilience to environmental fluctuation as has been demonstrated with bull trout where loss of life history forms results in higher extirpation probabilities (Dunham and Rieman 1999, pp. 650–651). Considering lower Columbia River cutthroat trout as a single population is consistent with the views of McPhee *et al.* (2007, p. 7), who suggest that, due to lack of reproductive isolation, it may not be appropriate to consider sympatric resident and anadromous rainbow trout (*Oncorhynchus mykiss*) as separate biological units, as they are currently managed.

Anadromous cutthroat trout, particularly in the lower Columbia River estuary, are exposed to the full array of habitat loss or degradation reported for the estuary. However, there are few data describing how they respond to this exposure. The degree to which the reduced numbers of the anadromous portion of the population of coastal cutthroat trout represent a risk to the DPS as a whole depends, in part, on the importance of this life-history strategy and the extent to which the expression of life history strategies are genetically versus environmentally controlled.

NMFS (Johnson *et al.* 1999, p. 201) acknowledged that, if freshwater coastal cutthroat trout can produce smolts, this could mitigate the risks to the anadromous portion of the population, though at the time they lacked information on the length of isolation of populations above Mayfield Dam to fully evaluate this phenomenon. They did note that, even if smolts were being produced, the anadromous portion of the population remains consistently low in many areas, which NMFS concluded was cause for concern at that time. The fact that resident cutthroat isolated by artificial barriers for over 40 years in the Cowlitz and over 65 years in Big Creek in Oregon continue to produce smolts suggests that even if the anadromous portion of the population continues to experience low numbers and possible declines, smolts will be produced that can supplement the anadromous portion of the population and take advantage of any improvement in anadromous habitat (e.g., ocean, estuary, mainstem rivers and tributaries). Further, the reported rates of smolt to adult returns are consistent with literature reports of return ratios among healthy populations of other Pacific salmon species (Bradford 1995, p. 1332; Beckman *et al.* 1999, p. 1130), suggesting that return rates of anadromous cutthroat are not unusually low.

In addition, there is no evidence at this time that coastal cutthroat trout pursuing the anadromous life-history strategy are segregated from the remainder of the population. This further supports the conclusion that anadromous and resident forms are not substantially separate subpopulations. Therefore, based on the evidence that freshwater and isolated portions of the population are capable of producing anadromous migrants and demonstrate rates of return consistent with literature reports of other Pacific salmon species, we conclude that freshwater and isolated portions of the coastal cutthroat trout population are mitigating risks to anadromous forms to some degree. We believe that the ability for non-anadromous cutthroat trout to produce anadromous progeny reduces the risk of loss of the anadromous life-history strategy.

Population Size and Trends

In our 2002 withdrawal (67 FR 44934; July 5, 2002), we acknowledged that little data existed to determine the actual population size of cutthroat trout in the DPS due to the fact that most information was collected incidental to monitoring of salmon and steelhead, counts were generally conducted only in areas monitored for salmon and steelhead, and abundance information originated from trapping facilities not designed for capturing cutthroat trout, thereby limiting the value of the datasets. Given the information available, and acknowledging the limitations of the datasets analyzed, we concluded "... while the anadromous portion of the population of coastal cutthroat trout is likely at lower-than-historical levels, there is little information available to determine the actual size of runs or to indicate that populations, or even the anadromous portion alone, are at extremely low levels in most areas of the DPS."

In assessing trends, we cited similar problems with the reliability of the information based on the short-term nature and gaps in many of the datasets, and biases due to unknown trapping efficiencies and other confounding factors. In regard to trends in the southwest Washington portion of the DPS, we stated in our 2002 withdrawal "there was no reliable evidence that the adult population in the Grays Harbor tributaries is declining over the long term and some indication that the adult population may be stable or increasing in at least some areas" and concluded by stating "we no longer conclude that trends of the adult anadromous portion of the population and outmigrating juveniles in the southwest Washington portion of the DPS are all declining markedly as described in the proposed rule (64 FR 16407) ." (67 FR 44934; July 5, 2002).

We have little new data to assess status and trend of anadromous cutthroat trout in the Grays Harbor and Willapa Bay portion of the DPS beyond what we previously assessed. The only new information we have comes from Anderson (2008, p. 16), who concluded the estimated anadromous smolt production in Bingham Creek between 2002 and 2004 indicated production of coastal cutthroat trout was relatively stable, though somewhat cyclical. This data was not analyzed using regression analysis, and we are not able to determine the significance of this trend or how well the data fit the trend line. In addition, the time series of the study is too short to detect a trend with any statistical confidence. However, this study does show that smolts continue to be produced from the Bingham Creek system. We have no other information since the withdrawal notice on adult or juvenile coastal cutthroat trout in the Grays Harbor watershed, and have no new information from the Willapa Bay watershed. Our evaluation of this information does not alter our original conclusions regarding the status and trend of anadromous cutthroat in these areas.

In our 2002 withdrawal notice, we stated "[d]ata for the lower Columbia River are limited and there are significant concerns about the reliability of the results. There are indications of declines in the anadromous component of the adult portion of the population in the Columbia River, though the rate of the decline is uncertain due to concerns

over the reliability of the analyses and potential biases in the data sets. While the number of anadromous coastal cutthroat trout have likely declined in the Columbia River, we do not have sufficient data to determine a reliable rate of recent decline and, therefore, no longer conclude that returns of anadromous cutthroat trout in almost all lower Columbia River streams have declined markedly over the last 10 to 15 years as described in the proposed rule (64 FR 16407; April 5, 1999). Based on these data, we do not find that the population trends indicate that coastal cutthroat trout are likely to be extirpated from any significant portion of their range in the foreseeable future." (67 FR 44934; July 5, 2002). Our evaluation of what new information there is does not alter our previous conclusion regarding the status and trend of anadromous cutthroat in this area, as described above.

We have little new data to assess status and trend of anadromous cutthroat trout in the Columbia River portion of the DPS. The production of cutthroat trout smolts from Abernathy and Germany creeks shows a slightly declining trend, with an increasing trend in Mill Creek, for the years 2001–2007 (WDFW 2009, p. 2). The number of returning natural-origin anadromous cutthroat trout to the Cowlitz River Hatchery has averaged 107 over the last 7 years, and the trend is positive (WDFW 2009, p. 2). Survival rates of hatchery-origin anadromous cutthroat trout to the Cowlitz River Hatchery have been consistent in recent years, averaging 4.2 percent ± 1.6 percent for the years 1998–2003 and 2005–2006; this range overlaps the hatchery's goal of achieving an average 4.71 percent smolt-to-adult survival (WDFW 2005, as cited in Anderson 2008, p. 13). No information is available to assess population size of anadromous cutthroat trout in the Columbia River, although several new studies cited above in the **Background** section document the continued expression of anadromy by cutthroat trout from tributaries of the Columbia River.

Thus, while the best available scientific and commercial information do not allow us to determine overall status and trend for anadromous coastal cutthroat trout in the DPS, the limited information above documents the continued persistence of the anadromous life-history form and suggests trends in streams that are monitored for coastal cutthroat trout are variable. Although not reflective of a trend in anadromous population size, new information on emigration of cutthroat juveniles from lower Columbia River tributaries in both Oregon and Washington indicates tributaries that are monitored for cutthroat trout are still delivering anadromous smolts to the estuary and that adults are returning at rates that are similar to those of healthy salmon and steelhead populations (ODFW 2008, pp. 6–11; WDFW 2009, p. 2; Johnson *et al.* 2008, pp. 16–20; Bradford 1995, p. 1332; Beckman *et al.* 1999, p. 1130). Although we acknowledge the anadromous life-history form in the DPS is likely at lower levels than it may have been in the past, our current assessment reaffirms the conclusions drawn in our 2002 withdrawal notice (64 FR 16407; April 5, 1999), regarding the unreliability of much of the available data for assessing population status and trend. We do not have evidence that anadromous coastal cutthroat trout are experiencing severe declines, or that the life-history form is likely to be in danger of extinction now or within the foreseeable future.

Significant Portion of the Range

As defined under the Act, an endangered species is any species which is in danger of extinction throughout all or a significant portion of its range (hereafter SPR), and a threatened species is any species likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Due to a number of legal challenges surrounding the meaning of the SPR phrase, on March 16, 2007, the Solicitor of the Department of the Interior issued a formal opinion, "The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range'" (U.S. DOI 2007). In the opinion, the Solicitor concluded:

(1) The SPR phrase is a substantive standard for determining whether a species is an endangered species—whenever the Secretary concludes because of the statutory five factor analysis that a species is "in danger of extinction throughout ... a significant portion of its range," it is to be listed and the protections of the Act applied to the species in that portion of its range where it is specified as an "endangered species";

(2) The word "range" in the SPR phrase refers to the range in which a species currently exists, not to the historical range of the species where it once existed;

(3) The Secretary has broad discretion in defining what portion of a range is "significant," and may consider factors other than simply the size of the range portion in defining what is "significant"; and

(4) The Secretary's discretion in defining "significant" is not unlimited; he/she may not, for example, define "significant" to require that a species is endangered only if the threats faced by a species in a portion of its range are so severe as to threaten the viability of the species as a whole.

The Service has defined an SPR as a portion of the range of the listed entity (whether a full species, subspecies, or DPS of a vertebrate) that contributes meaningfully to the conservation of that entity. We consider the significance of an SPR to be based on its contribution to the conservation (resiliency, redundancy, and representation) of the listable entity being considered. Resiliency of a species allows for recovery from periodic disturbance, such as ensuring that large populations persist in areas of high-quality habitat. Redundancy of populations provides for the spread of risk among populations through distribution, such that the species is capable of withstanding catastrophic events. Representation ensures that the species' adaptive capabilities are conserved, such as through genetic variability or the conservation of unique morphological, physiological, or behavioral characteristics.

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. "Species" is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). The first step in considering a listing action is to determine the listable entity, whether it is a species, subspecies, or DPS. It is important to note that a significant portion of the range is not a "species," i.e., it is not a listable entity as defined in the Act; rather it is the portion of a range of a listable entity where we may determine that species to be threatened or endangered. Upon a determination that a species is not endangered or threatened throughout all its range, we then examine whether there are any significant portions of the range where the species is threatened or endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, to meet the intended purpose of the Act, there is no point in analyzing portions of a species' range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further

consideration under the Act, we must determine whether there is substantial information indicating that (i) the portions are significant and (ii) the species is in danger of extinction there or is likely to become so within the foreseeable future. To be considered a significant portion of the range that may warrant the protections of the Act, both questions must be answered in the affirmative; the order in which they are answered is not of consequence, and both are equally valid approaches to determining a significant portion of the range that may warrant the protections of the Act.

In practice, a key part of our analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, and are not concentrated in some portion such that the species may be in danger of extinction there or likely to become so within the foreseeable future, no portion is likely to warrant further consideration. Alternatively, if any concentration of threats applies only to portions of the range that do not contribute meaningfully to the conservation of the species, such portions will not warrant further consideration. In cases where we do not identify any portions that warrant further consideration for either reason, we document that conclusion and no further analysis is conducted beyond our analysis of whether a species is threatened or endangered throughout its entire range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the contribution to conservation question first or the status question first. The first alternative relies on an assessment of significance based on a portion's contribution to the conservation (resiliency, redundancy, representation) of the listable entity. If a portion of the range is identified that is considered as making a meaningful contribution to the conservation of the species, a five-factor threats assessment is then conducted to determine if the species is threatened or endangered in that portion. If we determine that a portion of the range does not make a meaningful contribution to the conservation of the species, we need not continue with our analysis to determine whether the species is threatened or endangered there.

The second alternative is to first conduct a five-factor threats assessment on the portion under consideration to determine whether the species is threatened or endangered in this geographic area. If we determine that the species is not threatened or endangered in that portion of its range, we need not determine if that portion makes a meaningful contribution to the conservation of the species. If, however, we determine that the portion of the range under consideration does make a meaningful contribution to the conservation of the species and the species is threatened or endangered in that portion, we would then propose to add that species to the appropriate list and specify that significant portion of the range as threatened or endangered, as provided under section 4(c)(1) of the Act.

In this case, the Court, based on information presented in the 2002 withdrawal of the proposed rule, has directed us to assess whether the marine and estuarine areas of the Southwestern Washington/Columbia River DPS represent a significant portion of the coastal cutthroat's range. The portion of the species' range to be considered as a potential SPR has, therefore, already been defined for the Service. In order to address the Court's remand, we have elected to conduct a five-factor threats assessment on the portion under consideration, the marine and estuarine areas of the DPS, to determine whether the coastal cutthroat trout is threatened or endangered in this geographic area.

According to the process described above, if we determine through our five-factor threats assessment that coastal cutthroat trout are not threatened or endangered in the marine and estuarine areas of the DPS, the question of whether that portion may make a meaningful contribution to the conservation of the species would not warrant further consideration. If, on the other hand, we determine that coastal cutthroat trout are threatened or endangered in that portion, we would then proceed to consider the question of whether those marine and estuarine areas make a meaningful contribution to the conservation of the species in terms of resiliency, redundancy or representation. If the importance of those marine and estuarine areas to the conservation of coastal cutthroat trout in the DPS were affirmed, we would then propose to add the DPS to the appropriate list and would specify coastal cutthroat trout in that significant portion of the range as threatened or endangered.

Summary of Factors Affecting the Species

As noted above in the **Previous Federal Actions** section, the District Court's remand of our 2002 withdrawal (67 FR 44934; July 5, 2002) of the proposed rule (64 FR 16397; April 5, 1999) was due to the Ninth Circuit's determination that we did not properly consider whether the estuaries and other marine areas of the DPS constitute a significant portion of the range of the DPS. The Court's focus on marine and estuarine areas was due to statements in our record that included: first, acknowledgement of degradation of estuary and marine areas that are vital to the anadromous life-form of the DPS; second, that the anadromous life-form is important to the DPS's long-term survival strategy; and, third, that though there is evidence that resident life-forms can spawn anadromous life-forms, this is only significant if estuary habitat conditions and near-shore environments can support the persistence of this life-history strategy.

To address the Court's remand, the following analysis focuses on current threats, and threats reasonably likely to occur in the foreseeable future, to anadromous cutthroat trout in marine and estuarine areas of the DPS. As described above, we define "estuary" to mean a semi-enclosed coastal body of water that has a free connection with the open sea and within which sea water is measurably diluted with freshwater derived from land drainage (Lauff 1967, as cited in ISAB 2000, p. 2). In the Columbia River, salt water intrusion extends up to roughly rmi 28 (rkm 45) depending on daily tide cycles and seasonal flow volume. For this analysis, we define the Columbia River estuary to rmi 28 (rkm 45). This is distinguished from definitions created for other management processes that are tied to tidal influence rather than salt water intrusion. Because the primary issue for coastal cutthroat trout is based on the expression of anadromy, defining the estuary based on salt water intrusion is more biologically relevant.

There are three estuaries in the DPS: the Columbia River, Willapa Bay, and Grays Harbor. Although the Court did not ask us to revisit status, trends, and threats to anadromous cutthroat trout or other life-history forms outside of marine and estuarine areas, we have considered any new information available for these areas that would suggest a significant change in status, trend, or threats.

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or

curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors relevant to coastal cutthroat trout in the marine and estuarine portion of the Southwestern Washington/Columbia River DPS are discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In 1999, the proposed rule (64 FR 16407; April 5, 1999) listed forest management and estuary degradation as principal factors in the decline of coastal cutthroat rangewide, and estuary degradation as the principal factor affecting coastal cutthroat trout in the Southwestern Washington/Columbia River DPS. Our 2002 withdrawal of the proposed rule (67 FR 44934; July 5, 2002) assessed effects to coastal cutthroat trout from forest management and estuary degradation, as well as from agriculture and livestock management, dams and barriers, urban and industrial development, and mining. Our analysis, combined with information presented in the proposed rule, confirmed that all of these land uses, to varying degrees, had previously impacted, and continue to impact, habitat utilized by all life-history forms of coastal cutthroat trout in the DPS. Despite these impacts, we determined that coastal cutthroat trout, including anadromous forms, were not threatened to the degree portrayed in the proposed rule, and further, current regulatory mechanisms conferred a low risk of significant additional destruction or modification of habitat in the foreseeable future.

In regard to curtailment of range, our analysis in the withdrawal notice confirmed that coastal cutthroat trout, especially the freshwater forms, remained well distributed throughout the DPS, at densities comparable to healthy-sized populations in large portions of the subspecies' range outside the DPS. We acknowledged a change in accessibility of some areas to anadromous cutthroat trout due to barriers created by dams, diversions, culverts, dikes, and tidegates, and some streams that were lost to development, such as streams around Portland, Oregon. However, we determined these areas of inaccessibility to the anadromous life form comprised a relatively small portion of the DPS, and that while the anadromous portion of the DPS was likely at lower-than-historical levels, there was little specific information available to support the statement in the proposed rule that the abundance of the anadromous portion was at extremely low levels. Subsequently, we concluded in the withdrawal of the proposed rule that none of the impacts assessed under Factor A were likely to result in coastal cutthroat trout becoming threatened or endangered in the foreseeable future.

We present some new information below regarding potential impacts to habitat utilized by cutthroat trout in marine and estuarine areas, such as the proposed development of liquefied natural gas terminals in the Columbia River estuary and shellfish aquaculture impacts in Willapa Bay and Grays Harbor. In addition, there is also information newly available on the significant actions that have occurred, or are currently under way, to restore and protect estuary habitats in the DPS, particularly in the Columbia River. These restoration and conservation actions are summarized in this section following discussion of factors relevant to estuary degradation.

Columbia River Estuary and Marine Areas

Proposed Liquefied Natural Gas (LNG) Development

Liquefied Natural Gas (LNG) projects include berths for unloading liquefied gas, storage tanks, facilities to vaporize the liquid back to natural gas, and pipelines from the projects to deliver the gas to its final destination. There are two LNG terminals approved or proposed in the lower Columbia River: Bradwood Landing (approved) and Oregon LNG (proposed). In addition, another potential site at St. Helens, Oregon, has been identified.

Aspects of LNG development that could potentially affect aquatic resources include construction activities and associated habitat modification, water appropriations, artificial lighting, accidental spills or leaks of hazardous materials, and operation of the LNG terminal. In-water construction activities include dredging, development of the shoreline, and pile driving and could result in increased sedimentation and turbidity, increased noise, permanent habitat alteration, loss of benthic organisms, re-suspension of contaminants, entrainment through water intake pipes, and alterations to sediment transport and deposition. Activities associated with construction of the terminal, access facilities, and pipelines could indirectly affect aquatic resources through ground disturbances that lead to increased sediment inputs and turbidity in adjacent water bodies, increased water temperature from vegetation removal, noise, and artificial lighting that could alter species behavior (FERC 2008).

Operation of the LNG terminals would entail maintenance dredging of the access channel, potential for accidental spills of hazardous materials, stormwater runoff from impervious surfaces, lighting of ship berth and unloading facilities, operation of noise-producing equipment, and routine discharge of water from the vaporization process and testing of fire suppression equipment. Impacts to aquatic resources could include loss of habitat from increased water temperature, increased turbidity and sedimentation, and modification of animal behavior. Potential impacts to cutthroat trout would vary depending on location of the facilities relative to cutthroat use areas in the estuary (FERC 2008), but is not expected to be a limiting factor.

Although the construction and operation of LNG terminals have the potential to impact anadromous cutthroat trout and associated habitat in the Columbia River, the area of impact relative to the total area of available habitat in the Columbia River and estuary is small. In addition, regulatory mechanisms required through the Federal Energy Regulatory Commission (FERC) and through State land use regulations are expected to provide protective mechanisms to minimize impacts of construction and operation of LNG facilities. For these reasons we do not believe potential impacts rise to a level that constitutes a significant threat to anadromous cutthroat trout in the Columbia River portion of the DPS.

Wave Energy

Currently, there are five wave energy projects being evaluated or proposed in Oregon: (1) Coos Bay Ocean Power Technologies (OPT) Wave Park Project located in the Pacific Ocean about 2.5 mi (1.6 km) offshore in Coos County; (2) Newport OPT Wave Park Project about 3 to 6 mi (1.9 to 3.7 km) offshore in Lincoln County; (3) Oregon Coastal Wave Energy Project in the Pacific Ocean in Tillamook County; (4) Reedsport OPT Wave Park Project (FERC license pending); and (5) Douglas County Wave Energy Project off the Umpqua South jetty. In addition, Oregon State University has an experimental buoy offshore of Newport, Oregon. Given that wave energy is an emerging technology and new to Oregon, there is uncertainty as to its effects on the marine environment.

These potential projects would not occur within the Southwestern Washington/Columbia River DPS, and thus we do not believe potential impacts constitute a threat to anadromous cutthroat trout.

Channel Improvement Project Update

The Columbia River Channel Improvement Project (CRCIP) is a collaborative effort between the U.S. Army Corps of Engineers (USACE) and six river ports in Oregon and Washington to deepen the navigation channel to accommodate the current fleet of international bulk cargo and container ships. The USACE Record of Decision, signed in January of 2004, was to (1) deepen the 40-ft (12.2 m) navigation channel by 3 ft (1 m) to facilitate navigation, and (2) improve the natural environment through several ecosystem restoration projects designed to enhance salmon habitat. The Service and NMFS issued a non-jeopardy opinion on the project in 2002.

Project construction has been largely consistent with the decision criteria developed by the Adaptive Environmental Management Team. Several short-term discrepancies involving monitoring results for temperature and salinity were explained by corresponding variations in river flows or storms. The monitoring of dredging and dredged material disposal continues to show that actual construction volumes and their disposal are within the specifications developed for the project and that these specifications were considered in the non-jeopardy biological opinion. Several monitored deviations of cross-channel survey results from the decision criteria were shown to have returned to pre-project conditions in follow-up monitoring.

Reporting of extensive sediment identified only two locations, well outside the navigation channel, where sediment contaminants might be of concern. Shallow water habitat surveys and fish stranding monitoring are not scheduled to be addressed in detail until project construction has been completed. While completion and maintenance of the CRCIP may cause short-term and low-level impacts now and in the foreseeable future to anadromous cutthroat trout and their habitat, we do not believe these potential impacts constitute a significant threat because of the adequacy of current regulatory mechanisms and limited project scope relative to available habitat.

Columbia River Estuary Restoration Actions

Habitat restoration activities that may offset the threat of habitat destruction or modification in the lower Columbia River have been ongoing since 1999 through a variety of entities and are aimed at restoring habitat conditions to benefit primarily salmon and steelhead. However, they may well provide benefits for cutthroat trout and other species as well by restoring estuary rearing habitat. The database of the Lower Columbia River Estuary Partnership (LCREP) identifies 44 completed and/or ongoing projects in the lower 25 rmi (47 rkm) of the Columbia River and a total of 152 for the Columbia River from the mouth upstream to Bonneville Dam (LCREP 2009). The projects include a variety of conservation and restoration activities designed to benefit salmonids including culvert removal, tidegate alteration or removal, large wood placement, tidal reconnection, dike breaching, invasive species removal, revegetation, water control structures, conservation easements, channel modification, velocity barrier removal, and land acquisitions.

Grays Harbor and Willapa Bay Estuaries and Marine Areas

Loss of estuary habitat

Currently, coastal cutthroat trout use of the various portions of Willapa Bay and Grays Harbor estuaries and marine habitat is unknown. However, recent studies have documented estuary use by coastal cutthroat trout within (Hudson *et al.* 2008, entire) and outside of the DPS (Haque 2008, entire; Krentz *et al.* 2007, entire). Krentz *et al.* (2007, p. 81) examined migratory patterns of coastal cutthroat trout in the Salmon River Estuary, Oregon. Two main life-history forms were identified: Ocean migrants that move quickly through the estuary to marine environments, and estuarine residents that remain in the estuary throughout the spring and summer months. In addition, this study documented trout residing in the estuary but making brief forays into the marine environment and individuals overwintering in the estuary. In South Puget Sound, Haque (2008, p. 26) documented overwintering use of estuaries by coastal cutthroat trout. She also concluded that observed movement patterns and travel distances may indicate different life-history strategies among anadromous coastal cutthroat trout. Both studies may support the existence of opportunistic and adaptable behavior of coastal cutthroat trout.

Coastal cutthroat trout are opportunistic feeders that forage in eelgrass beds in estuary environments (Trotter 1997, p. 10). In nearshore environments in Washington and Oregon, coastal cutthroat trout were found to prey on salmonids, herring, pacific sand lance, shiner perch, surf smelt, anchovy, and invertebrates including gammarid amphipods (family Crangonyctidae), shrimp, and isopods (Jauquet 2008, p. 152; Jones *et al.* 2008, p. 146). Although we have no new information on coastal cutthroat trout migration in estuary or marine areas offshore from Willapa Bay and Grays Harbor, it is likely that estuary habitat within these areas is used extensively by anadromous coastal cutthroat trout.

The proposed rule (64 FR 16402; April 5, 1999) described the potential loss of important estuary habitat through the "[d]redging, filling, and diking of estuarine areas for agricultural, commercial, or municipal uses" and stated "reductions in the quantity and quality of estuarine ... habitat have probably contributed to declines, but the relative importance of these risks is not well understood" (64 FR 16408; April 5, 1999).

The withdrawal notice (72 FR 44948; July 5, 2002) stated "30 percent of the historical wetland habitat in Grays Harbor estuary has been lost, as well as 31 percent of the historical Willapa Bay estuary wetlands." During the public comment period we received additional information on the historical loss of estuary habitats to Willapa Bay and Grays Harbor estuaries (WDFW 2009, pp. 2–3). WDFW reported estimates of a 19 percent loss of native tidal marsh plant communities and extensive dendritic slough systems in the Willapa River Basin and a 36 percent loss in the Bay Basin due to diking and filling along the lower Willapa River. Diking of the river's upper intertidal wetlands, downstream of South Bend, is estimated at 89 percent. However, we have no information documenting any effects of the historical loss of eelgrass and wetland habitat on coastal cutthroat trout populations in Willapa and Grays Harbor estuary habitat.

Ongoing and planned restoration projects in the Columbia River and southwest Washington estuary habitats should benefit coastal cutthroat trout and their prey species (WDFW 2009, p. 2). We have no specific information on restoration projects occurring in Willapa and Grays Harbor estuaries. In addition, we do not have information at this time regarding the responses of coastal cutthroat trout or their prey to estuary enhancement and restoration.

Shellfish Aquaculture

Shellfish aquaculture is likely to degrade water quality temporarily and reduce available foraging habitat for anadromous coastal cutthroat trout and prey species. In Willapa Bay and Grays Harbor estuaries, activities that may potentially affect anadromous coastal cutthroat trout are those that involve bed preparation, mechanical harvest, and shellfish grow-out. Although these specific activities have not been directly investigated, bed preparation activities such as tilling, disking, raking, harrowing, and dragging in eelgrass beds may reduce the density and biomass of eelgrass and their related communities (USFWS 2009, p. 120). Approximately 55 percent of the Willapa Bay estuary is intertidal land (42,502 of 78,876 acres (ac) (17,200 of 31,920 hectares (ha)), and approximately 21 percent (9,000 ac (3,642 ha)) of that intertidal land is intensively cultured. Commercial aquaculture is limited to 3 percent (900 ac (364 ha)) of the intertidal land in the Grays Harbor estuary (Burrowing Shrimp Committee 1992 as cited in Feldman *et al.* 2000, p. 146). Within intertidal areas, eelgrass provides cover, refuge, and supports a prey base for coastal cutthroat trout. Although the loss of eelgrass density and abundance as a result of shellfish aquaculture may have negative effects to individual coastal cutthroat trout, due to the limited area dedicated to intensive shellfish culture, we do not believe these potential impacts rise to the level of a significant threat to coastal cutthroat trout in the marine and estuarine areas, or the DPS as a whole.

Since 1963, the Washington Department of Ecology has issued permits to oyster growers to apply carbaryl to intertidal areas for the purpose of controlling burrowing shrimp (USACE 2008, as cited in USFWS 2009, p. 143). Carbaryl is applied annually in July or August. Between 2000 and 2003, carbaryl was applied on 541 ac (219 ha) on Willapa Bay and Grays Harbor intertidal lands. In 2007, approximately 420 ac (170 ha) in Willapa Bay and approximately 140 ac (55 ha) in Grays Harbor were treated with carbaryl (Booth and Tufts 2007 as cited in USFWS 2009, p. 143). Labenia *et al.* (2007, p. 6) found that coastal cutthroat trout do not avoid carbaryl-contaminated seawater at ecologically representative concentrations potentially found in Willapa Bay. Brief exposure to carbaryl affects the swimming performance of cutthroat trout (Labenia *et al.* 2007, pp. 6–7). Decreased swimming performance may increase predation on coastal cutthroat trout smolts. Because cutthroat trout forage in shallow waters during the summer months it is likely that wild fish will be exposed to carbaryl. Carbaryl is absorbed onto sediments relatively quickly and may remain toxic to burrowing shrimp for up to 28 days (Labenia *et al.* 2007, p. 9).

Carbaryl is acutely toxic to invertebrates (USFWS 2009, p. 144). A secondary indirect exposure pathway to anadromous salmonids may exist through dietary consumption of dead and dying invertebrates and fish (USFWS 2009, p. 146). We have no information as to whether or not coastal cutthroat trout may consume dead and dying invertebrates or fish or how the potential uptake of the chemical in this manner may affect coastal cutthroat trout. The reduction of prey species for several weeks after treatment of oyster beds may indirectly reduce the growth of anadromous cutthroat trout by temporarily reducing the amount of prey species. One or two tidal cycles after spraying, the area may be relatively devoid of macroinvertebrate prey. Recolonization of an area by epibenthic invertebrates is variable, depends on the species and site, and can take anywhere from 2 to 52 days (Simenstad and Fresh 1995, as cited in USFWS 2009, p. 137). Fish would likely recolonize the area more quickly. Given the relatively small portion of the estuaries treated with carbaryl, we do not believe the potential impacts constitute a significant threat to anadromous cutthroat trout in the Willapa Bay and Grays Harbor portion of the DPS. The use of carbaryl on oyster beds is planned to be phased out in 2012 (*http://www.epa.gov/oppsrrd1/REDs/factsheets/carbaryl_factsheet.pdf*).

Summary of Threat Factor A

As discussed in Bottom *et al.* (2005, entire), the Columbia River estuary and plume have undergone significant alteration from historical conditions, which has likely reduced the amount and quality of habitat for anadromous coastal cutthroat trout. While not as much information is available regarding current conditions and foreseeable threats to anadromous cutthroat trout from the Willapa Bay and Grays Harbor watersheds, it is clear these estuaries have also undergone significant alteration.

Despite these altered conditions, anadromous coastal cutthroat trout continue to persist in the DPS and return rates appear to be within the normal range for Pacific salmon, as documented in recent studies on hatchery and wild-origin cutthroat trout returning to Cowlitz River Hatchery (Johnson *et al.* 2008, entire; ODFW 2008, entire; WDFW 2009, pp. 5–7). In addition to documenting the persistence of returning anadromous adults, these studies also provided new information on the prevalence of outmigrating coastal cutthroat smolts, even above long-standing artificial barriers, from tributaries of the lower Columbia River. Although very little new information is available on trend of anadromous cutthroat trout in the DPS, the limited information available does not suggest an overall declining trend of returning adults, or significant limiting factors to anadromous coastal cutthroat trout.

While development and operation of LNG terminals and completion and maintenance of the Columbia River Channel Improvement Project may cause short-term and low-level impacts now and in the foreseeable future to anadromous cutthroat trout and their habitat, we do not believe these potential impacts constitute a significant threat or a limiting factor because of the adequacy of current regulatory mechanisms and limited project scope relative to available habitat. In Willapa Bay, shellfish aquaculture may be impacting anadromous cutthroat trout, but we have no information to determine the nature of these effects; however, we do know that the area of intensive culture represents a small fraction of the habitat utilized by coastal cutthroat trout. Similarly, while the use of carbaryl to control burrowing shrimp in shellfish aquaculture has been shown through lab studies to potentially impact coastal cutthroat trout, the area of exposure within the estuary is relatively small, and we have no information to indicate this pesticide has caused a decline in anadromous cutthroat trout.

Given the adequacy of current regulatory mechanisms and the restoration actions that have occurred, as well as those under way, the overall baseline condition of the estuary is more likely on a positive versus negative trajectory. Furthermore, we have no information to suggest any correlation between the threat factors considered here and any decline in the anadromous life-history form, such that we would consider anadromous coastal cutthroat trout likely to become endangered within the foreseeable future. We have thus evaluated the best available scientific and commercial information and determined anadromous cutthroat trout are not threatened by destruction, modification, or curtailment of its habitat or range in marine and estuarine areas, or the DPS as a whole.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

Our 2002 withdrawal of the proposed rule identified only one potential threat, recreational angling, under Factor B. Based on our analysis we determined the potential threats from recreational angling did not represent a significant threat to the DPS as a whole. In our current review of available information we did not identify any new threats, nor did we find evidence that any previously identified threats had significantly changed. As noted in our withdrawal of the proposed rule, coastal cutthroat trout are not harvested commercially, and bycatch of cutthroat trout in commercial gillnet fisheries is minimal due to the large mesh size of the nets (NMFS 2003; pp. 3–73). Scientific research and collection for educational programs have probably had no discernible negative impact on the anadromous life-history form or the DPS as a whole.

Anadromous cutthroat were a sought-after sportfish for many years, due in part to the multiple hatchery programs operated by the States of Oregon and Washington. While it is likely that sport angler harvest within the DPS contributed to reductions in the anadromous form over time, due in part to liberal size and bag limits (Trotter 2008, p. 95), the legacy of overharvest on today's status of anadromous cutthroat is unknown. Current angling effort for anadromous cutthroat trout has significantly declined in the last two decades (67 FR 44934, July 5, 2002; Rawding 2001 as cited in Anderson 2005, p. 17), and in many areas coastal cutthroat trout harvest is primarily incidental to recreational fisheries for other species of salmonids. Because of harvest restrictions on naturally produced coastal cutthroat trout in many areas and the lack of targeted fisheries, direct mortality due to fishing pressure is thought to be relatively low, at least in recent years (Hooton 1997, p. 66; Gerstung 1997, pp. 53–54).

Washington's fishing regulations have been designed to increase the survival of rearing and migrating cutthroat smolts and to allow adult females to spawn at least once (Washington Department of Game 1984, as cited in Anderson 2008, p. 13). (Note: for additional information on the changes in coastal cutthroat trout angling regulations over time, see the withdrawal notice (67 FR 44934; July 5, 2002)). In 2009, new anti-snagging restrictions were implemented in Washington State (WDFW 2009, p. 15), which may provide further protection of coastal cutthroat trout. In 1998, Washington adopted a catch and release regulation for any coastal cutthroat trout caught in marine waters. Washington's freshwater fishing regulations in the Willapa Bay and Washington zone of the Columbia River provide protection to coastal cutthroat trout by requiring catch and release of naturally produced cutthroat trout. Catch and release restrictions are generally required in the mainstem Columbia River, except for adipose-clipped (removal of fin behind dorsal fin) hatchery fish. Below the Bonneville Dam, two hatchery trout can be retained daily with a minimum size of 12 inches (in) (30.5 centimeters (cm)). A bag limit of five hatchery trout over 12-in (30.5 cm), including no more than two over 20 in (50.8 cm) is allowed in the Cowlitz River. Harvest restrictions are not as restrictive in the Grays Harbor watershed, where harvest of wild coastal cutthroat is allowed in many of its tributaries. Regulations require a 14-in (35.6-cm) minimum size and daily bag limit of two wild cutthroat trout.

Current Oregon sport fishing regulations (ODFW 2009b) in the Columbia Zone, which includes most of the Columbia River in Oregon within the Southwestern Washington/Columbia River DPS, have required catch and release of wild unmarked coastal cutthroat trout since 1997.

Summary of Threat Factor B

We have evaluated the best available scientific and commercial information on the overutilization of anadromous cutthroat trout for commercial, recreational, scientific, or educational purposes. We identified no new or significantly increased threats under this threat factor beyond those analyzed in the 2002 withdrawal notice (67 FR 44934; July 5, 2002). The most relevant information pertaining to this threat factor are the current angling regulations within the DPS in Oregon and Washington, which with few exceptions require the release of naturally produced cutthroat trout. Current fishing regulations within the DPS for Oregon and Washington are generally protective of naturally produced coastal cutthroat trout. Where regulations allow the retention of wild cutthroat trout (some Grays Harbor tributaries), the regulation is designed to increase the likelihood that juveniles and migrating smolts are protected and the majority of adult females are able to spawn at least once (Anderson 2008, p. 13). Based on the information above, we conclude that anadromous cutthroat trout are not threatened now or in the foreseeable future by overutilization in marine and estuarine areas, or any of the remaining portions of the DPS.

C. Disease or Predation.

Our 2002 withdrawal of the proposed rule provided information on several threats to anadromous coastal cutthroat trout identified under Factor C, including the parasite *Ceratomyxa shasta* in the Columbia and Willamette rivers, gas bubble disease below large hydroelectric dams in the Columbia River, and predation by nonnative fishes, pinnipeds, and fish-eating birds such as Caspian terns (*Hydroprogne caspia*) and double-crested cormorants (*Phalacrocorax auritus*) (67 FR 44934; July 5, 2002). We determined these potential threats did not represent significant threats to the DPS as a whole. In our current review of available information we did not identify any new disease or predation threats, nor did we find evidence that any previously identified threats had significantly changed. We did receive new information allowing us to quantify the potential effect of avian predation in the lower Columbia River, which we were forced to deal with qualitatively in the withdrawal notice (67 FR 44934; July 5, 2002).

Estuary predation of outmigrating salmon and steelhead juveniles by fish-eating birds has been studied extensively in the lower Columbia River, focused on colonies of Caspian terns and double-crested cormorants, which have grown in number in recent decades. The largest breeding colony of Caspian terns in the world (10,700 breeding pairs in 2008), and the largest breeding colony of double-crested cormorants (13,700 breeding pairs) in western North America, now nest on East Sand Island. The reasons for these concentrations of fish-eating birds are: (1) the creation of artificial nesting habitat; (2) reliable food supply produced by salmon hatcheries; and, (3) loss of secure nesting sites and food resources elsewhere (BRNW 2009).

From 1999 to 2001, about 4 percent of the PIT tags that were placed on juvenile salmon in the Columbia River system were detected on these island nesting habitats, suggesting a minimal predation rate on salmon and steelhead, varying from 2.6 percent of yearling chinook to 11.5 percent of the juvenile steelhead (Ryan *et al.* 2001 as cited in Quinn 2005, p. 238). The magnitude of predation on salmon and steelhead has more recently been estimated to be approximately 10 percent of salmon and steelhead that survive to the estuary (BRNW 2009). Recent work by Hudson *et al.* (2008, entire) examined estuary bird predation on anadromous coastal cutthroat trout based on PIT tagging of cutthroat trout in 11 tributaries of the

Columbia River from 2001 to 2008. Avian mortality was estimated to be 16.6 percent for all cutthroat trout that were tagged. Mortality rates in individual tributaries ranged from 3.7 percent to 24.2 percent.

PIT tags from Bear Creek and Big Creek coastal cutthroat trout were detected on Caspian tern and double-crested cormorant colonies on East Sand Island during both years of an ODFW study (ODFW 2008, p. 9). Tag detection was not 100 percent efficient, so estimates are conservative. Confirmed mortalities from avian predation made up 5.3 percent of the total outmigrant cutthroat from Big Creek in 2006, 15.4 percent of the Big Creek migrants in 2007, and 14.7 percent of Bear Creek migrants in 2007 (ODFW 2008, p. 9).

The studies by Hudson *et al.* (2008, entire) and ODFW (2008, entire) present new information on impacts to anadromous cutthroat trout from avian predation that was not considered in the withdrawal notice (67 FR 44934; July 5, 2002). Despite the avian predation rates documented in Hudson *et al.* (2008, entire) and ODFW (2008, entire), return rates of adults are similar to or exceed adult return rates for many wild, healthy anadromous salmon and steelhead populations in all but one tributary that was monitored (Bradford 1995, p. 1332; Beckman *et al.* 1999, p. 1130), suggesting avian predation is not a limiting factor for anadromous coastal cutthroat trout.

The USACE initiated a program in 2008 to disperse and relocate the tern and cormorant colonies outside the Columbia Basin to reduce predation impacts on threatened Columbia River salmon and steelhead by creating new nesting habitat in a number of locations along the west coast, including Crump and Summer lakes in southeast Oregon, Fern Ridge Reservoir in the southern Willamette Valley, and in San Francisco Bay, California. Concurrent with the creation of new habitats outside the lower Columbia River estuary, current nesting habitat on East Sand Island is being gradually reduced through vegetation management. Available nesting habitat on East Sand Island in 2009 was reduced by approximately 50 percent from that available in 2008 (BRNW 2009). Nesting by Caspian terns has occurred at the newly created Crump Lake habitat, and evidence from banded birds indicates some of the birds are from the East Sand Island colony. Two newly created islands in Summer Lake are being used by nesting terns. Results from monitoring terns at Crump and Summer lakes indicate initial success. Recent video camera footage revealed that Caspian terns visited newly created nesting habitat at Fern Ridge Reservoir following the 2009 nesting season. Construction of sites in San Francisco Bay will take place prior to the 2010 nesting season.

While there is evidence that relocation efforts are showing success, fish-eating birds have likely always been present in the marine and estuarine portions of the DPS. Research documenting the extent of the predation on salmon and steelhead, and now on coastal cutthroat trout, has begun to portray the nature of the impact of these predators, but does not serve to explain the full measure of the impact. Though we have some data on bird predation, we have no data to explain what proportion of all predation faced by outmigrating coastal cutthroat trout is bird-caused versus other sources. To determine whether this bird predation presents an extinction risk to anadromous coastal cutthroat trout, we reviewed comments submitted by WDFW (2009, pp. 2–7) on hatchery releases and returns at its Cowlitz River hatchery.

Between brood year 1996 and brood year 2004, the rate of returns of released coastal cutthroat trout 2 years after release ranged from a low of 2.36 percent to a high of 7.41 percent (excluding 2004, when some fish may have been double-counted by mistake). Subsequent to brood year 2004, the broodstock trap was moved, making comparisons between the years before and after the move inappropriate. For brood years 2005 and 2006, return rates were measured at 0.92 percent and 1.77 percent, respectively. The Cowlitz Hatchery has as its program goal to achieve an average 4.71 percent smolt-to-adult survival, including harvest and return of up to 5,000 fish at current production levels (WDFW 2005, as cited in Anderson 2008, p. 13). WDFW's submitted comments state that returns for brood years 1998–2006 (excluding 2004) averaged 4.2 percent, ± 1.6 percent., the range of which includes the program goals for smolt-to-adult survival (Anderson 2008, p. 13).

A 3–year study on the Oregon side of the lower Columbia River estuary documented adult return rates of PIT- or acoustic-tagged coastal cutthroat trout that emigrated from Big Creek and Bear Creek (ODFW 2008, entire). ODFW reports: "In Big Creek, none of 30 acoustically tagged fish that emigrated in Spring 2006 returned to the stream, and one of 53 PIT and/or acoustic tagged migrants (two percent) returned to the stream after emigrating in Spring 2007. In Bear Creek, 1 of 20 fish (5 percent) returned to the stream from the 2007 acoustic tagged group, and 2 of 25 PIT-tagged fish that were detected emigrating in spring 2008 returned in autumn 2008 (8 percent). One of the two returning fish from Bear Creek returned to Big Creek, however, indicating that some straying among tributaries occurs. Accordingly, it is possible that some tagged fish may have returned to other unmonitored streams." In the streams that show returns, the rates of return are consistent with literature reports of smolt-to-adult return ratios among other healthy populations of Pacific salmon species (Bradford 1995, p. 1332, Beckman *et al.* 1999, p. 1130), suggesting that conditions experienced post-emigration in the estuary and marine habitats, including present levels of avian predation, do not present a limiting factor to coastal cutthroat trout.

Summary of Threat Factor C

We have evaluated the best available scientific and commercial information on the threat of disease and predation. We did not identify any new disease or predation threats to anadromous coastal cutthroat beyond those identified previously in the proposed rule (64 FR 16397; April 5, 1999) or the withdrawal of the proposed rule (67 FR 44934; July 5, 2002). We did receive information allowing us to quantify the potential level of predation by birds. We found no new evidence to suggest previously identified threats under Factor C are significant sources of mortality to anadromous cutthroat in marine and estuarine areas or the DPS as a whole. While the recent work by Hudson *et al.* (2008, entire) confirms that anadromous cutthroat trout, like other migrating fishes in the estuary, are vulnerable to predation by terns and cormorants, the overall impact to the anadromous life-history form in the Columbia River is unknown. However, we do know that, despite the avian predation rates documented in Hudson *et al.* (2008, pp. 54–55) and ODFW (2008, p. 9), return rates of adults are similar to or exceed adult return rates for many wild, healthy anadromous salmon and steelhead populations (Bradford 1995, p. 1332, Beckman *et al.* 1999, p. 1130) in all but one tributary that was monitored, suggesting avian predation is not a limiting factor for anadromous coastal cutthroat trout. Fish-eating birds will continue to be, and have always been, present in the marine and estuarine portions of the DPS. Although we expect efforts to redistribute Caspian terns and cormorants may reduce predation impacts on anadromous cutthroat trout in the Columbia River estuary, in the near-term, we expect this source of mortality to continue at

current levels. Based on the information above, we conclude that anadromous cutthroat trout are not threatened by disease or predation in marine and estuarine areas, or any of the remaining portions of the DPS.

D. The Inadequacy of Existing Regulatory Mechanisms.

In the 2002 withdrawal of the proposed rule, we concluded that coastal cutthroat trout are not threatened as a result of the inadequacy of existing regulatory mechanisms, including Federal land management practices; Oregon and Washington land use practices; dredge, fill, and in-water construction programs; water quality programs; and hatchery management (67 FR 44934; July 5, 2002). We further noted that many of these regulatory mechanisms were contributing to the recovery of aquatic habitats from degradation that occurred prior to the creation and implementation of many of these State and Federal regulatory mechanisms. Our review of available information indicates that there has been no significant weakening of State and Federal regulatory mechanisms since 2002. Hence, we again conclude that the species is not threatened as a result of inadequacy of regulatory mechanisms.

Summary of Threat Factor D

Inadequacy of regulatory mechanisms was not identified as a threat in the proposed rule, nor was this considered a significant threat at the time of the withdrawal (2002). Based on our current analysis, we have no evidence that any of the previously identified regulatory mechanisms have been significantly weakened from 2002 to 2009, and several changes during this time have strengthened regulatory mechanisms. Although we believe that our 2002 analysis adequately assessed the role of these existing regulatory mechanisms on coastal cutthroat trout in marine and estuarine environments, we have reassessed their role in these geographic areas, considered any changes from 2002 to 2009, and again conclude that anadromous coastal cutthroat trout are not threatened in marine and estuarine areas, or in any remaining portions of the DPS, by inadequacies in these mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence.

Under Factor E in the withdrawal of the proposed rule, we assessed the potential threats of climate change, catastrophic natural events, and hybridization to coastal cutthroat trout (67 FR 44934: July 5, 2002). We concluded from our analysis that none of these factors were anticipated to significantly threaten the Southwestern Washington/Columbia River DPS of coastal cutthroat trout in the foreseeable future. With the exception of climate change, we have no new significant evidence to analyze that would potentially alter our previous conclusion that these factors do not pose a significant threat to coastal cutthroat trout in marine and estuarine areas or the remaining portions of the DPS.

Climate Change

According to the Climate Impacts Group, an interdisciplinary research group studying the impacts of natural climate variability and global climate change (“global warming”) on the U.S. Pacific Northwest, it is unclear how coastal ocean conditions in the Pacific Northwest will respond to climate change because of the complexity of these systems and the lack of long-term studies (CIG 2009). Considerable research has provided evidence for the likelihood and potential consequences of climate change associated with greenhouse gas emissions. Climate change is anticipated to result in sea level rise, ocean acidification, increased winter precipitation and intensity of storm events, accelerated coastal erosion, and increased water temperatures (OPWG 2006, p. 23). The rate of sea level rise in the Pacific Northwest is projected to be faster than the global average. Sea level rise could result in increased coastal erosion rates and degraded nearshore habitat.

Bottom *et al.* (2005, pp. 80–88) assessed impacts of climate change in the Columbia River Basin. They concluded that the near-term effects of climate change are not large enough to rival the impacts of anthropogenic alterations to the hydrological cycle. Climate change may exacerbate current conditions and conflicts over water supply by increasing demand and decreasing natural flows during the critical spring-freshet period (Hamlet and Lettenmaier 1999, as cited in Bottom *et al.* 2005, p. 80). While physical changes to the near-shore environment appear likely, much remains to be learned about the magnitude, geographic extent, and temporal and spatial patterns of change, and their effects on coastal cutthroat trout.

In this section we summarize new information regarding potential impacts to coastal cutthroat trout in marine environments. New information regarding the condition of the marine environment in Washington and Oregon includes information regarding harmful algal blooms, dead zones, prey availability and quality, and the potential exacerbation of these conditions from climate change.

California Current System

The California Current System (CCS) extends about 190 mi (~300 km) offshore from southern British Columbia, Canada, to Baja California, Mexico, and is dominated by a southward surface current of colder water from the north Pacific (Miller *et al.* 1999, p. 1; Dailey *et al.* 1993, as cited in USFWS 2009b, p. 34). The system is characterized by upwelling, particularly in spring-summer. This is an oceanographic phenomenon involving wind-driven movement of dense, cooler, and usually nutrient-rich water towards the ocean surface, which replaces warmer and usually nutrient-depleted surface water (Smith 1983, as cited in USFWS 2009b, p. 34). Coastal upwelling replenishes nutrients near the surface where photosynthesis occurs, resulting in increased productivity (Batchelder *et al.* 2002, as cited in USFWS 2009b, p. 35).

The CCS is affected by El Nixntilde;o-Southern Oscillation (ENSO) and Pacific Decadal Oscillation climatic processes. ENSO is used to describe periodic changes, typically lasting 1 to 2 years, in air-sea interaction in the equatorial Pacific Ocean region. El Nixntilde;o events (warm-water events) result in increased sea-surface temperatures, reduced flow of eastern boundary currents such as the CCS, and reduced coastal upwelling (Norton and McLain 1994, pp. 16,019–16,030; Schwing *et al.* 2006, as cited in USFWS 2009b, p. 35). La Nixntilde;a events (cold-water events) produce effects in the northeast Pacific Ocean that tend to be the reverse of those during El Nixntilde;o events, resulting in colder, more-nutrient rich waters than usual, due to strong upwelling-favorable winds and cold waters near the surface due to a shallow thermocline (zone of rapid temperature change in the water column that typically separates warm water above from cold water below) (Murphree and Reynolds 1995, p. 52; Oedekoven *et al.* 2001, as cited in USFWS 2009b, p. 35).

In addition to climate events such as El Nixntilde;o and La Nixntilde;a, the mid-latitude Pacific Ocean experiences warm and cool phases that occur on decadal time scales (Mantua 2000, as cited in USFWS 2009b, p. 35). The term “Pacific Decadal Oscillation” was coined to describe long-term climate variability in the Pacific Ocean, in which there are observed warm and cool phases, or “regime shifts” (Mantua *et al.* 1997, pp.

1069–1079; Mantua 2000, as cited in USFWS 2009b, p. 35). Recently, the North Pacific Gyre Oscillation concept was developed to help explain the basis for the changing Pacific Decadal Oscillation patterns in the northeast Pacific (Ceballos *et al.* 2009, as cited in USFWS 2009b, p. 35).

Should climate change affect the timing, variability, and/or magnitude of coastal upwelling in the species' range, it could negatively affect coastal cutthroat trout and prey resources. The available information is equivocal, with studies to date reaching different conclusions on whether such upwelling changes are expected. Bakun (1990, as cited in USFWS 2009b, p. 43) outlined a physical mechanism by which coastal upwelling should intensify under global warming. While Bakun's mechanism has received much support, and is based on simple physical principles, two other modeling studies have predicted little change in the magnitude and seasonality of upwelling in the next century (Mote and Mantua 2002; Mote *et al.* 2008, as cited in USFWS 2009b, p. 43). The differing predictions of ocean conditions and changes in upwelling patterns due to climate change prevent an informative threat assessment to coastal cutthroat trout. We, therefore, have no information at this time indicating that climate change poses a significant threat to anadromous coastal cutthroat trout in the marine and estuarine areas, or any remaining areas of the DPS, within the foreseeable future.

Harmful Algal Blooms and Biotoxins

Some algal species cause harm to animals and the environment through toxin production or excessive growth. These algal species are known as harmful algae and can include microalgae that live suspended in the water or macroalgae that live attached to plants or other substrates. Harmful algal blooms are a natural phenomenon, but human activities are thought to contribute to the increased frequency of some of these, e.g., increased nutrient loading is a factor that contributes to increased occurrence of high biomass harmful algal blooms (Lopez *et al.* 2008, as cited in USFWS 2009b, p. 36). All coastal States in the United States have experienced harmful algal bloom events and "it is generally believed that the frequency and distribution of [harmful algal blooms] and their impacts have increased considerably in recent years" (Lopez *et al.* 2008, as cited in USFWS 2009b, p. 36).

The consequences of harmful algal blooms can include the death of whales, sea lions, dolphins, manatees, sea turtles, birds, fish, and invertebrates from direct exposure to toxins; exposure to toxins via contaminated food, water, or aerosols; damaged gills; and starvation due to low or poor food quality (Lopez *et al.* 2008, as cited in USFWS 2009b, p. 36). Ecosystems can be degraded through the formation of such large blooms that they alter habitat quality through overgrowth, shading, or oxygen depletion (see dead zone section below). In addition, mortalities from harmful algal blooms can degrade habitat quality indirectly through altered food webs or hypoxic (low oxygen) events caused by the decay of dead animals (Lopez *et al.* 2008, as cited in USFWS 2009b, p. 36).

Blooms of *Heterosigma akashiwo*, a raphidophyte known to kill fish have been documented in the Pacific Northwest annually since the 1960s and blooms of *Chanttonella*, another raphidophyte, have also killed fish along the Pacific coast. Macroalgal blooms along Washington's coast harm seagrasses, fish, and invertebrates due to hypoxia and potentially due to the production of bioactive compounds (Lopez *et al.* 2008, as cited in USFWS 2009b, p. 37). These blooms may reduce survival of coastal cutthroat trout through exposure to toxins, reducing habitat, and reducing the quality and quantity of prey species. We have no information at this time documenting the effect of these blooms on coastal cutthroat trout, prey species, or foraging habitat in the marine environment within the DPS, or to suggest that these blooms pose a significant threat to anadromous coastal cutthroat trout in the marine and estuarine areas of the DPS within the foreseeable future.

Dead Zones

Ecosystems can be degraded through the formation of such large algal blooms that they alter habitat quality through overgrowth, shading, or oxygen depletion (hypoxia or anoxia) (Lopez *et al.* 2008, as cited in USFWS 2009b, p. 38). Hypoxia or anoxia (low or no dissolved oxygen) can suffocate fish and bottom-dwelling organisms and can sometimes lead to hydrogen sulfide poisoning (Lopez *et al.* 2008, p. 22; Grantham *et al.* 2004, p. 750; Chan *et al.* 2008, as cited in USFWS 2009b, p. 38). In addition, mortality from harmful algal blooms can degrade habitat quality indirectly through altered food webs or hypoxic events caused by the decay of dead animals (Lopez *et al.* 2008, as cited in USFWS 2009b, p. 38). Hypoxic and anoxic events along the Pacific Coast can also be caused by large-scale changes in ocean conditions on near-shore upwelling ecosystem dynamics. Upwelling is part of the California Current coastal ecosystem, but typically, northerly winds alternate throughout the summer with southerly winds. The wind shifts suppress upwelling, mix the water, and prevent nutrient overload. However, every summer since 2002, the Oregon Coast has experienced a hypoxic/anoxic event (also referred to as "dead zone") (Grantham *et al.* 2004; Chan *et al.* 2008, as cited in USFWS 2009b, p. 38), due to changes in typical summer wind patterns along with upwelling of nutrient-rich, but oxygen-poor, waters.

While hypoxic conditions are known to be related to upwelling events, the hypoxic events off Oregon's coast extend from the shallowest reaches (inshore of 30 meter (98 feet) isobath) to the nearshore stations (1.2 to 3.1 mi (2 to 5 km) offshore), which is unusual. Further complicating matters, phytoplankton are two to three times more abundant during these hypoxic events, resulting in increased respiration (expiration of carbon dioxide), which exacerbates the dissolved oxygen deficits (Grantham *et al.* 2004, as cited in USFWS 2009b, p. 38). The severe hypoxic event in 2006 extended into Washington at least as far north as the Quinault River and affected crabs in pots at depths of about 45 to 90 ft (14 to 27m). In addition to unusual summer wind patterns, researchers are also interested in large phytoplankton blooms that occur in the late spring and early summer in the waters off Washington and Vancouver Island. The large blooms in the north might explain why waters off the Oregon coast that now upwell at the coastal shelf break are unusually low in oxygen. The change in wind patterns and the response of the marine ecosystem may be an interlude in a natural cycle or may signal a more permanent shift in the regional climate and the health of the ecosystem (Chan *et al.* 2008, as cited in USFWS 2009b, p. 38).

These seasonal dead zones begin as early as June and typically end in September, times when coastal cutthroat trout are present in nearshore and marine environments. It is unclear how far offshore coastal cutthroat trout migrate; those entering nearshore waters reportedly move moderate distances along the shoreline. These hypoxic events in Oregon and Washington may occur within the marine areas used by coastal cutthroat trout and avoidance of these areas may impact migratory patterns. In addition, dead zones can result in significant mortality of fish and invertebrates (Grantham *et al.* 2004; Chan *et al.* 2008 as cited in USFWS 2009b, p. 39). Reduction of these species

may contribute to low quality and quantity of prey for coastal cutthroat trout. However, we have no information at this time documenting the effects of dead zones on coastal cutthroat trout migration or prey availability.

Summary of Threat Factor E

Although climate change will undoubtedly impact ocean productivity as well as estuary and freshwater habitats, the likely effects to anadromous cutthroat trout and the DPS as a whole are uncertain. At this point we have no information that allows us to make a reliable projection of climate change effects on coastal cutthroat trout within the foreseeable future. We note that coastal cutthroat trout are habitat generalists and, like other generalist species, may be less vulnerable to changing environmental conditions brought on by climate change compared to other species that have a narrower range of habitat requirements (Foden *et al.* 2008, p. 3). As discussed above, we also assessed the potential threats of catastrophic natural events and hybridization under Factor E in the 2002 withdrawal of the proposed rule (67 FR 44934: July 5, 2002). However, as we have no new information to analyze regarding these threats, we consider our previous assessment as still representing the best available information on these subjects. Therefore, we reaffirm our original conclusion that catastrophic natural events and hybridization do not pose a significant threat to coastal cutthroat trout.

We have evaluated the best available scientific and commercial information on natural or manmade factors affecting its continued existence, and we conclude that anadromous cutthroat trout are not threatened in marine and estuarine areas, or any of the remaining portions of the DPS, by climate change, potential catastrophic natural events, or hybridization.

Finding

Based on the remand of the withdrawal of the proposed rule and the direction provided by the Court, we have reassessed our previous analysis to focus on anadromous cutthroat trout in the marine and estuarine portion of the DPS. We relied heavily on our past analysis in order to make a new finding for several reasons. Our previous analysis was comprehensive and included an assessment of threats to anadromous cutthroat upon which we could build. Also, we found that threats have not significantly changed between the date of the withdrawal and now. It was logical to compare the threats we previously identified to any change in threats now or how we projected those threats into the foreseeable future, and to consider whether any new threats have been identified since our last status determination. In this analysis, we have, therefore, considered all information previously evaluated in the 2002 withdrawal notice (67 FR 44934; July 5, 2002), as well as any new information that has become available since that time.

Although 7 years have passed since our withdrawal of the proposed rule, we have little new information available to further assess current status and trend of anadromous cutthroat trout in the Columbia River, Grays Harbor or Willapa Bay watersheds, and marine areas. Although not reflective of a trend, new information on emigration of cutthroat juveniles from lower Columbia River tributaries in both Oregon and Washington indicates tributaries that are monitored for cutthroat trout are still delivering anadromous smolts to the estuary and that adults are returning at rates that are similar to healthy salmon and steelhead populations (ODFW 2008, entire; Johnson *et al.* 2008, entire; Zydlewski *et al.* 2008, entire; Hudson *et al.* 2008, entire; Bradford 1995, p. 1332; Beckman *et al.* 1999 p. 1130). New information from ODFW (2008, entire) provides additional evidence that resident cutthroat trout isolated above long-standing anthropogenic barriers still produce anadromous smolts. This suggests that, to the extent that there is a hereditary basis for life history, it is not lost rapidly even under strong selection against the anadromous form.

We have no evidence of any new significant threats or significant changes in previously identified threats to anadromous cutthroat trout, though we now have additional quantitative information on predation by Caspian terns and cormorants in the lower estuary at East Sand Island. While we acknowledge that avian predation is a source of mortality for anadromous cutthroat trout, its overall impact to anadromous cutthroat trout is unknown. However, we have no evidence to suggest it is a limiting factor. Trends of returning hatchery and naturally produced cutthroat trout at Cowlitz Hatchery have been relatively stable in recent years, suggesting that the large releases of anadromous cutthroat smolts are not being significantly impacted by avian predation. Furthermore, USACE is seeking to reduce this impact. The goal of the program is to reduce the size of the Caspian tern colony by half by 2015. Early results of the USACE's relocation program for Caspian terns, as well as the concurrent program to reduce suitable nesting habitat on East Sand Island, are encouraging.

Future climate change will undoubtedly impact aquatic habitat and aquatic species in the lower Columbia River, and few species will be unaffected. However, coastal cutthroat trout, because of their complex life-history diversity, may be better equipped than many salmonids to handle the environmental stochasticity we may expect to see under future climate change. This fact underscores the importance of conserving and restoring the life-history diversity present in this complex subspecies.

The Columbia River estuary and plume, as well as Willapa Bay and Grays Harbor estuaries, have undergone significant alteration from historical conditions, which has likely reduced the amount and quality of habitat for anadromous coastal cutthroat trout. Despite these altered conditions, anadromous cutthroat continue to persist in the DPS. New information documents the prevalence of outmigrating coastal cutthroat smolts, even above long-standing artificial barriers, from many tributaries of the lower Columbia River, which supports the continued existence of the anadromous life-history form. Although numbers of anadromous coastal cutthroat trout may be lower than they have been historically, the limited information available on trends in anadromous coastal cutthroat trout does not suggest an ongoing decline, or the existence of significant limiting factors to anadromous coastal cutthroat trout.

Projects such as proposed LNG terminals and completion and maintenance of the Columbia River Channel Improvement Project may cause short-term and low-level impacts now and in the foreseeable future to anadromous cutthroat trout and their habitat. However, we do not believe these potential impacts constitute a significant threat because of the adequacy of current regulatory mechanisms and limited project scope relative to available habitat. In Willapa Bay, shellfish aquaculture and the use of carbaryl to control burrowing shrimp in shellfish aquaculture has been shown through lab studies to potentially impact coastal cutthroat trout, but we lack information to suggest these have caused declines in anadromous cutthroat trout; in addition, the areas affected are small compared to available habitat. Given the adequacy of current regulatory mechanisms and the restoration actions that have occurred, as well as those under way, we conclude the overall baseline habitat condition of the Columbia River estuary

is likely on a positive trajectory. Based on our evaluation of the best available scientific and commercial information, we have, therefore, determined anadromous cutthroat trout are not threatened by destruction, modification, or curtailment of their habitat or range in marine and estuarine areas, or the DPS as a whole.

We have evaluated the best available scientific and commercial information on the overutilization of anadromous cutthroat trout for commercial, recreational, scientific, or educational purposes. We identified no new or significantly increased threats under this threat factor beyond those analyzed in the 2002 withdrawal. We, therefore, conclude that anadromous cutthroat trout are not threatened now or in the foreseeable future by overutilization in marine and estuarine areas, or any of the remaining portions of the DPS.

While recent studies confirm that anadromous cutthroat trout, like other migrating fishes in the estuary, are vulnerable to predation by terns and cormorants, the overall impact to the anadromous life-history form in the Columbia River is unknown. However, we do know that, despite the avian predation rates documented in recent studies, return rates of adults are similar to or exceed adult return rates for many wild, healthy anadromous salmon and steelhead populations, suggesting that avian predation is not a limiting factor for anadromous coastal cutthroat trout. We previously determined that potential threats due to disease did not represent significant threats to the DPS as a whole. In our current review of available information we did not identify any new disease threats, nor did we find evidence that any previously identified threats had significantly changed. We, therefore, conclude that anadromous cutthroat trout are not threatened by disease or predation in marine and estuarine areas, or any of the remaining portions of the DPS.

Few regulatory mechanisms were identified as a threat in the proposed rule and none were considered a significant threat at the time of the withdrawal (2002). Based on our current analysis, we have no evidence that any of the previously identified regulatory mechanisms have been significantly weakened from 2002 to 2009, and several changes during this time have strengthened regulatory mechanisms. We, therefore, conclude that anadromous coastal cutthroat trout are not threatened in marine and estuarine areas, and in the remaining portions of the DPS by inadequacies in regulatory mechanisms.

Although climate change will undoubtedly impact ocean productivity as well as estuary and freshwater habitats, the likely effects to anadromous cutthroat trout and the DPS as a whole, are uncertain. Equivocal projections of future conditions do not allow for a reliable prediction of the effects of climate change on the DPS. Coastal cutthroat trout are habitat generalists and, like other generalists, may be less impacted due to changing environmental conditions brought on by climate change and, therefore, more resilient compared to other species that have a narrower range of habitat. We have no new information available that would alter our previous conclusion from the 2002 withdrawal notice that potential catastrophic events and hybridization do not pose a significant threat to coastal cutthroat trout (67 FR 44934; July 5, 2002). We have evaluated the best available scientific and commercial information on natural or manmade factors affecting its continued existence, and we conclude that anadromous cutthroat trout are not threatened in marine and estuarine areas, nor in any of the remaining portions of the DPS, by climate change, potential catostrophic natural events, or hybridization.

Although marine habitats comprise a significant portion (about 90 percent) of the combined marine and estuarine analysis area, we found no information on threats specific to anadromous coastal cutthroat trout or similar fish species in marine habitats. The new information that is available primarily addresses the potential effects of climate change on marine habitat such as seasonal upwelling, El Nixntilde;o and La Nixntilde;a events, near-shore dead zones, and harmful algal blooms (see discussion under Threat Factor E). These events influence primary productivity and thus likely influence the forage base and overall productivity of these marine environments for anadromous coastal cutthroat trout. However, the degree to which these events are impacted now and in the foreseeable future by climate change is uncertain, as are the subsequent potential impacts to anadromous cutthroat trout. Although we acknowledge uncertainty around the potential impacts of climate change, the limited information available on threats to marine habitats within the analysis area does not suggest that current or future conditions represent a threat to anadromous coastal cutthroat trout.

It is also helpful to note that, while we have no evidence of potential threats in marine areas, but do know of some potential threats in estuarine areas, based on estuary utilization information from the Columbia River, it appears the vast majority of anadromous coastal cutthroat trout rely less on estuarine habitat than on marine habitat. The degree of this reliance on the estuary varies over the life of an individual fish. New information on coastal cutthroat trout movement from the Columbia River estuary suggests anadromous coastal cutthroat trout on their first outmigration use the estuary largely as a migration corridor only, and spend relatively little time exposed to those threats that may exist in estuarine areas. These younger fish are the ones most susceptible to the types of threats described, but their limited exposure to these threats on their way to marine habitats reduces the likelihood of a response, so such exposure is not likely a limiting factor.

Those anadromous coastal cutthroat trout that return from marine habitats exhibit more extensive use of the estuary than is typical for a first year outmigrant. However, at the older age and larger size they have reached after spawning, they are also generally less vulnerable to potential estuarine threats. Therefore, in the marine areas that comprise 90 percent of the analysis area, we see few if any potential threats specific to anadromous coastal cutthroat trout. In the remaining 10 percent of the analysis area, a small percentage of anadromous coastal cutthroat trout are exposed to, but are less susceptible to, the potential or known estuarine threats.

We have carefully considered the best scientific and commercial information available regarding the status of and threats to coastal cutthroat trout in the marine and estuarine portions of the Southwestern Washington/Columbia River DPS. On the basis of our review and analysis of the five threat factors considered under section 4(a)(1) of the Act, we have concluded that anadromous cutthroat trout are not threatened or endangered in the marine and estuarine portions of the Southwestern Washington/ Columbia River DPS. As stated earlier, to be considered a significant portion of the range that may warrant the protections of the Act, there must be substantial information indicating that both (i) the portions are significant and (ii) the species is in danger of extinction there or is likely to become so within the foreseeable future. Both questions must be answered in the affirmative. Since we have determined that the marine and estuarine areas of the DPS (i.e., the portion of the DPS' range under consideration) are not threatened, then we have determined that the marine and estuarine areas of the DPS do not

warrant the protections of the Act. Furthermore, we have reviewed the comments received for indications of significant changes in threats to coastal cutthroat trout throughout the Southwestern Washington/Columbia River DPS, and concluded there is no new indication that coastal cutthroat trout are threatened or endangered in any other portions of the DPS or the DPS as a whole.

Therefore, based on the lack of significant present or foreseeable threats, we have determined that the Southwestern Washington/Columbia River DPS of coastal cutthroat trout is not likely to become in danger of extinction in the foreseeable future throughout all or a significant portion of its range, including the marine and estuarine areas of the DPS, and, therefore, does not meet the Act's definition of a threatened or endangered species. Consequently, we withdraw our April 5, 1999, proposed rule to list the Southwestern Washington/Columbia River DPS as threatened (64 FR 16397; April 5, 1999).

Current and Future Conservation Actions

While the following information did not contribute to our determination, we believe it is worthwhile to highlight current and planned conservation efforts for coastal cutthroat trout.

In the 2002 withdrawal of the proposed rule, we committed to providing technical assistance to Federal, State, and other entities to encourage them to address the conservation needs of coastal cutthroat trout. We committed to work with these agencies and entities to collect additional biological information, monitor the status of coastal cutthroat trout, and monitor the progress of conservation efforts for the DPS (67 FR 44934; July 5, 2002).

The Service initiated efforts in 2003 to involve the States in development and implementation of a multi-state coastal cutthroat trout conservation strategy. Meetings with ODFW resulted in a Memorandum of Understanding (MOU) signed in January 2005 (Goodson 2008, pp. 9–10). Three products to be accomplished under the MOU included: (1) a cooperative coastal cutthroat trout research, monitoring, and evaluation (RM&E) plan, to be implemented under the Oregon Plan for Salmon and Watersheds and ODFW's Native Fish Conservation Policy; (2) a coastal cutthroat trout conservation plan, developed via ODFW's Native Fish Conservation Policy; and, (3) a Conservation Agreement between the Service and ODFW to specifically identify the RM&E and conservation actions and responsibilities necessary to conserve coastal cutthroat trout in Oregon. The risk assessments identified in the 2005 Native Fish Status Report (ODFW 2005) were used to set conservation plan priorities under the Native Fish Conservation Policy (OAR 635-007-0505(3)). Monitoring of coastal cutthroat trout has been incorporated into existing ODFW programs, although it does not encompass all coastal cutthroat trout habitat (K. Goodson, pers. comm. 2009).

The 2005 Coastal Cutthroat Trout Symposium was held in Port Townsend, Washington, with major support provided by the Service, Oregon Chapter of the American Fisheries Society, and the Pacific States Marine Fisheries Commission (PSMFC). The objectives of the symposium were to: (1) update coastal cutthroat trout information presented during the 1995 symposium in Reedsport, Oregon; (2) enhance knowledge on all facets of coastal cutthroat trout life history and ecology; (3) provide a current assessment of the range-wide status of coastal cutthroat trout populations; and, (4) encourage development of a coordinated range-wide coastal cutthroat trout conservation and monitoring plan (Young *et al.* 2008, p. xi). The Service's presentation encouraged the exploration of opportunities to speed implementation of conservation strategies through the newly formed Western Native Trout Initiative (WNTI) partnership (Finn *et al.* 2008, p. 134). The partnership is funded by a multi-state grant issued through the Association of Fish and Wildlife Agencies. The 17 species and subspecies covered by WNTI are divided into 5 geographically based groups. The Northwest Group focuses on bull trout and coastal cutthroat trout. WNTI is seen as a way not only to address funding the development of conservation plans and actions, but also an opportunity to raise the visibility of coastal cutthroat trout (K. Griswold, pers. comm. 2009).

Following the 2005 symposium and inclusion of coastal cutthroat trout in WNTI, a working group composed of experts throughout the range of coastal cutthroat trout was formed, known as the Coastal Cutthroat Trout Interagency Committee (Committee). The Committee is composed of State wildlife agency representatives from the western States and British Columbia, Federal agencies (Service, U.S. Bureau of Land Management, U.S. Forest Service, and U.S. Geologic Survey), and the Northwest Indian Fisheries Commission; the Committee is sponsored by the PSMFC (K. Griswold, pers. comm. 2009). The Committee was formalized in 2006, and identified the goal of "developing a consistent framework to help guide and prioritize conservation, management, research, and restoration of coastal cutthroat trout throughout their native range" (Griswold 2008, p. 169).

In pursuit of their goal, the Committee has sponsored two workshops; the latest focusing on monitoring needs was held in 2007. As a result of that workshop, the Committee initiated a database project whereby information about the distribution, abundance, and diversity of coastal cutthroat trout could be housed and shared. The project has three current products: (1) a searchable library housed within PSMFC's StreamNet Library; (2) a database with an initial focus on documented occurrence; and, (3) an interactive web-based map to display documented occurrence (K. Griswold, pers. comm. 2009). Work has also started on a draft outline of a coastal cutthroat trout conservation plan, which includes a section addressing research, monitoring, and evaluation.

Summary of Comments and Recommendations

To ensure that any action resulting from the request for information is based on the best scientific and commercial data available, we solicited comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties. We particularly sought comments concerning:

(1) Information on those marine and estuarine areas that could potentially constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout, and the suggested boundaries of those areas;

(2) Information on whether and why those marine and estuarine areas constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout as defined by sections 3(6) or 3(20) of the Act;

(3) Other information on the status, distribution, population trends, abundance, habitat conditions, or threats specific to those marine and estuarine areas that could constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout; and

(4) Information on the effects of potential threat factors that are the basis for a species' listing determination under section 4(a)(1) of the Act (16

U.S.C. 1531 *et seq.*; the "five listing factors") specifically with respect to those marine and estuarine areas of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout. The five listing factors considered under the Act are:

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

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

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; and,

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

In the reopening of public comment (74 FR 12297; March 24, 2009), we defined "estuary" to mean a semi-enclosed coastal body of water that has a free connection with the open sea and within which sea water is measurably diluted with fresh water derived from land drainage (Lauff 1967, as cited in ISAB 2000, p. 2). All interested parties were requested to submit factual reports or information on the marine and estuarine areas of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout with particular regard to whether these areas constitute a significant portion of the range of the DPS under the Act, and if so, whether the subspecies is threatened or endangered in those areas.

Additionally, we contacted appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties and requested comment, pursuant to section 4(b)(5)(A) of the Act. During the comment period, a total of four comment letters were submitted from government agencies, organizations, or individuals. Specifically, comment letters were submitted by the States of Oregon and Washington, from one individual, and from the Center for Biological Diversity. The following is a summary of substantive issues that were identified within the comments received and our response to each issue.

Comments from the States of Oregon and Washington

Representatives of both the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fish and Wildlife (WDFW) submitted comment letters in response to the request for comments. The ODFW comments provided updated biological information on studies conducted by, or in conjunction with, ODFW, as well as ODFW's opinion that the lower Columbia River estuary "may be considered a significant portion of the range" of the DPS, although no statement was made about the rest of the estuarine and marine areas of the DPS. The ODFW comments also stated that "[w]e do not feel the coastal cutthroat trout in the lower Columbia River estuary are threatened at this time due to their fairly wide distribution in the tributaries of the Columbia River and the fact that many of the threats facing them are being addressed in salmon recovery efforts" (ODFW 2009a, p. 7).

The WDFW provided summarized data and a number of citations for recent coastal cutthroat trout studies, and stated that "marine and estuarine habitat is vital for the individual cutthroat trout that utilize this habitat for foraging" but that "[e]xisting information on abundance and size at return of the sea-going cutthroat trout of the [DPS] does not indicate that these fish are at risk of becoming endangered (WDFW 2009, p. 1)." We have considered all data submitted by ODFW and WDFW in our analysis. In one instance, a comment raised made by the ODFW was similar to those of others who commented; we responded to this comment in the Public Comments section below with attribution.

Public Comments

Comment 1: Several commenters, including the State of Oregon, suggested our definition of estuary is too limited and that we should consider the estuary as areas under tidal influence, not just areas of saltwater intrusion.

Our Response: Although there are many accepted definitions of the term estuary, we chose to use the definition by Lauff (1967, as cited in ISAB 2000, p. 2) that describes an estuary as a semi-enclosed coastal body of water that has a free connection with the open sea and within which sea water is measurably diluted with fresh water derived from land drainage. This definition is consistent with how we have used this term since publication of the proposed rule in 1999 (64 FR 16397; April 5, 1999), and parallels the life-history terminology that coastal cutthroat trout are not anadromous until they experience salt water.

Comment 2: One commenter suggested estuaries may be of greater relative importance to anadromous cutthroat than to Pacific salmon based on the number of times they visit or pass through this habitat during their lifetimes, since anadromous coastal cutthroat trout can spawn up to four times during their lifetime.

Our Response: We acknowledge that anadromous cutthroat trout have the potential to move through and utilize estuaries multiple times during their lifetimes, and recent information from studies of cutthroat trout movement in the lower Columbia River document this (Hudson *et al.* 2008, entire; Johnson *et al.* 2008, entire). However, although anadromous cutthroat have the capability of spawning multiple times, studies suggest a relatively low percentage of individuals return to spawn a second or third time (Hudson *et al.* 2008, pp. 54–55; Johnson *et al.* 2008, pp. 16–18). Consequently, estuaries may be of greater relative importance only to those individuals that return to spawn multiple times, which represent a small fraction of this life history form.

Comment 3: One commenter stated the importance of the Columbia River plume (i.e., the mix of salt and freshwater that extends into the marine environment) to anadromous cutthroat and suggested that the Service consider the plume, as well as the estuary and near-shore travel zones along the mainstem Columbia River, in any future considerations regarding critical habitat designation for coastal cutthroat trout.

Our Response: Since our finding is that listing is not warranted, we are not considering developing a proposed critical habitat rule for the Southwestern Washington/Columbia River DPS of coastal cutthroat trout.

Comment 4: Several commenters suggested that headwater resident cutthroat above barriers do not commonly migrate below these barriers and should not be relied upon to contribute to anadromous populations below the barriers.

Our Response: New information supports the fact that headwater resident cutthroat migrate below natural barriers at low rates (Bateman *et al.* 2008, pp. 62–64). Given this low rate of emigration, it is unlikely that they contribute significantly to anadromous populations downstream. However, there is evidence within the DPS that resident freshwater forms within the zone of anadromy (i.e., not isolated above natural barriers impassable to anadromous fish), even those that have been isolated for long periods of time above man-made barriers, are contributing substantial numbers of emigrating smolts to the Columbia River estuary (ODFW 2008, pp. 9–11, Johnson *et al.* 2008, pp. 19–20). For this reason we expect resident freshwater forms within the zone of current or historical anadromy to continue to contribute to the maintenance of the anadromous life-history strategy

Comment 5: Several commenters suggested there is evidence of genetic

distinctness between anadromous coastal cutthroat, freshwater migratory, and resident cutthroat trout, and that this distinctness provides support for the existence of an SPR within the Southwestern Washington/Columbia River DPS.

Our Response: The best available information suggests there is little genetic differentiation between anadromous and sympatric resident freshwater cutthroat trout. Ardren *et al.* (in press) found no genetic differences between sympatric anadromous and resident life forms within two tributaries of the lower Columbia River. They further found genetic differences were an order of magnitude higher between tributary samples than between life forms within a tributary. Their results are consistent with a population made up of multiple life histories that freely interbreed within each tributary producing anadromous, freshwater migratory and resident life forms. In contrast, there is information to suggest resident cutthroat trout isolated above natural barriers may be genetically distinct from cutthroat below natural barriers due in part to low rates of emigration over these barriers and the inability of anadromous and resident migratory cutthroat to reproduce with coastal cutthroat trout that exist above these barriers (Griswold 1997, pp. 167–169; Bateman *et al.* 2008 pp. 62–64). We find that available information on genetic distinctness between life forms of coastal cutthroat trout does not support the existence of an SPR in the Southwestern Washington/Columbia River DPS, especially for the anadromous life form, which is not genetically distinct from resident forms below natural barriers.

Comment 6: One commenter suggested that resident cutthroat trout above barriers contribute little to anadromous and freshwater migratory forms below barriers and that the designation of DPSs and SPRs should consider this information.

Our Response: We agree that resident cutthroat trout above natural barriers likely contribute little to the maintenance of anadromous and freshwater migratory forms. We have considered this information in our current analysis.

Comment 7: One commenter stated that if the Service finds a marine and estuarine SPR that warrants listing as threatened or endangered, then the whole Southwestern Washington/Columbia River DPS should be listed.

Our Response: Current Service policy per the DOI solicitor's M-Opinion on significant portion of the range allows for applying the protections of the Act to an SPR that is a portion of a listable entity, whether that entity is a DPS, subspecies, or species. In any event, because the Service has determined that the subspecies is not threatened or endangered in the marine and estuarine areas of the DPS, the Service need not decide what the appropriate scope of a listing would be.

Comment 8: One commenter cited the definition of SPR from the Service's draft guidance and suggested, "based on this criteria, marine and estuarine areas easily qualify as an SPR of the range of the Southwestern Washington/Columbia River coastal cutthroat trout because these areas are essential to the survival of sea-run coastal cutthroat trout."

Our Response: Our draft guidance states that a portion of a species' range is significant if it is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. While we agree that marine and estuarine areas are important to the survival of sea-run (anadromous) coastal cutthroat trout, our analysis indicates that the species is not threatened or endangered in these areas and thus further consideration of an SPR is not warranted.

Comment 9: One commenter stated that the Service's withdrawal of the proposed rule failed to provide any evidence that sea-run cutthroat trout are abundant or widespread and that, in fact, most of the information the Service presented indicates continued cause for concern.

Our Response: Our five-factor analysis in the 2002 withdrawal found coastal cutthroat trout to be generally widespread and abundant throughout the DPS. While we acknowledged that the anadromous life form was likely reduced from historical levels, and perhaps was still declining in some areas, we presented new information and highlighted changes in regulations that changed our conclusion about the risk that the DPS may become endangered in the foreseeable future. The Service's withdrawal of the proposed rule did not require we demonstrate that sea-run (anadromous) cutthroat trout be widespread and abundant, only that they are not threatened or endangered, as these terms are defined in section 3 of the Act.

Comment 10: One commenter said that the reopening of the public comment (74 FR 12297; March 24, 2009) misrepresented the court's direction to the Service by suggesting that some portions of the withdrawal of the proposed rule were insulated from review.

Our Response: While we believe the Court's remand was based solely on our failure to adequately consider whether the marine and estuarine portions of the DPS constituted a "significant portion of the range" of the DPS, we agree that the withdrawal decision was remanded in full by the Court's ruling, and that data regarding impacts in areas of the DPS outside marine and estuarine areas are also relevant to the current finding. The reopening of the public comment (74 FR 12297; March 24, 2009) on the proposed rule specifically sought data on the five listing factors within the marine and estuarine areas, but did not limit submissions to these areas. We have received and considered comments on issues specific to the marine and estuarine as well as the DPS as a whole.

Comment 11: One commenter pointed out that the Service based its reversal of the proposed rule in part on the fact that resident cutthroat trout can occasionally produce anadromous offspring, but that this same information was available to NMFS when it conducted its status review and NMFS still concluded that listing was warranted.

Our Response: Information on the contribution of resident cutthroat trout to anadromy was not available to NMFS when completing its status review, although it was available prior to the proposal to list the ESU (now DPS). Our withdrawal of the proposed rule was based on multiple factors, including additional information that was not available to NMFS suggesting that resident cutthroat trout do produce anadromous offspring. New information in our current analysis further supports the fact that resident cutthroat trout below natural barriers are contributing to the anadromous life-history component of cutthroat trout in this DPS.

Comment 12: One commenter suggested that, if poor habitat conditions are suppressing anadromous cutthroat trout, then any anadromous progeny produced by resident cutthroat trout would face the same habitat limitations, thereby providing limited contribution to the conservation of the anadromous life-history form.

Our Response: We agree that the anadromous component of coastal cutthroat trout in the DPS is likely reduced from historical levels and that this reduction has likely been caused in part by habitat degradation. We also agree that any anadromous progeny produced by resident cutthroat trout would face the same habitat limitations. However, even with historical habitat degradation in the three estuaries within the DPS, our analysis indicates anadromous cutthroat trout are still

present and are still returning to many tributaries within the DPS at rates that are generally comparable to return rates for healthy anadromous salmonid species, and that the nature of threats are such that the anadromous life-history form is not likely to become threatened or endangered in the foreseeable future.

Comment 13: One commenter suggested that forest management practices will continue to impact coastal cutthroat trout for decades to come through ongoing impacts from past activities.

Our Response: While it is true that some legacy effects of past logging practices will continue into the future, there is no information demonstrating anything more than a speculative link suggesting that these types of impacts pose a risk of extinction of coastal cutthroat trout throughout the DPS, or in the marine and estuarine areas of the DPS. In fact, in our 2002 withdrawal of the proposal to list, we concluded that management of forested landscapes is expected to improve in the future due to improvements in the requirements for private timber harvest regulations in Washington State, and information received during the recent comment period from the State of Washington describes improvements in migratory corridors and other watershed improvements under the Washington State Forest and Fish rules.

Comment 14: One commenter asserted that private lands forest management in proximity to the estuaries has a disproportional impact to anadromous coastal cutthroat trout as compared to upper tributary populations that may be more affected by Federal forest management.

Our Response: While it is true that there are more acres of privately managed forest lands in close proximity to the estuarine areas of the DPS, the commenter offers no information to show that forest management in these areas has had impacts to coastal cutthroat trout. Exposure to some of the negative aspects of these practices is described in the comment, but no response by coastal cutthroat trout is articulated.

Comment 15: One commenter provided an expansive list of potential threats or factors to a variety of coastal cutthroat trout life-history forms (e.g., "anadromous," "sea-run," "migratory"), many of which cite back to the 2002 withdrawal notice or documents used by the Service in support of the withdrawal notice, but without any new information cited in support of these as actual threats. The commenter failed to identify how coastal cutthroat trout that may be exposed to some of these potential threats may respond, for example in terms of population declines, increases in extinction risk, reductions in reproductive capacity or output, or any other measure indicating that the exposed fish are responding to these factors such that they should be considered threats. The factors addressed in this manner include, but are not limited to:

- Urban and industrial sprawl
- Agriculture
- Grazing
- Mining
- Cumulative effects, or a synergy of impacts "greater than the sum of the parts"
- The fish diseases *Ceratomyxa shasta* and gas bubble disease
- Predation by other fishes, mammals, or birds
- The inadequacy of Federal Forest management in Oregon and Washington to protect coastal cutthroat trout, because the Federal forests are too far away from the estuary and marine areas
- The inadequacy of regulations covering urban, industrial, and agricultural "sprawl" in Oregon and Washington
- Oregon Forest Practices Act.

Our Response: In conducting a "5-factor" analysis in the listing process, we must consider all factors that the best available scientific and commercial information identifies as threats faced by the species in question. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of threatened or endangered under the Act.

For the factors offered here, the commenter argues that they exist in places across the landscape and that coastal cutthroat trout in the Southwestern Washington/Columbia River DPS are exposed to these factors to varying degrees. However, the commenter has not provided evidence that coastal cutthroat trout in the DPS are responding to these factors in negative ways such that they constitute actual threats. In some cases, the commenter provides evidence that other, similar species are affected negatively by these factors, and we have considered these instances carefully. Where we lack species-specific studies, and the best available scientific and commercial information does not at least offer corroborating support, we cannot portray such a factor as a threat on the basis of mere exposure. To do so would obviate the need to consider the biology of the species at all.

In the case of coastal cutthroat trout and the factors listed in this issue above, most of these were raised and considered in the 2002 withdrawal of the proposed rule (67 FR 44934; July 5, 2002). We have reconsidered them here, looked for any new information among the best available scientific and commercial information received in response to our reopening of the comment period, and considered whether this new information, in conjunction with the data previously evaluated in our 2002 withdrawal notice (67 FR 44934; July 5, 2002) would lead us to a different conclusion now, even when applied just to the marine and estuarine areas of the DPS. In doing so we find that these factors do not constitute significant threats because, while coastal cutthroat trout may be exposed to them, and in some cases may suffer some degree of harm, there is insufficient evidence to suggest that the species responds in ways that would contribute to a finding of threatened or endangered status in marine and estuarine areas within the DPS or the DPS as a whole.

Comment 16: One commenter stated that the State of Washington's Forest and Fish rules should not have been considered "adequate regulatory mechanisms" for coastal cutthroat trout in our 2002 withdrawal because these rules governing private land timber harvest do not: (a) adequately address the anadromous life history of coastal cutthroat trout; (b) encompass enough of the anadromous form to offer any protection to it; and (c) were speculative at the time we made the original withdrawal finding.

Our Response: At the time of our 2002 withdrawal notice, the finding being reached was on the DPS as a whole, and did not single out life-history forms. We have reconsidered that finding here in light of the best available scientific and commercial information, including any new information received in response to the reopening of the comment period even when applied just to the marine and estuarine areas of the DPS. In all of these analyses, we have considered the impact of the State of Washington's Forest and Fish rules to the full extent, as is appropriate, regardless of life-history form. We acknowledged at the time of the 2002 withdrawal that the rules were relatively new, but we recognized, and still recognize, that they were consistent with improving fish habitat conditions on forested lands over time. The State of Washington's comments articulated significant improvements in fish habitat as a result of the rules supporting the removal of culverts and other barriers to fish migration; we note that no new information was received to suggest these rules have not improved conditions.

Comment 17: One commenter stated that coastal cutthroat trout are more susceptible now to stochastic disturbances and catastrophic natural events because in historical times they were more widespread and thus prior populations would have more resilience to these impacts.

Our Response: At the time of the 2002 withdrawal notice, we found no major gaps in the range or local extirpations within the DPS, and the best available scientific and commercial information, including any new information received in response to the reopening of the comment period, even when applied just to the marine and estuarine areas of the DPS, reaffirms this finding. As a result, stochastic disturbances and catastrophic natural events should constitute no more of a threat to coastal cutthroat trout now than in historical times.

Comment 18 : One commenter cited a number of sources of water pollution, including industrial and sewage effluents, pesticides, fertilizers, mining wastes, metals and others, that coastal cutthroat trout are exposed to in lower rivers and estuaries, using data generally gathered prior to the 2002 withdrawal notice. This commenter then stated that the cumulative effects of pollution are especially dangerous to sea-run cutthroat trout as they spend a great deal of their lives in these areas.

Our Response: As with other issues raised in the comments received, most of these were raised and considered in the 2002 withdrawal of the proposed rule. We have reconsidered them here, looked for any new information among the best available scientific and commercial information, including information received in response to our reopening of the comment period, and considered whether this information would lead us to a different conclusion now, even when applied just to the marine and estuarine areas of the DPS. In doing so we find that these factors do not constitute significant threats because, while coastal cutthroat trout may be exposed to them, there is insufficient evidence to suggest that the species responds in ways that would support a finding of threatened or endangered status in the marine and estuarine areas within the DPS or the DPS as a whole.

Comment 19: One commenter requested that we consider the impacts of climate change on coastal cutthroat trout in the Southwest Washington/Columbia River DPS in both marine and freshwater habitats, but did not provide any new information since the 2002 withdrawal notice regarding climate change impacts.

Our Response: The 2002 withdrawal of the proposed rule (67 FR 44934; July 5, 2002) addressed climate change, and we have extensively reconsidered this issue in this finding (see "Climate Change" discussion, above, under Factor E) in light of the best available scientific and commercial information. We have also considered whether any new information, when considered in conjunction with the data considered in the 2002 withdrawal notice, would lead us to a different conclusion now, even when applied just to the marine and estuarine areas of the DPS. As detailed in our threats analysis under Factor E, in doing so we find that current climate change risk does not constitute a significant threat to coastal cutthroat trout.

Comment 20: One commenter noted that sea-run cutthroat trout make extensive use of estuarine habitat and have likely been negatively impacted by current and historical habitat degradation and loss.

Our Response: We acknowledge that estuaries of Willapa Bay, Grays Harbor, and the Columbia River have been significantly modified from historical condition, and that these habitats are often occupied by the anadromous cutthroat trout life-history form. While we acknowledge that degradation and habitat loss in estuaries has likely had some level of impact on anadromous cutthroat trout, there is no information available directly correlating the loss and degradation of habitat to a significant population decline. For example, the commenter cited new information on habitat degradation and loss of shallow-water habitats in the Columbia River estuary and resulting impacts to detritus- based food webs that support Pacific salmon (Bottom *et al.* 2006, p. 524), thereby suggesting that these same impacts are affecting anadromous cutthroat trout. Despite the documentation of these changes in the food web of the Columbia River estuary, the authors did not provide empirical evidence of a linkage between the loss of a detritus-based food web and the status of Pacific salmon in the Columbia Basin, much less any link to anadromous coastal cutthroat trout.

Comment 21: One commenter described various impacts of dams and barriers on anadromous cutthroat trout ranging from complete blockage to habitat, loss of access to spawning areas, passage mortality and injury through entrainment at dams, gas super-saturation below dams, and inadequate or poor passage at culverts.

Our Response: Much of the information that comprised this comment was derived from the withdrawal of the proposed rule (67 FR 44934; July 5, 2002), or from Moynan (2002, entire), which is an internal Service document associated with our administrative record of the withdrawal of the proposed rule. Although we previously considered this information in support of our withdrawal of the proposed rule, we have reconsidered this information in light of our analysis on anadromous cutthroat trout. Although we acknowledge that dams and barriers have likely contributed to a decline in anadromous cutthroat, there is evidence that anadromous cutthroat continue to persist throughout the DPS, except for above barriers, and there is no evidence that the loss of this life-history form is likely in the foreseeable future.

In addition, there have been a number of passage improvements in recent years that have restored significant amounts of habitat for anadromous coastal cutthroat trout. For example, in 2007, Marmot dam was removed on the Sandy River, thereby removing a potential passage impediment and possible source of entrainment mortality that had been in place for 90 years, and the Little Sandy River Dam is also scheduled for removal in the near future. In addition, comments submitted by the State of Washington noted that new Forest and Fish Rules have provided benefits to cutthroat trout by removing hundreds of barriers on commercial forest lands, doubling the available cutthroat habitat with unobstructed access.

Comment 22: One commenter stated that there are many projects planned for the lower Columbia River that will impact coastal cutthroat trout, including the planned Bradwood Landing Liquified Natural Gas Project. In regards to the Bradwood Landing Project, the commenter noted that a biological assessment developed by NorthernStar Energy, the entity proposing the project, concluded the proposed action "may affect, and is likely to adversely affect" a number of stocks of federally listed salmon and steelhead. The commenter stated that coastal cutthroat trout are associated with and have a similar life history to salmon and steelhead, and thus it can be inferred that they too will be adversely affected by the project.

Our Response: In our five-factor analysis we considered the effects of this and other potential liquefied natural gas (LNG) projects in the Columbia River. While we acknowledge that individual cutthroat trout might be impacted from these types of developments, we note that the scope of potential impacts is small relative to the total area of available habitat in the Columbia River and estuary. In addition, regulatory mechanisms required through the Federal Energy Regulatory Commission (FERC), and through State land uses regulations, are expected to provide protective mechanisms to minimize impacts of construction and operation of LNG facilities. Although a final consultation has not been completed by NMFS and FERC on the Bradwood Landing LNG Project, NMFS has the authority under section 7(a)(2) of the Act to require non-discretionary actions on behalf of the project proponent that may serve to modify how the project is constructed and operated to minimize impacts to salmon and steelhead listed under the Act.

Although the biological assessment developed by NorthernStar Energy determined the project "may affect, and is likely to adversely affect" a number of stocks of listed salmon and steelhead, this determination is not a population-level finding. Rather, it is an acknowledgment that individual fish may be adversely impacted from the action. In regards to potential impacts to anadromous cutthroat trout, we agree that adverse effects to individual fish are possible but there are no data to support a conclusion that such impacts would increase a population-level extinction risk. The commenter's statement regarding NMFS's assertion that "massive numbers of fish" will be entrained in both process water and ballast water withdrawals from the Bradwood Landing LNG Project is unsupported.

Comment 23: One commenter noted that hybridization between cutthroat trout and rainbow trout is widespread and that hybridization may reduce productivity of coastal cutthroat populations. The commenter also noted that cutthroat trout hatchery programs and hatchery programs for salmon and steelhead also have the potential to negatively impact coastal cutthroat trout.

Our Response: We agree that hybridization with native rainbow trout and hatchery rainbow trout is known to occur, but there is no evidence that hybridization has contributed to a decline of anadromous coastal cutthroat trout in the DPS. As we noted in our withdrawal of the proposed rule (67 FR 44934; July 5, 2002), although the data on hybridization between coastal cutthroat trout and rainbow trout/steelhead trout are limited, indications are that hybridization does occur at low levels where these two species coexist. Much scientific uncertainty currently surrounds the causes of hybridization and its evolutionary consequences. In view of the limited nature of hybridization in the DPS and the natural co-occurrence of these species, hybridization between cutthroat trout and rainbow/steelhead trout is not currently considered a significant threat to anadromous cutthroat trout in the DPS. Low levels of hybridization may represent natural interactions between rainbow/steelhead trout and coastal cutthroat trout. Populations with high levels of hybridization are few and isolated.

Likewise, we acknowledge the potential impacts of reduced fitness that could result from wild cutthroat reproducing with hatchery coastal cutthroat trout, but have no evidence that this is occurring in the DPS. As noted in the withdrawal of the proposed action, coastal cutthroat trout production has been reduced to a single hatchery (Cowlitz River Hatchery), and there is no information at this time to indicate the limited ongoing coastal cutthroat trout hatchery releases are having a negative impact on wild cutthroat trout in the DPS.

Hatchery programs for salmon and steelhead, particularly coho and steelhead, have the potential to impact coastal cutthroat trout through competition. However, information demonstrating effects from releases of coho and steelhead in the DPS is limited and the extent to which hatchery management affects the DPS of coastal cutthroat as a whole is unknown. We have no new evidence beyond that previously considered in our 2002 withdrawal of the proposed rule that hatchery releases of salmon and steelhead in the DPS are producing competition above natural levels or represent a significant risk to the DPS. Thus, our conclusion that competition with hatchery fish does not pose a significant threat to coastal cutthroat trout remains the same (67 FR 44934; July 5, 2002).

References Cited

A complete list of all references we cited in this document is available on the Internet at *http://www.regulations.gov* or by contacting the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 5, 2010.

Sam D. Hamilton,

Director, Fish and Wildlife Service.

[FR Doc. 2010–3803 Filed 2–24–10; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register
Vol. 75, No. 37
Thursday, February 25, 2010

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

DEPARTMENT OF AGRICULTURE

Forest Service

South Central Idaho Resource Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Central Idaho RAC will meet in Twin Falls, Idaho. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to begin the processes of starting the RAC and develop protocols the RAC will use as an Advisory Council.

DATES: The meeting will be held March 18, 2010 from 9:30 a.m.–3:30 p.m.

ADDRESSES: The meeting will be held at The Red Lion Canyon Springs Hotel, 1357 Blue Lakes Blvd. North, Twin Falls, Idaho 83301. Written comments should be sent to Sawtooth National Forest, *Attn:* Julie Thomas, 2647 Kimberly Road East, Twin Falls, Idaho 83301. Comments may also be sent via e-mail to *jathomas@fs.fed.us,* or via facsimile to 208–737–3236.

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 The Sawtooth National Forest Supervisors Office at 2647 Kimberly Road East, Twin Falls, Idaho 83301. Visitors are encouraged to call ahead to 208–737–3200 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Julie Thomas, Designated Federal Official, Sawtooth National Forest, 208–737–3200.

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. The following business will be conducted: This Resource Advisory Council meeting will specifically deal with procedures that the RAC will use to implement the business of the RAC. The agenda for the meeting can be found at *http://www.fs.fed.us/r4/sawtooth/.* Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 8, 2010 will have the opportunity to address the Committee at those sessions.

Dated: February 18, 2010.

Julie Thomas,

Designated Forest Official.

[FR Doc. 2010–3648 Filed 2–24–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Public Meetings on the Development of the Forest Service Land Management Planning Rule

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The USDA Forest Service is committed to developing a new Forest Service Land Management Planning Rule (planning rule) through a transparent and participatory process. To facilitate public participation, dialogue, and active collaboration, the Forest Service will host a national science forum, three national roundtables, and nine regional roundtables. Summaries of each session will be produced and posted on the planning rule Web site as part of the public record.

While public participation in the forum and roundtables will be a valuable source of information for the rule-writing process, this participation is not a substitute for the submission of written comments through the formal National Environmental Policy Act and Administrative Procedure Act (NEPA/APA) processes. Any comments you wish to be considered as part of the formal NEPA/APA process must be made by you in writing during the appropriate comment period.

DATES:

- The national science forum will take place March 29 and 30, 2010, in Washington, DC.
- The national roundtables are scheduled for April 1 and 2, April 20 and 21, and May 11 and 12, 2010, in Washington, DC.
- The nine regional roundtables will take place in the following locations:
  - Pacific Northwest Region (Region 6), Portland, OR on April 6, 2010;
  - Pacific Southwest Region (Region 5),Sacramento, CA on April 6, 2010;
  - Intermountain Region (Region 4), Salt Lake City, UT on April 8, 2010;
  - Rocky Mountain Region, (Region 2), Lakewood, CO on April 12, 2010;
  - Northern Region (Region 1), Missoula, MT on April 13, 2010;
  - Alaska Region (Region 10), Juneau, AK on April 13, 2010;
  - Southern Region (Region 8), Atlanta, GA during the week of April 12, 2010 (exact date to be determined);
  - Eastern Region (Region 9), Chicago, IL during the week of April 28 (exact date to be determined); and
  - Southwestern Region (Region 3), Albuquerque, NM on April 28, 2010.
  - Region 2 will host additional meetings on April 14 in Cheyenne, WY and on April 21 meeting in Rapid City, SD.
- Several Forest Service regions will videoconference their regional meeting to Forest Service offices in other locations:
  - Region 5 will videoconference to Forest Service offices in San Bernandino, CA and Redding, CA with the April 6 Sacramento, CA meeting;
  - Region 1 will videoconference with Forest Service offices in Couer d'Alene, ID and Billings, MT with the April 13 meeting in Missoula, MT;
  - Additional videoconference locations are also possible; please check the planning rule Web site, at *http://www.fs.usda.gov/planningrule,* for the most up-to-date information.
- A more detailed schedule of these planning rule public meetings, including information on meeting times and specific locations, will be available on the planning rule Web site at *http://www.fs.usda.gov/planningrule.* The exact dates for the meetings in Atlanta, GA and Chicago, IL will be posted to the planning rule Web site as soon as the information is available.

ADDRESSES: The addresses for the science forum, national roundtables, and regional roundtables will be available on the planning rule Web site at *http://www.fs.usda.gov/planningrule.*

FOR FURTHER INFORMATION CONTACT: The Ecosystem Management Coordination (EMC) staff at 202–205–0895. Additional information concerning these meetings, including regional contact information, will be available on the planning rule Web site at *http://www.fs.usda.gov/planningrule.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On December 18, 2009, the Forest Service formally announced the intent to prepare a new planning rule with the publication of a notice of intent (NOI) to prepare an environmental impact statement in the **Federal Register** (74 FR 67165) (*http://fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5110264.pdf*). In line with President Obama's call for open government that is transparent, participatory and collaborative, the Forest Service is committed to actively engaging the public in the development of a new planning rule. The national science forum, three national roundtables, and nine regional roundtables are key elements in the agency's plan to provide multiple opportunities for public dialogue and collaboration to develop the proposed planning rule and DEIS. Webcasts, the posting of summaries from each session, and the planning rule blog, all hosted on the Forest Service planning rule Web site, will provide further support for a dynamic, participatory, transparent and collaborative process.

Science forum: The national science forum will provide an opportunity for scientists and other participants to share perspectives on how science can inform and form a strong basis for a new planning rule. The science forum will be open to the public and will be available over webcast. Notes from the forum will be posted to the planning rule Web site for further feedback, and will be used to frame the roundtable discussions. Further information on the design and agenda for the forum will be posted to the planning rule Web site at *http://www.fs.usda.gov/planningrule.*

Roundtables: The U.S. Institute for Environmental Conflict Resolution, an independent federal program, is assisting the Forest Service in organizing the national and regional roundtables. All roundtables will be open to the public and will provide opportunities for dialogue about the nature and content of a new planning rule. Notes from each roundtable will be posted on the planning rule Web site for further feedback opportunities. The public will also be able to view parts of and provide feedback on the roundtables through remote access; details on remote access opportunties will be posted the planning rule Web site.

The Planning Rule Blog (*http://blogs.usda.gov/usdablogs/planningrule*) will provide opportunities for people who are unable to attend the roundtables to discuss the subjects covered and to provide feedback on the notes from the roundtables as they are posted to the planning rule Web site.

Summaries of the presentations and discussions that occur during each session will be produced and become part of the public record for the rule. The teams writing the proposed rule and the draft environmental impact statement (DEIS) will use these summaries, along with the report of individual comments expressed during the 60-day formal comment period on the Notice of Intent, in the development of the proposed rule and DEIS alternatives.

While public participation in the forum and roundtables will be a valuable source of information for the rulewriting process, we emphasize that this participation is not a substitute for the submission of written comments through the formal National Environmental Policy Act and Administrative Procedure Act (NEPA/APA) processes. Any comments you wish to be considered as part of the formal NEPA/APA process must be made by you in writing during the appropriate comment period.

Further information on the meetings, the planning rule development process, and general background information on the planning rule may be found at *http://www.fs.usda.gov/planningrule.*

Dated: February 22, 2010.

Faye L. Krueger,

Acting Associate Deputy Chief, NFS.

[FR Doc. 2010–3904 Filed 2–24–10; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that the New Hampshire Advisory Committee will convene a briefing meeting and planning meeting at 9 a.m. on Friday, March 12, 2010, at the Legislative Office Building, Room 207 Concord, New Hampshire 03301. The purpose of the briefing meeting is to receive presentations from experts on whether New Hampshire correctional facilities provide services to female prisoners similar to that of male prisoners. Experts will include government officials, correctional officials, academicians, and advocates on these gender disparities. The purpose of the planning meeting is for the Committee to consider its next steps.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by April 12, 2010. The address is the Eastern Regional Office, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. Persons wishing to e-mail their comments, or who desire additional information should contact Alfreda Greene, secretary, at 202–376–7533 or by e-mail to: *ero@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, February 22, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–3804 Filed 2–24–10; 8:45 am]

BILLING CODE 6335–01–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 emergency

provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Survey of Health Insurance and Program Participation (SHIPP).

OMB Control Number: None.

Form Number(s): The collection will be conducted using an automated instrument. There are no form numbers.

Type of Request: Emergency Review of a new collection.

Burden Hours: 1,000.

Number of Respondents: 5,000.

Average Hours per Response: 12 minutes.

Needs and Uses: The U.S. health care system is decentralized, thus there is no comprehensive database of the insured and no way to derive the number of uninsured from such a database. Surveys offer the only data source for estimating the uninsured. Measuring the uninsured in surveys, however, has proved to be a persistent challenge to the research community. The Census Bureau has been conducting research for more than a decade on measurement error in its surveys that measure health insurance, including the Current Population Survey Annual Social and Economic Supplement (commonly called the CPS ASEC), the American Community Survey (ACS) and the Survey of Income and Program Participation (SIPP). This research fed into the development of an experimental set of questions on health insurance (the Redesign), which has the potential to reduce measurement error. The next step in this line of research is a split-ballot experiment planned for the spring of 2010 called the "Survey of Health Insurance and Program Participation" (SHIPP), which will include three panels of questions on health insurance: One modeled on the CPS ASEC series, one modeled on the American Community Survey (ACS) series, and the Redesign (see attached questionnaire and additional lists of state-specific program names).

The SHIPP is conducted by telephone from the Census Bureau's telephone data collection center in Hagerstown, Md., and the field period is scheduled for March 22 through May 10, 2010. Two types of sample will be used: Random digit dial (RDD), and "seeded" sample of known Medicare enrollees from the Centers for Medicare and Medicaid Services.

With regard to the circumstances necessitating an emergency clearance, on January 21, 2010, we submitted a request to conduct this survey under the Statistical Research Division's (SRD) generic clearance, which covers basic methodological research on questionnaire design and evaluation (split-ballot field tests, respondent debriefings, interviewer evaluations, etc.). Turnaround time for generic clearance is generally 10 days, and since 1999 SRD has conducted several similar (and related) studies under this generic clearance. Results from some of these studies are documented in the list of references in Question 8 below. In early February 2010, however, we were informed by OMB that this particular study did not fall under the generic clearance but required a separate package because of the increased visibility of health insurance measurement issues which arose in the context of recent high-profile efforts to evaluate various health system reform proposals.

Given the timing of this determination that a separate OMB clearance package is needed, the choice is either to delay the survey by about six months or to pursue an emergency clearance. Delaying the survey has several negative consequences. In the short run, significant resources have been dedicated to running this survey in the spring of 2010, and shifting the timing would not only squander those resources, but it is unlikely that sufficient staff would be available later. Related to this, beginning in May 2010 and running through September 2010, several decennial followup operations will be conducted out of the Hagerstown telephone facility, and the SHIPP study would directly conflict with resources dedicated to those efforts. But perhaps the most compelling reason the survey cannot be delayed is due to the nature of the research questions. The Redesign is aimed at reducing measurement associated with the calendar year reference period, in tandem with the approximate three-month lag time between the end of the reference period and the interview date. Thus, as noted in Question 6 below, to evaluate the effectiveness of the questions on retrospective coverage in the Redesign, it is essential that the field study be carried out in parallel with the timing of producing CPS ASEC data collection as closely as possible. A 6-month delay would seriously threaten the applicability of the results.

The primary purpose of the field study is to evaluate the Redesign and assess any improvements over the CPS ASEC design. A secondary purpose is to compare estimates from the CPS and ACS test panels. Evaluations will be carried out by HHES and SRD staff and will involve a range of different methods, including an analysis of: (1) The point estimates of the uninsured, and also those insured by various types of coverage (such as employer-sponsored plans, Medicare and Medicaid); (2) the accuracy of the survey data (as compared to administrative records on health coverage); (3) interview administration time; (4) interviewer feedback; (5) analysis of interviewer-respondent interaction (through behavior coding); and (6) respondent debriefings (scripted in questionnaire). The evaluation will be used to help interpret estimates from CPS ASEC and ACS production data, and to determine whether particular survey design features of the CPS ASEC would benefit by modifications based on the Redesign. One particular survey design feature—the calendar year reference period—has been demonstrated to result in under-reported coverage. The Redesign, therefore, collects data on current coverage (a much less problematic reference period) and then uses this information as an anchor in order to ask about retrospective coverage during the past calendar year. If results show that this alternative method does in fact reduce under-reporting of past coverage, the CPS ASEC could adapt this type of question sequence in order to (1) produce statistics on current coverage and (2) produce past calendar year statistics that are more accurate.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 182; Title 42 U.S.C. Section 285e–1.

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 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent in by March 12, 2010 to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: February 19, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–3761 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–07–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: Economic Development Administration (EDA).

Title: Application for Investment Assistance.

OMB Control Number: 0610–0094.

Form Number(s): ED–900.

Type of Request: Regular submission.

Number of Respondents: 1,525.

Average Hours per Response: 21 hours, 35 minutes.

Burden Hours: 26,150.

Needs and Uses: The information contained in Form ED–900 is necessary for EDA to evaluate whether proposed projects satisfy eligibility and programmatic requirements contained in EDA's authorizing legislation, the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) and as contained in the Trade and Globalization Adjustment Assistance Act (TGAAA), part of the American Recovery and Reinvestment Act of 209, which amended chapter 4 of the Trade Act of 1974.

Affected Public: City, county, or other political subdivision of a State or a consortium of political subdivisions of a State.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Sharon Mar, (202) 395–6466.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Sharon Mar, OMB Desk Officer, FAX number (202) 395–5806, or *Sharon_Mar@omb.eop.gov.*

Dated: February 19, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–3781 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–24–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: Economic Development Administration (EDA).

Title: Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance.

OMB Control Number: 0610–0091.

Form Number(s): ED–840P.

Type of Request: Regular submission.

Number of Respondents: 800.

Average Hours per Response: 128 hours, 12 minutes.

Burden Hours: 40,101.

Needs and Uses: The information contained in Form ED–840P is necessary for EDA to evaluate whether proposed projects satisfy eligibility and programmatic requirements contained in chapters 3 and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) and the Trade and Globalization Adjustment Assistance Act (TGAAA) of 2009 which reauthorized the program.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Sharon Mar, (202) 395–6466.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Sharon Mar, OMB Desk Officer, FAX number (202) 395–5806, or *Sharon_Mar@omb.eop.gov*.

Dated: February 19, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–3776 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Permit Family of Forms.

OMB Control Number: 0648–0204.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 1,829.

Average Hours per Response: HMS permit applications, 30 minutes; renewals, 6 minutes; coastal pelagic permit renewals, 15 minutes (no new permit applications); transfers, 30 minutes; appeals, 2 hours.

Burden Hours: 139.

Needs and Uses: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) established regional fishery management councils, including the Pacific Fishery Management Council (Pacific Council), to develop fishery management plans (FMP) for fisheries in the U.S. exclusive economic zone (EEZ). The Pacific Council has prepared a FMP for the coastal pelagic species (CPS) fishery off the U.S. West Coast and for U.S. West Coast Fisheries for Highly Migratory Species. Each of these FMPs contain a requirement that commercial fishery participants obtain permits for the fishery. This request deals with the continuing information collection requirements for permits: Basic fishery permits (e.g., highly migratory species (HMS)), limited entry permits for selected fisheries (e.g., West Coast coastal pelagic fishery), and experimental fishing permits (EFP).

Affected Public: Business or other for-profit organizations.

Frequency: Annually and biannually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent

within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: February 22, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–3885 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2010–0001]

Request for Comments on Methodology for Conducting an Independent Study of the Burden of Patent-Related Paperwork

AGENCY: United States Patent and Trademark Office.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) retained ICF International (ICF) to perform an independent study of the burden of patent-related paperwork, beginning with a report describing the methodologies for performing such a study (Methodology Report). ICF has now provided the USPTO with its Methodology Report, in which ICF recommends methodologies for addressing various topics about estimating the patent-related burdens imposed on the public as reflected in information collection requests under the Paperwork Reduction Act of 1995 (PRA). The USPTO is inviting public comment on ICF's Methodology Report.

DATES: Written comments must be received on or before April 12, 2010.

ADDRESSES: Written comments should be sent by electronic mail message over the Internet addressed to *pra_study_comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Raul Tamayo. Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The written comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the USPTO Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, at (571) 272–7728.

SUPPLEMENTARY INFORMATION: While information collection is critical to evidence-based decisions and informed government operations, unnecessary paperwork requirements can impose serious burdens on the public, especially small entities. The PRA requires Federal agencies to minimize the burden on the public resulting from their information collections, and to maximize the practical utility of the information collected.

As part of its continuing effort to improve the accuracy and transparency of its patent-related PRA burden estimates, the USPTO retained ICF to perform an independent study having the following three overall objectives: (1) Develop an independent, publicly vetted, objectively based estimate of the total cost of paperwork for patent applicants; (2) develop recommendations for continued improvement in the accuracy of burden estimates made by the USPTO in the future; and (3) identify opportunities to reduce applicant burdens. ICF's Methodology Report provides concise descriptions of the methodologies it recommends for conducting specific inter-related analyses for addressing the three overall objectives.

The specific inter-related analyses will be performed independently by ICF and will provide impartial, fact-based results. The approaches described in ICF's Methodology Report for performing the analyses were developed independently by ICF, and are ICF's recommendations regarding the most efficient and effective ways to complete the analyses and to meet the overall objectives for the study.

The USPTO is inviting comments from the public regarding ICF's Methodology Report. The USPTO posted the Methodology Report on its Internet Web site (*http://www.uspto.gov*) on February 25, 2010, with a notice requesting public comment on the Methodology Report and indicating that written comments must be received on or before April 12, 2010, to receive consideration.

Dated: February 19, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–3882 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate—rescheduled site visit and public meeting.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces a rescheduled site visit and time for a public meeting previously included in an announcement of intent to evaluate the performance of the Rhode Island Coastal Management Program. Notice was previously given in the **Federal Register** on Monday, December 7, 2009, of the date of the site visit for the evaluation of the Rhode Island Coastal Management Program and the date, local time, and location of the public meeting. Notice is hereby given of the rescheduled date for the site visit and local time of the public meeting during the site visit.

DATE AND TIME: The Rhode Island Coastal Management Program evaluation site visit will be held February 22–26, 2010. One public meeting will be held during the week. The public meeting will be held on Wednesday, February 24, 2010, at 6 p.m. in Conference Room A, Department of Administration, One Capitol Hill, Providence, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, (301) 563–1182.

Dated: February 16, 2010.

Donna Wieting,

Acting Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–3793 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–274–804)

Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago; Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On November 9, 2009, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Trinidad and Tobago. *See Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago; Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 57648 (November 9, 2009) (*Preliminary Results*). We gave interested parties an opportunity to comment on the *Preliminary Results*, and received no comments.

EFFECTIVE DATE: February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Jolanta Lawska, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–8362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2009, the Department published the preliminary results of administrative review of the antidumping duty order covering carbon and certain alloy steel wire rod from Trinidad and Tobago. *See Preliminary Results*. The parties subject to this review are ArcelorMittal Point Lisas Limited, and its affiliate ArcelorMittal International America LLC (collectively, AMPL). The petitioners in this proceeding are ISG Georgetown Inc., Nucor Steel Connecticut Inc., Keystone Consolidated Industries Inc., and Rocky Mountain Steel Mills.

In the *Preliminary Results*, the Department stated that interested parties were to submit case briefs within 30 days of publication of the *Preliminary Results* and rebuttal briefs within five days of the due date for filing case briefs. *See Preliminary Results* at 57652. No interested party submitted a case or rebuttal brief. We have made no changes since the *Preliminary Results* were published.

Period of Review

The period of review (POR) is October 1, 2007, through September 30, 2008.

Scope of the Order

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross–sectional diameter. Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of grade 1080 tire cord quality wire rod and grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis – that is, the direction of rolling – of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise

intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The merchandise subject to this order are classifiable under subheadings 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 7213.91.3093,[1] 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000,[2] 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6085, 7227.90.6050, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, and 7227.90.6080 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.[3]

Final Results of Review

The Department has determined that the following margins exist for the period October 1, 2007, through September 30, 2008:

Manufacturer / Exporter	Weighted Average Margin (percentge)
AMPL	23.95

Assessment Rates

Pursuant to these final results, the Department has determined, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions for AMPL to CBP 15 days after the date of publication of these final results. Pursuant to 19 CFR 351.212(b)(1), we calculated importer–specific (or customer–specific) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific (or customer–specific) assessment rates calculated in the final results of this review are above *de minimis*.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*). This clarification will apply to entries of subject merchandise during the POR produced by AMPL for which AMPL did not know the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un–reviewed entries at the 11.40 percent all–others rate if there is no company-specific rate for an intermediary involved in the transaction. *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945, 65947 (October 29, 2002) (*Wire Rod Orders*) (establishing an all–others rate of 11.40 percent). *See Assessment of Antidumping Duties* for a full discussion of this clarification.

Cash Deposit Requirements

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of wire rod from Trinidad and Tobago entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) the cash deposit rate for AMPL will be the rate established in the final results of review; (2) if the exporter is not a firm covered in this review or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all–others rate of 11.40 percent ad valorem from the LTFV investigation. *See Wire Rod Orders* at 65947. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties. *See* 19 CFR 351.402(f)(3).

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 19, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–3884 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–DS–S

[1] As a result of a typographical error, this HTSUS subheading appeared as "721.39.3093" in the *Preliminary Results*.

[2] As a result of a typographical error, this HTSUS subheading appeared as "7227.20.000" in the *Preliminary Results*.

[3] Effective July 1, 2008, U.S. Customs and Border Protection (CBP) reclassified certain HTSUS numbers related to the subject merchandise. *See* http://www.usitc.gov/publications/docs/tata/hts/bychapter/0810chgs.pdf.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 10–2010]

Foreign-Trade Zone 21—Charleston, SC, Application for Subzone, Luigi Bormioli Corporation (Glassware), Barnwell, SC

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 21, requesting special-purpose subzone status for the warehousing and distribution facility of Luigi Bormioli Corporation (Luigi Bormioli), located in Barnwell, South Carolina. 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 February 16, 2010.

The Luigi Bormioli facility (35 employees, 19 acres, $11.5 million in annual shipments) is located at 1656 Fuldner Rd. (Joey Zorn Blvd.), Barnwell, South Carolina. The facility is used for the storage and distribution of glass fragrance containers and glass tableware products (duty rate ranges from 3 to 38%).

FTZ procedures could exempt Luigi Bormioli from customs duty payments on foreign products that are re-exported (approximately 2 percent of shipments). On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant and entered for consumption. FTZ designation would further allow Luigi Bormioli 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, Maureen Hinman 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 April 26, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 11, 2010.

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 *www.trade.gov/ftz.*

For further information, contact Maureen Hinman at *maureen.hinman@trade.gov* or (202) 482–0627.

Dated: February 16, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–3861 Filed 2–24–10; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 11–2010]

Foreign-Trade Zone 59—Lincoln, NE Application for Subzone CNH America, LLC (Agricultural Machinery Manufacturing) Grand Island, NE

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Lincoln Foreign Trade Zone, Inc., grantee of FTZ 59, requesting special-purpose subzone status for the agricultural combine and hay tools manufacturing facilities of CNH America, LLC (CNH), located in Grand Island, Nebraska. 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 February 16, 2010.

The CNH facilities (1,274 employees) consist of two sites in Grand Island, Nebraska on approximately 171.5 acres: *Site 1* (132.52 acres)—main plant located at 3445 W. Stolley Park Road; and *Site 2* (38.93 acres)—warehouse located at 1011 Claude Road. The facilities are used for the manufacture, testing, warehousing and distribution of combines and hay tools. The CNH facilities annually can produce up to 5,960 combines and 4,600 hay tools. Components and materials sourced from abroad (representing 10% of the value of the finished product) include: Articles of plastic (incl. tubes, hoses, fittings, stoppers and lids); articles of rubber (incl. belts, tubes, hoses, grommets, plugs, mountings, sheets, strips); tires; gaskets; washers; safety glass; iron tubes; pipes and fittings; cable; fasteners; springs; articles of steel; sign plates; internal-combustion engines and parts; pumps; filters; parts for agricultural equipment; valves; bearings; transmission shafts; electric motors; generators; clutches; brakes; ignitions; electromagnetic couplings; gears; flywheels; pulleys; electrical lighting or signaling equipment; loudspeakers; heaters; defrosters; resistors; switches; relays; lamps; wires; cables; locks and keys; thermostats and measuring instruments (duty rates range from free to 9%).

FTZ procedures could exempt CNH from customs duty payments on the foreign components used in export production. The company 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 combines and hay tools (duty-free) for the foreign inputs noted above. FTZ designation would further allow CNH to realize logistical benefits through the use of certain customs entry procedures. The request indicates that the savings from FTZ procedures would help improve the plant's 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 April 26, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 11, 2010.

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 *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: February 16, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–3883 Filed 2–24–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT57

Incidental Takes of Marine Mammals During Specified Activities; Marine Geophysical Survey in the Commonwealth of the Northern Mariana Islands, April to June 2010

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

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (L–DEO), a part of

Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a marine seismic survey in the Commonwealth of the Northern Mariana Islands (CNMI) during April to June 2010. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to authorize L–DEO to incidentally take, by Level B harassment only, small numbers of marine mammals during the aforementioned activity.

DATES: Comments and information must be received no later than March 29, 2010.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing e-mail comments is *PR1.0648–XT57@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." The authorization must also set forth permissible methods of taking, other means of affecting the least practicable adverse impact on the species or stock and its habitat and requirements for monitoring and reporting such takings.

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization not to exceed one year to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"].
>
> 16 U.S.C. 1362(18)

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period for any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS, on behalf of the Secretary, makes the findings set forth in clause 101(a)(5)(D)(i) of the MMPA and must either issue the authorization with appropriate conditions to meet the requirements of clause 101(a)(5)(D)(ii) or deny it. NMFS will publish notice of issuance or denial of the authorization within thirty days of issuance or denial.

Summary of Request

On December 16, 2009, NMFS received an IHA application and an Environmental Assessment (EA) from L–DEO for the taking, by Level B harassment only, of small numbers of several species of marine mammals incidental to conducting, with research funding from the National Science Foundation (NSF), a marine seismic survey in the CNMI during April to June, 2010. The CNMI is a commonwealth in a political union with the U.S. The survey will take place in the Exclusive Economic Zone (EEZ) of the U.S. in water depths greater than 2,000 m (6,561.7 ft). The seismic study will use a towed array of 36 airguns with a total discharge volume of approximately 6,600 in^3.

Description of the Specified Activity

L–DEO plans to conduct a seismic survey in the CNMI. The survey will occur in the area 16.5° to 19° North, 146.5° to 150° East within the EEZ (*see* Figure 1 of L–DEO's application). The project is scheduled to occur from April 25 to June 6, 2010. Some minor deviation of these dates is possible, depending on logistics and weather (*i.e.,* the cruise may depart earlier to be extended due to poor weather; there could be extra days (up to three) of seismic operations if collected data are of substandard quality.

L–DEO plans to conduct the seismic survey over the Mariana outer forearc, the trench and the outer rise of the subducting and bending Pacific plate. The objective is to understand the water cycle within subduction-systems. Subduction systems are where the basic building blocks of continental crust are made and where Earth's great earthquakes occur. Little is known about either of these processes, but water cycling through the system is thought to be the primary controlling factor in both arc-crust generation and megathrust seismicity.

An important new hypothesis has recently been suggested that, if correct, will transform our understanding of the water budget of subduction systems. This hypothesis holds that cracking attributable to bending of the subducting plate enables water to penetrate through the subducting crust into the mantle, where it hydrates the mantle by forming the hydrous mineral phase serpentine. This phase is stable to greater depths than the hydrous clay minerals of the crust, where most of the subducting water was previously believed to be held. Thus, if this

hypothesis is correct, it provides a mechanism for transporting water far beneath the mantle wedge, where it promotes melting and crust formation, and possibly even deeper into the mantle, providing a whole-earth hydration mechanism that promotes the continued operation of plate tectonics, without which our planet would likely be unable to support life.

The scientists involved in this program will test this hypothesis by measuring mantle seismic sounds speeds, which vary with degree of serpentinization. By comparing these measurements from the Mariana system, which is old and cold with the Costa Rica system, which is young and warm and where similar measurements have recently been made, we should be able to definitively determine whether or not substantial water is taken up by the mantle of subducting plates near the outer rise of seafloor trenches.

The planned survey will involve one source vessel, the R/V *Marcus G. Langseth* (*Langseth*), which will occur in the CNMI. The *Langseth* will deploy an array of 36 airguns (6,600 in^3) as an energy source at a tow depth of 9 m (30 ft). The receiving system will consist of a 6 km (3.7 mi) hydrophone streamer and approximately 85 ocean bottom seismometers (OBSs). As the airgun array is towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the on-board processing system. The OBSs record the returning acoustic signals internally for later analysis. The OBSs to be used for the 2010 program will be deployed and most (approximately 60) will be retrieved during the cruise, whereas 25 will be left in place for one year.

The planned seismic survey will consist of approximately 2,800 km (1,739.8 mi) of transect lines within the CNMI (*see* Figure 1 of L–DEO's application). The survey will take place in water depths greater than 2,000 m (6,561.7 ft). All planned geophysical data acquisition activities will be conducted by L–DEO with onboard assistance by the scientists who have proposed the study. The scientific team consists of Dr. Doug Wiens (Washington University, St. Louis, MO) and Daniel Lizarralde (Woods Hole Oceanographic Institution [WHOI], Woods Hole, MA). The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

In addition to the operations of the airgun array, a Kongsberg EM multibeam echosounder (MBES) and a Knudsen 320B sub-bottom profiler (SBP) will be operated from the *Langseth* continuously throughout the CNMI cruise.

Vessel Specifications

The *Langseth* will be used as the source vessel. The Langseth will tow the 36 airgun array along predetermined lines. The *Langseth* will also tow the hydrophone streamer, retrieve OBSs, and may also deploy OBSs. When the *Langseth* is towing the airgun array as well as the hydrophone streamer, the turning rate of the vessel while the gear is deployed is limited to five degrees per minute. Thus, the maneuverability of the vessel is limited during operations with the streamer.

The *Langseth* has a length of 71.5 m (234.6 ft), a beam of 17 m (55.8 ft), and a maximum draft of 5.9 m (19.4 ft). The ship was designed as a seismic research vessel, with a propulsion system designed to be as quiet as possible to avoid interference with the seismic signals. The ship is powered by two Bergen BRG–6 diesel engines, each producing 3,550 horse-power (hp), that drive the two propellers directly. Each propeller has four blades, and the shaft typically rotates at 750 revolutions per minute (rpm). The vessel also has an 800 hp bowthruster, which is not used during seismic acquisition. The operation speed during seismic acquisition is typically 7.4 to 9.3 km/hr (4 to 5 kt). When not towing seismic survey gear, the *Langseth* can cruise at 20 to 24 km/hr (11 to 13 kt). The *Langseth* has a range of 25,000 km (15,534 mi), which is the distance the vessel can travel without refueling. The *Langseth* will also serve as the platform from which vessel-based Protected Species Observers (PSOs) will watch for marine animals before and during airgun operations. NMFS believes that the realistic possibility of a ship-strike of a marine mammal by the vessel during research operations and in-transit during the proposed survey is discountable.

Acoustic Source Specifications—Seismic Airguns

During the proposed survey, the airgun array to be used will consist of 36 airguns, with a total volume of approximately 6,600 in^3. The airgun array will consist of a mixture of Bolt 1500LL and 1900LL airguns. The airguns array will be configured as four identical linear arrays or "strings" (*see* Figure 2 in L–DEO's application). Each string will have 10 airguns; the first and last airguns in the strings are spaced 16 m (52.5 ft) apart. Nine airguns in each string will be fired simultaneously, while the tenth is kept in reserve as a spare, to be turned on in case of failure of another airgun. The four airgun strings will be distributed across an approximate area of 24 × 16 m (78.7 × 52.5 ft) behind the *Langseth* and will be towed approximately 140 m (459 ft) behind the vessel. The shot interval will be 37.5 m (123.0 ft) or 150 m (492.1 ft) during the study. The shot interval will be relatively short (approximately 37.5 m or approximately 15 to 18 seconds [s]) for multi-channel seismic surveying with the hydrophone streamer, and relatively long (approximately 150 m or approximately 58 to 73 s) when recording data on the OBSs. The firing pressure of the array is 1,900 pounds per square inch (psi). During firing, a brief (approximately 0.1 s) pulse of sound is emitted. The airguns will be silent during the intervening periods.

Because the actual source is a distributed source (36 airguns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source (265 dB re 1 μ Pa·m, peak-to-peak [pk-pk]). In addition, the effective source level for sound propagating in near-horizontal directions will be substantially lower than the nominal source level applicable to downward propagation because of the directional nature of the sound from the airgun array.

TABLE 1—DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 190, 180, AND 160 DB RE 1 μPa (RMS) COULD BE RECEIVED IN DEEP (GREATER THAN 1,000 M) WATER DURING THE PROPOSED SURVEY IN THE CNMI, APRIL 25 TO JUNE 6, 2010

Source and volume	Tow depth (m)	Water depth	Predicted RMS distances (m)		
			190 dB	180 dB	160 dB
Single Bolt airgun (40 in^3)	9	Deep (>1,000 m)	12	40	385
4 strings, 36 airguns (6,600 in^3)	9	Deep (>1,000 m)	400	940	3,850

Acoustic Source Specifications—Multibeam Echosounder (MBES) and Sub-bottom Profiler (SBP)

Along with the airgun operations, two additional acoustical data acquisition systems will be operated during the survey. The ocean floor will be mapped with Kongsberg EM 122 MBES and Knudsen 320 SBP. These sound sources will be operated from the *Langseth* continuously throughout the cruise.

The Kongsberg EM 122 MBES operates at 10.5 to 13 (usually 12) kHz and is hull-mounted on the *Langseth.* The transmitting beamwidth is 1° or 2° fore-aft and 150° athwartship. The maximum source level is 242 dB re 1 μPam (rms). Each "ping" consists of eight (in water greater than 1,000 m deep) or four (less than 1,000 m) successive fan-shaped transmissions, each ensonifying a sector that extends 1° fore-aft. Continuous-wave (CW) pulses increase from two to 15 ms long in water depths up to 2,600 m (8,530 ft), and FM chirp pulses up to 100 ms long are used in water greater than 2,600 m. The successive transmissions span an overall cross-track angular extent of about 150°, with 2 ms gaps between pulses for successive sectors.

The Knudsen 320B SBP is normally operated to provide information about the sedimentary features and the bottom topography that is being mapped simultaneously by the MBES. The SBP beam is transmitted as a 27 degree cone, which is directed downward by a 3.5 kHz transducer in the hull of the *Langseth.* The maximum output is 1,000 watts (204 dB), but in practice, the output varies with water depth. The pulse interval is 1 s, but a common mode of operation is to broadcast five pulses at 1 s intervals followed by a 5 s pause.

OBS Description and Deployment

Approximately 85 OBSs will be deployed by the *Langseth* before the survey, in water depths 3,100 to 8,100 m (10,170.6 to 26,574.8 ft). There are three types of OBS deployment:

(1) Approximately 20 broad-band OBSs located on the bottom in a wide two-dimensional (2D) array with a spacing of no more than 100 km (62.1 mi);

(2) Approximately five short-period OBSs tethered in the water column above the trench areas deeper than 6 km; and

(3) Approximately 60 short-period OBSs located on the bottom in a 2D array with a spacing of about 75 km (46.6 mi).

The first two types will be left in place for one year for passive recording, and the third type will be retrieved after the seismic operations. OBSs deployed in water deeper than 5,500 m (18,044.6 ft) will require a tether to keep the instruments at a depth of 5,500 to 6,000 m (18,044.6 to 19,685 ft), as the instruments are rated to a maximum depth of 6,000 m. The lengths of the tethers will vary from 65 to 2,600 m (213.3 to 8,530.2 ft). The tether will fall to the seafloor when the OBS is released.

Two different types of OBSs may be used during the 2010 program. The WHOI "D2" OBS has a height of approximately 1 m (3.3 ft) and a maximum diameter of 50 cm (19.7 in). The anchor is made of hot-rolled steel and weighs 23 kg (50.7 lb). The anchor dimensions are 2.5x30.5x38.1 cm. The LC4x4 OBS from the Scripps Institution of Oceanography (SIO) has a volume of approximately 1 m^3, with an anchor that consists of a large piece of steel grating (approximately 1 m^2). Once an OBS is ready to be retrieved, an acoustic release transponder interrogates the OBS at a frequency of 9 to 11 kHz, and a response is received at a frequency of 9 to 13 kHz. The burn-wire release assembly is then activated, and the instrument is released from the anchor to float to the surface. The anchors will remain on the sea floor.

Proposed Dates, Duration, and Specific Geographic Area

The survey will occur in the following specific geographic area: 16.5° to 19° North, 146.5° to 150° East within the EEZ of the U.S. (*see* Figure 1 of L–DEO's application). Water depths in the survey area range from greater than 2,000 m to greater than 8,000 m (26,246.7 ft). The closest that the vessel will approach to any island is approximately 50 km (31.1 mi) from Alamagan. The exact dates of the activities depend on logistics and weather conditions. The *Langseth* will depart from Guam on April 25, 2010 and return to Guam on June 6, 2010. Seismic operations will be carried out for 16 days, with the balance of the cruise occupied in transit (approximately 2 days) and in deployment and retrieval of OBSs and maintenance (25 days).

Description of Marine Mammals in the Proposed Activity Area

A total of 27 cetacean species, including 20 odontocete (dolphins and small- and large-toothed whales) species and nine mysticetes (baleen whales) are known to occur in the area affected by the specified activities associated with the proposed CNMI marine geophysical survey (*see* Table 2 of L–DEO's application). Cetaceans and pinnipeds, which are the subject of this IHA application, are protected by the MMPA and managed by NMFS in accordance with its requirements. Information on the occurrence, distribution, population size, and conservation status for each of the 27 marine mammal species that may occur in the proposed project area is presented in the Table 2 of L–DEO's application as well as here in the table below (Table 2). The status of certain marine mammal species as threatened or endangered is based on evaluation and listing procedures under the U.S. Endangered Species Act (ESA), the International Union for Conservation of Nature (IUCN) Red List of Threatened Species, and Convention on International Trade in Endangered Species (CITES). Several marine mammal species that may be affected by the proposed IHA are listed as Endangered under Section 4 of the ESA, including the North Pacific right, sperm, humpback, fin, sei, and blue whales.

There are no reported sightings of pinnipeds in the CNMI (*e.g.,* DON, 2005). The dugong (*Dugong dugon*), also listed under the ESA as Endangered, is distributed throughout most of the Indo-Pacific region between approximately 27° North and south of the equator (Marsh, 2002); it seems unlikely that dugongs have ever inhabited the Mariana Islands (Nishiwaki *et al.,* 1979). There have been some extralimital sightings in Guam, including a single dugong in Cocos Lagoon in 1974 (Randall *et al.,* 1975) and several sightings of an individual in 1985 along the southeastern coast (Eldredge, 2003).

Table 2 below outlines the cetacean species, their habitat and abundance in the proposed project area, and the requested take levels. Additional information regarding the distribution of these species expected to be found in the project area and how the estimated densities were calculated may be found in L–DEO's application.

TABLE 2—THE HABITAT, REGIONAL ABUNDANCE, CONSERVATION STATUS, AND BEST AND MAXIMUM DENSITY ESTIMATES OF MARINE MAMMALS THAT COULD OCCUR IN OR NEAR THE PROPOSED SEISMIC SURVEY AREA IN THE CNMI. *See* TABLES 2 TO 4 IN L–DEO'S APPLICATION FOR FURTHER DETAIL

Species	Habitat	Regional population size [a]	ESA [b]	Density/ 1000 km^2 (best) [c]	Density/ 1000 km^2 (max) [d]
Mysticetes:					
North Pacific right whale (*Eubalaena japonica*)	Pelagic and coastal	Few 100s	EN	0.01	0.01
Humpback whale (*Megaptera novaeangliae*)	Mainly nearshore waters and banks.	938–1107 [e]	EN	0.01	0.02
Minke whale (*Balaenoptera acutorostrata*)	Pelagic and coastal	25,000 [f]	NL	0.01	0.02
Bryde's whale *Balaenoptera brydei*)	Pelagic and coastal	20,000–30,000	NL	0.41	0.62
Sei whale (*Balaenoptera borealis*)	Primarily offshore, pelagic	7,260–12,620 [g]	EN	0.29	0.44
Fin whale (*Balaenoptera physalus*)	Continental slope, mostly pelagic	13.620–18.680 [h].	EN	0.01	0.02
Blue whale (*Balaenoptera musculus*)	Pelagic and coastal	N.A.	EN	0.01	0.02
Odontocetes:					
Sperm whale (*Physeter macrocephalus*)	Usually pelagic and deep seas	29,674 [i]	EN	1.23	1.85
Pygmy sperm whale (*Kogia breviceps*)	Deep waters off shelf	N.A.	NL	2.91	4.37
Dwarf sperm whale (*Kogia sima*)	Deep waters off the shelf	11,200 [j]	NL	7.14	10.71
Cuvier's beaked whale (*Ziphius cavirostris*)	Pelagic	20,000 [j]	NL	6.21	9.32
Longman's beaked whale (*Indopacetus pacificus*)	Deep water	N.A.	NL	0.41	0.62
Blainville's beaked whale (*Mesoplodon densirostris*)	Pelagic	25,300 [k]	NL	1.17	1.76
Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*).	Pelagic	N.A.	NL	0.01	0.02
Rough-toothed dolphin (*Steno bredanensis*)	Deep water	146,000 ETP [j]	NL	0.29	0.44
Common bottlenose dolphin (*Tursiops truncatus*)	Coastal and oceanic, shelf break	243,500 ETP [j]	NL	0.21	0.32
Pantropical spotted dolphin (*Stenella attenuata*)	Coastal and pelagic	800,000 ETP [j]	NL	22.60	33.90
Spinner dolphin (*Stenella longirostris*)	Coastal and pelagic	800,000 ETP [j]	NL	3.14	4.71
Striped dolphin (*Stenella coeruleoalba*)	Off continental shelf	1,000,000 ETP [j]	NL	6.16	9.24
Fraser's dolphin (*Lagenodelphis hosei*)	Waters greater than 1,000 m	289,000 ETP [j]	NL	4.17	6.26
Short-beaked common dolphin (*Delphinus delphis*)	Shelf and pelagic, seamounts	3,000,000 ETP [j]	NL	0.01	0.01
Risso's dolphin (*Grampus griseus*)	Waters greater than 1,000 m, seamounts.	175,000 ETP [j]	NL	0.97	1.46
Melon-headed whale (*Peponocephala electra*)	Oceanic	45,000 ETP [j]	NL	4.28	6.42
Pygmy killer whale (*Feresa attenuata*)	Deep, pantropical waters	39,000 ETP [j]	NL	0.14	0.21
False killer whale (*Pseudorca crassidens*)	Pelagic	40,000 [j]	NL	1.11	0.21
Killer whale *(Orcinus orca*)	Widely distributed	8,500 ETP [j]	NL	0.14	0.21
Short-finned pilot whale (*Globicephala macrorhynchus*).	Mostly pelagic, high-relief topography.	500,000 ETP [j]	NL	1.59	2.39
Sirenians: Dugong (*Dugong dugon*)	Coastal	N.A.	EN	N.A.	N.A.

N.A.—Data not available or species status was not assessed,
[a] North Pacific (Jefferson *et al.,* 2008) unless otherwise indicated.
[b] U.S. Endangered Species Act: EN = Endangered, NL = Not listed.
[c] Best estimate as listed in Table 3 of the application.
[d] Maximum estimate as listed in Table 3 of the application.
[e] Western North Pacific (Calambokidis *et al.,* 2008).
[f] Northwest Pacific and Okhotsk Sea (IWC, 2007a).
[g] North Pacific (Tillman, 1977).
[h] North Pacific (Ohsumi and Wada, 1974).
[i] Western North Pacific (Whitehead, 2002b).
[j] Eastern Tropical Pacific = ETP (Wade and Gerrodette, 1993).
[k] ETP; all *Mesoplodon* spp. (Wade and Gerodette, 1993).

Potential Effects on Marine Mammals

Potential Effects of Airgun Sounds

The effects of sounds from airguns might result in one or more of the following: tolerance, masking of natural sounds, behavioral disturbances, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the project would result in any cases of temporary or especially permanent hearing impairment, or any significant non-auditory physical or physiological effects. Some behavioral disturbance is expected, but this would be localized and short-term. NMFS concurs with this determination.

The root mean square (rms) received levels that are used as impact criteria for marine mammals are not directly comparable to the peak or peak-to-peak values normally used to characterize source levels of airgun arrays. The measurement units used to describe airgun sources, peak or peak-to-peak decibels, are always higher than the rms decibels referred to in biological literature. A measured received level of 160 dB rms in the far field would typically correspond to a peak measurement of approximately 170 to 172 dB, and to a peak-to-peak measurement of approximately 176 to 178 dB, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.,* 1998, 2000a). The precise difference between rms and peak or peak-to-peak values depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower

than the peak or peak-to-peak level for an airgun-type source.

Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. For a summary of the characteristics of airgun pulses, *see* Appendix B (3) of the EA. Numerous studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response—*see* Appendix B (5) of L–DEO's application. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times, mammals of all three types have shown no overt reactions. In general, pinnipeds usually seem to be more tolerant of exposure to airgun pulses than are cetaceans, with relative responsiveness of baleen and toothed whales being variable.

Masking

Obscuring of sounds of interest by interfering sounds, generally at similar frequencies, is known as masking. Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are few specific data of relevance. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However in exceptional situations, reverberation occurs for much or all of the interval between pulses (Simard *et al.,* 2005; Clark and Gagnon, 2006) which could mask calls. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses. The airgun sounds are pulsed, with quiet periods between the pulses, and whale calls often can be heard between the seismic pulses (Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b, 2006; Dunn *et al.,* 2009). In the northeast Pacific Ocean, blue whale calls have been recorded during a seismic survey off Oregon (McDonald *et al.,* 1995). Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies found that they continued calling the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; Jochens *et al.,* 2008). Dolphins and porpoises commonly are heard calling while airguns are operating (Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b; Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than the dominant components of airgun sounds, thus limiting the potential for masking. In general, masking effects of seismic pulses are expected to be minor, given the normally intermittent nature of seismic pulses. Masking effects on marine mammals are discussed further in Appendix B (4) of the L–DEO EA.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the response may or may not rise to the level of "harassment" to the individual, or affect the stock or the species population as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals are likely to be present within a particular distance of industrial activities, and/or exposed to a particular level of industrial sound. In most cases, this practice potentially overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

The sound exposure criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based primarily on behavioral observations of several species. However, information is lacking for many species. Detailed studies have been done on humpback, gray, bowhead, and sperm whales. Less detailed data are available for some other species of baleen whales, small toothed whales, and sea otters, but for many species there are no data on responses to marine seismic surveys.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix B (5) of the L–DEO EA, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding activities and moving away from the sound source. In the case of the migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals. They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have demonstrated that seismic pulses with received levels of 160 to 170 dB re 1 μPa (rms) seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4 to 15 km (2.8 to 9 mi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in Appendix B(5) of the L–DEO EA have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160 to 170 dB re 1 μPa (rms).

Responses of humpback whales to seismic surveys have been studied during migration, on the summer feeding grounds, and on Angolan winter breeding grounds; there has also been discussion of effects on the Brazilian wintering grounds. McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off Western Australia to a full-scale seismic survey with a 16 airgun, 2,678 in^3 array, and to a single 20 in^3 airgun with a source level of 227

dB re 1 μPam peak-to-peak. McCauley *et al.* (1998) documented that initial avoidance reactions began at 5 to 8 km (3.1 to 5 mi) from the array, and that those reactions kept most pods approximately 3 to 4 km (1.9 to 2.5 mi) from the operating seismic boat. McCauley *et al.* (2000a) noted localized displacement during migration of 4 to 5 km (2.5 to 3.1 mi) by traveling pods and 7 to 12 km (4.3 to 7.5 mi) by cow-calf pairs. Avoidance distances with respect to the single airgun were smaller (2 km [1.2 mi]) but consistent with the results from the full array in terms of received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re 1 μPa (rms) for humpback whale pods containing females, and at the mean closest point of approach (CPA) distance the received level was 143 dB re 1 μPa (rms). The initial avoidance response generally occurred at distances of 5 to 8 km (3.1 to 5 mi) from the airgun array and 2 km (1.2 mi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re 1 μPa (rms).

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100 in^3) airgun (Malme *et al.,* 1985). Some humpbacks seemed "startled" at received levels of 150 to 169 dB re 1 μPa on an approximate rms basis. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 re 1 μPa on an approximate rms basis.

It has been suggested that South Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). The evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with results from direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was "no observable direct correlation" between strandings and seismic surveys (IWC, 2007:236).

There are no data on reactions of right whales to seismic surveys, but results from the closely-related bowhead whale show that their responsiveness can be quite variable depending on the activity (migrating vs. feeding). Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20 to 30 km (12.4 to 18.6 mi) from a medium-sized airgun source at received sound levels of around 120 to 130 dB re 1 μPa (rms) (Miller *et al.,* 1999; Richardson *et al.,* 1999; *see* Appendix B (5) of the EA). However, more recent research on bowhead whales (Miller *et al.,* 2005a; Harris *et al.,* 2007) corroborates earlier evidence that, during the summer feeding season, bowheads are not as sensitive to seismic sources. Nonetheless, subtle but statistically significant changes in surfacing-respiration-dive cycles were evident upon statistical analysis (Richardson *et al.,* 1986). In summer, bowheads typically begin to show avoidance reactions at a received level of about 152 to 178 dB re 1 μPa (rms) (Richardson *et al.,* 1986, 1995; Ljungblad *et al.,* 1988; Miller *et al.,* 2005a).

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding Eastern Pacific gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. Malme *et al.* (1986, 1988) estimated, based on small sample sizes, that 50 percent of feeding gray whales ceased feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB dB re 1 μPa (rms). Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and with observations of Western Pacific gray whales feeding off Sakhalin Island, Russia, when a seismic survey was underway just offshore of their feeding area (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.* 2007a,b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of *Balaenoptera* (blue, sei, fin, Bryde's, and minke whales) have occasionally been reported in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and calls from blue and fin whales have been localized in areas with airgun operations (*e.g.* McDonald *et al.,* 1995; Dunn *et al.,* 2009). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting and not shooting (silent) (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). In a study off Nova Scotia, Moulton and Miller (2005) found little difference in sighting rates (after accounting for water depth) and initial sighting distances of balaenopterid whales when airguns were operating vs. silent. However, there were indications that these whales were more likely to be moving away when seen during airgun operations. Similarly, ship-based monitoring studies of blue, fin, sei, and minke whales offshore of Newfoundland (Orphan Basin and Laurentian Sub-basin) found no more than small differences in sighting rates and swim direction during seismic vs. non-seismic periods (Moulton *et al.,* 2005, 2006a,b).

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (*see* Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Angliss and Outlaw, 2008). The Western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a prior year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Angliss and Outlaw, 2008).

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above and (in more detail) in Appendix B or the EA have been reported for toothed whales. However, recent systematic studies on sperm whales have been done (Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses

of various odontocetes to seismic surveys based on monitoring studies (*e.g.,* Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009).

Seismic operators and observers on seismic vessels regularly *see* dolphins and other small toothed whales near operating airgun arrays, but in general there seems to be a tendency for most delphinids to show some avoidance of operating seismic vessels (Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; Barkaszi *et al.,* 2009). However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large airgun arrays are firing (Moulton and Miller, 2005). Nonetheless, there have been indications that small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (Stone and Tasker, 2006; Weir, 2008). In most cases, the avoidance radii for delphinids appear to be small, on the order of 1 km (0.62 mi) or less, and some individuals show no apparent avoidance. The beluga is a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys during seismic operations in the southeastern Beaufort Sea during summer found that sighting rates of beluga whales were significantly lower at distances 10 to 20 km (6.2 to 12.4 mi) compared with 20 to 30 km (mi) from an operating airgun array, and observers on seismic boats in that area rarely see belugas (Miller *et al.,* 2005; Harris *et al.,* 2007).

Captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005; Finneran and Schlundt, 2004). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results for porpoises depend on species. The limited available data suggest that harbor porpoises show stronger avoidance of seismic operations than do Dall's porpoises (Stone, 2003; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operations airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources in general (Richardson *et al.,* 1995; Southall *et al.,* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the sperm whale shows considerable tolerance of airgun pulses (Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases, the whales do not show strong avoidance and continue to call (*see* Appendix B in the L–DEO EA). However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sounds (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, northern bottlenose whales (*Hyperodon ampullatus*) continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (Wursig *et al.,* 1998). They may also dive for an extended period when approached by a vessel (Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). It is likely that these beaked whales would normally show strong avoidance of an approaching seismic vessel, but this has not been documented explicitly.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of the mysticetes, belugas, and harbor porpoises (Appendix B of the L–DEO EA).

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to sequences of airgun pulses.

NMFS will be developing new noise exposure criteria for marine mammals that take account of the now-available scientific data on temporary threshold shift (TTS), the expected offset between the TTS and permanent threshold shift (PTS) thresholds, differences in the acoustic frequencies to which different marine mammal groups are sensitive, and other relevant factors. Detailed recommendations for new science-based noise exposure criteria were published in late 2007 (Southall *et al.,* 2007).

Several aspects of the planned monitoring and mitigation measures for this project (*see* below) are designed to detect marine mammals occurring near the airguns to avoid exposing them to sound pulses that might, at least in theory, cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area where received levels of airgun sound are high enough such that hearing impairment could potentially occur. In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that might (in theory) occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (*i.e.,* beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, as discussed below, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. It is especially unlikely that any effects of these types would occur during the present project given the brief duration of exposure of any given mammal, the deep water in the study area, and the proposed monitoring and mitigation measures (*see* below). The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for

marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007). Based on these data, the received energy level of a single seismic pulse (with no frequency weighting) might need to be approximately 186 dB re 1 $\mu Pa^2 \cdot s$ (*i.e.,* 186 dB SEL or approximately 196 to 201 re 1 μPa [rms]) in order to produce brief, mild TTS. Exposure to several strong seismic pulses that each have received levels near 190 re 1 μPa (rms) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy; however, this 'equal energy' concept is an oversimplification. The distance from the *Langseth's* airguns at which the received energy level (per pulse, flat-weighted) would be expected to be *greater than or equal to 190 dB* re 1 μPa (rms) are estimated in Table 1 of L–DEO's application and above. Levels greater than or equal to 190 dB re 1 μPa (rms) are expected to be restricted to radii no more than 400 m. For an odontocete closer to the surface, the maximum radius with greater than or equal to 190 dB re 1 μPa (rms) would be smaller.

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin and beluga. For the one harbor porpoise tested, the received level of airgun sound that elicited onset of TTS was lower (Lucke *et al.,* 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of TTS occurs at similar received levels in all odontocetes (Southall *et al.,* 2007). Some cetaceans apparently can incur TTS at considerably lower sound exposures than are necessary to elicit TTS in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound required to induce TTS. The frequencies to which baleen whales are most sensitive are lower than those to which odontocetes are more sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales (Southall *et al.,* 2007). In any event, no cases of TTS are expected given three considerations:

(1) The relatively low abundance of baleen whales expected in the planned study areas;

(2) The strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS; and

(3) The mitigation measures that are planned.

To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding 180 and 190 dB re 1 μPa (rms), respectively. This sound level is not considered to be the level above which TTS might occur. Rather, it was the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to cetaceans. As summarized above and in Southall *et al.* (2007), data that are now available imply that TTS is unlikely to occur in most odontocetes (and probably mysticetes as well) unless they are exposed to a sequence of several airgun pulses stronger than 190 dB re 1 μPa (rms).

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (Richardson *et al.,* 1995; Gedamke *et al.,* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time (*see* Appendix B (6) of the L–DEO EA). Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis, and probably greater than 6 dB (Southall *et al.,* 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans they estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 $\mu Pa^2 \cdot s$ (15 dB higher than the M_{mf}-weighted TTS threshold, in a beluga, for a watergun impulse), where the SEL value is cumulated over the sequence of pulses.

Southall *et al.* (2007) also note that, regardless of the SEL, there is concern about the possibility of PTS if a cetacean or pinniped receives one or more pulses with peak pressure exceeding 230 or 218 dB re 1 μPa (peak), respectively. Thus PTS might be expected upon exposure of cetaceans to either SEL greater than or equal to 198 dB re 1 $\mu Pa^2 \cdot s$ or peak pressure greater than or equal to 230 dB re 1 μPa. Corresponding proposed dual criteria for pinnipeds (at least harbor seals) are greater than or equal to 186 dB SEL and greater than or equal to 218 dB peak pressure (Southall *et al.,* 2007). These estimates are all first approximations, given the limited underlying data, assumptions, species differences, and evidence that the "equal energy" model may not be entirely correct. A peak pressure of 230 dB re 1 μPa (3.2 bar · m, 0-pk), which would only be found within a few meters of the largest (360 in^3) airguns in the planned airgun array (Caldwell and Dragoset, 2000). A peak pressure of 218 dB re 1 μPa could be received somewhat farther away; to estimate that specific distance, one would need to apply a model that accurately calculates peak pressures in the near-field around an array of airguns.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. The planned monitoring and mitigation measures, including visual monitoring, passive acoustic monitoring (PAM) to complement visual observations (if practicable), power-downs, and shut-downs of the airguns when mammals are seen within or approaching the EZs will further reduce the probability of exposure of marine mammals to sounds strong enough to induce PTS.

Strandings and Mortality—Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and their auditory organs are especially susceptible to injury (Ketten *et al.,* 1993; Ketten, 1995). However, explosives are no longer used for marine waters for commercial seismic surveys or (with rare exceptions) for seismic research; they have been replaced entirely by airguns or related non-explosive pulse generators. Airgun pulses are less energetic and have slower rise times, and there is no proof that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of mass strandings of beaked whales with naval exercises and, in one case, an L–DEO seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong pulsed sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding (Hildebrand, 2005; Southall *et al.,* 2007). Appendix B(6) of the L–DEO EA provides additional details.

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) A change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) A physiological change such as a vetibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) Tissue damage directly from sound exposure, such as through acoustically mediated bubble formation and growth or acoustic resonance of tissues.

Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are increasing indications that gas-bubble disease (analogous to "the bends"), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. The evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead (at least indirectly) to physical damage and mortality (Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005a; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) was not well founded based on available data (IAGC, 2004; IWC, 2007b). In September 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L–DEO vessel R/V *Maurice Ewing* (*Ewing*) was operating a 20 airgun, 8,490 in^3 array in the general area. The link between the stranding and the seismic survey was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution when conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). No injuries of beaked whales are anticipated during the proposed study because of:

(1) The high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels;

(2) The proposed monitoring and mitigation measures; and

(3) Differences between the sound sources operated by L–DEO and those involved in the naval exercises associated with strandings.

Non-auditory Physiological Effects—non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formation (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of "the bends," as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007), or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales and some odontocetes, are especially unlikely to incur non-auditory physical effects. Also, the planned monitoring and mitigation measures, including shut-down of the airguns, will reduce any such effects that might otherwise occur.

Potential Effects of Other Acoustic Devices—MBES Signals

The Kongsberg EM 122 MBES will be operated from the source vessel during the planned study. Sounds from the MBES are very short pulses, occurring for 2 to 15 ms once every 5 to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by the MBES is at frequencies centered at 12 kHz, and the maximum source level is 242 dB re 1 μPa (rms). The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m deep) or four (greater than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the nine segments. Also, marine mammals that encounter the MBES are unlikely to be subjected to

repeated pulses because of the narrow fore-aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2 to 15 ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an MBES emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order in order to receive the multiple pulses that might result in sufficient exposure to cause TTS. Burkhardt *et al.* (2007) concluded that immediate direct auditory injury was possible only if a cetacean dived under the vessel into the immediate vicinity of the transducer.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans (1) generally have a longer pulse duration that the Kongsberg EM 122, and (2) are often directed close to horizontally vs. more downward for the MBES. The area of possible influence of the MBES is much smaller—a narrow band below the source vessel. The duration of exposure for a given marine mammal can be much longer for a Navy sonar. During L–DEO's operations, the individual pulses will be very short, and a given marine mammal would not receive many of the downward-directed pulses as the vessel passes by.

Marine mammal communications will not be masked appreciably by the MBES signals given its low duty cycle and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz "whale-finding" sonar with a source level of 215 dB re 1 µPam, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (656 ft) (Frankel, 2005). When a 38 kHz echosounder and a 150 kHz acoustic Doppler current profiler were transmitting during studies in the Eastern Tropical Pacific, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1 s tonal signals at frequencies similar to those that will be emitted by the MBES used by L–DEO, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in either duration as compared with those from an MBES.

NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the MBES are not likely to result in the harassment of marine mammals.

Potential Effects of Other Acoustic Devices—SBP Signals

A SBP will be operated from the source vessel during the planned study. Sounds from the SBP are very short pulses, occurring for 1 to 4 ms once every second. Most of the energy in the sound pulses emitted by the SBP is at 3.5 kHz, and the cone-shaped beam is directed downward. The SBP on the *Langseth* has a maximum source level of 204 dB re 1 µPam. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for an SBP more powerful than that on the *Langseth*—if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS.

Marine mammal communications will not be masked appreciably by the SBP signals given their directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the SBP signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the SBP are likely to be similar to those for other pulsed sources if received at the same levels. The pulsed signals from the SBP are somewhat weaker than those from the MBES. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

It is unlikely that the SBP produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The SBP is operated simultaneously with other higher-power acoustic sources, including the airguns. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the SBP. In the case of mammals that do not avoid the approaching vessel and its various sound sources, monitoring and mitigation measures that would be applied to minimize effects of other sources would further reduce or eliminate any minor effects of the SBP.

NMFS believes that to avoid the potential for permanent physiological damage (Level A harassment), cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 µPa (rms). The precautionary nature of these criteria is discussed in the L–DEO EA, including the fact that the minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS and the level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage. NMFS also assumes that cetaceans or pinnipeds exposed to levels exceeding 160 dB re 1 µPa (rms) may experience Level B harassment.

Possible Effects of Acoustic Release Signals

The acoustic release transponder used to communicate with the OBSs uses frequencies of 9 to 13 kHz. These signals will be used very intermittently. It is unlikely that the acoustic release signals would have significant effects on marine mammals through masking, disturbance, or hearing impairment. Any effects likely would be negligible given the brief exposure at presumable low levels.

Estimated Take of Marine Mammals by Incidental Harassment

All anticipated takes would be "takes by Level B harassment," involving temporary changes in behavior. The proposed monitoring and mitigation measures are expected to minimize the possibility of injurious takes or mortality. However, as noted earlier, there is no specific information

demonstrating that injurious "takes" or mortality would occur even in the absence of the planned mitigation measures. NMFS believes, therefore, that injurious take or mortality to the affected species marine mammals is extremely unlikely to occur as a result of the specified activities within the specified geographic area for which L–DEO seeks the IHA. The sections below describe methods to estimate "take by harassment", and present estimates of the numbers of marine mammals that could be affected during the proposed seismic program. The estimates of "take by harassment" are based on consideration of the number of marine mammals that might be disturbed appreciably by operations with the 36 airgun array to be used during approximately 2,800 km of seismic surveys in the CNMI study area. The sources of distributional and numerical data used in deriving the estimates are described below.

It is assumed that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES and SBP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the MBES and SBP given their characteristics (*e.g.,* narrow downward-directed beam) and other considerations. Such reactions are not considered to constitute "taking" (NMFS, 2001). Therefore, no additional allowance is included for animals that could be affected by sound sources other than airguns.

The only systematic marine mammal survey conducted in the CNMI was a ship-based survey conducted by the U.S. Navy during January to April, 2007 in four legs: January 16 to February 2, February 6 to 25, March 1 to 20, and March 24 to April 12 (SRS—Parsons *et al.,* 2007). The cruise area was defined by the boundaries 10° to 18° North, 142° to 148° East, encompassing an area approximately 585,000 km^2 including the islands of Guam and the southern CNMI almost as far north as Pagan. The systematic line-transect survey effort was conducted from the flying bridge (10.5 m or 34.5 ft above sea level) of the 56 m (183.7 ft) long M/V *Kahana* using standard line-transect protocols developed by NMFS Southwest Fisheries Science Center (SWFSC). Observers visually surveyed 11,033 km (6,855.6 mi) of tracklines, mostly in high sea states (88 percent of the time in Beaufort Sea states 4 to 6).

L–DEO used the densities calculated in SRS—Parsons *et al.* (2007) for the 12 species sighted in that survey. For eight species not sighted in that survey, but expected to occur in the CNMI, relevant densities are available for the "outer EEZ stratum" of Hawaiian waters, based on a 13,500 km (mi) survey conducted by NMFS SWFSC in August to November, 2002 (Barlow, 2006). Another potential source of relevant densities is the SWFSC surveys conducted in the ETP during summer/fall 1986 to 1996 (Ferguson and Barlow, 2001). However, for five of the remaining seven species that could occur in the survey area, there were no sightings in offshore tropical strata during those surveys, and for another (the humpback whale), there was only one sighting in more than 50 offshore tropical (less than 20° latitude) 5° x 5° strata. For those six species, an arbitrary low density was assigned. The short-beaked common dolphin was sighted in a number of offshore tropical strata, so its density was calculated as the mean of densities in the 17 offshore 5° x 5° strata between 10° North and 20° North.

The densities mentioned above had been corrected, by the original authors, for detectability bias, and in two of the three areas, for availability bias. Detectability bias is associated with diminishing sightability with increasing lateral distance from the track line [$f(0)$]. Availability bias refers to the fact that there is less than 100 percent probability of sighting an animal that is present along the survey track line, and it is measured by g(0). SRS—Parsons *et al.* (2007) did not correct the Marianas densities for g(0), which for all but large (greater than 20) groups of dolphins [where g(0) = 1], resulted in underestimates of density.

There is some uncertainty about the representativeness of the density data and the assumptions used in the calculations. For example, the timing of the surveys was either before (Marianas) or after (Hawaii and ETP) the proposed surveys. Also, most of the Marianas survey was in high sea states that would have prevented detection of many marine mammals, especially cryptic species such as beaked whales and *Kogia* spp. However, the approach used here is believed to be the best available approach. To provide some allowance for these uncertainties, particularly underestimates of densities present and numbers of marine mammals potentially affected have been derived; maximum estimates are 1.5x the best estimates. Densities calculated or estimated as described above are given in Table 3 of L–DEO's application.

The estimated numbers of individuals potentially exposed are based on the 160 dB re 1 Pa (rms) Level B harassment exposure threshold for all cetaceans, *see* Table 4 of L–DEO's application. It is assumed that the species of marine mammals affected by the proposed survey, if exposed to airgun sounds at these levels, might change their behavior sufficiently to be considered "take by Level B harassment."

It should be noted that the following estimates of exposures to various sound levels and related incidental takes by Level B harassment assume that the proposed marine geophysical surveys will be completed. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-km of seismic operations that can be undertaken. Furthermore, any marine mammals sightings within or near the designated EZs will result in the power-down or shut-down of seismic operations as a mitigation measure. Thus the following estimates of the numbers of marine mammals potentially exposed to 160 dB re 1 μPam (rms) sounds are precautionary and probably overestimate the actual numbers of marine mammals that might be involved. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

Table 4 of L–DEO's application shows the best and maximum estimated number of exposures and the number of different individuals potentially exposed during the seismic survey if no animals moved away from the survey vessel. The requested take authorization, given in the far right column of Table 4 of L–DEO's application, is based on the maximum estimates rather than the best estimates of the numbers of individuals exposed, because of uncertainties associated with applying density data from one area to another.

The number of different individuals that may be exposed to airgun sounds with received levels ≥160 dB re 1 μPa (rms) on one or more occasions was estimated by considering the total marine area that would be within the 160 dB radius around the operating airgun array on at least one occasion. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160 dB radius around the operating airguns, including areas of overlap. In the proposed survey, the seismic lines are widely spaced in the proposed survey area, so an

individual mammal would most likely not be exposed numerous times during the survey; the area including overlap is only 1.4x the area excluding overlap. Moreover, it is unlikely that a particular animal would stay in the area during the entire survey.

The number of different individuals potentially exposed to received levels ≥160 dB re 1 μPa (rms) was calculated by multiplying:

- The expected species density, either "mean" (*i.e.,* best estimate) or "maximum," times,
- The anticipated minimum area to be ensonified to that level during airgun operations excluding overlap (exposures), or
- The anticipated area to be ensonified to that level during airgun operations excluding overlap (individuals).

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo Geographic Information System (GIS), using the GIS to identify the relevant areas by "drawing" the applicable 160 dB buffer (*see* Table 1 of L–DEO's application) around each seismic line, and then calculating the total area within the buffers. Areas where overlap were included only once when estimating the number of individuals exposed.

Applying the approach described above, approximately 15,685 km^2 (6,056 mi^2) would be within the 160 dB isopleth on one or more occasions during the survey, where as 21,415 km^2 (8,268.4 mi^2) is the area ensonified to greater than or equal to 160 dB when overlap is included. Because this approach does not allow for turnover in the mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. However, the approach assumes that no cetaceans will move away from or toward the trackline as the *Langseth* approaches in response to increasing sound levels prior to the time the levels reach 160 dB, which will result in overestimates for those species known to avoid seismic vessels.

TABLE 3—THE ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 DB DURING L–DEO'S PROPOSED SEISMIC SURVEY IN THE CNMI IN APRIL TO JUNE, 2010*

Species	No. of individuals exposed (best) [1]	No. of individuals exposed (max) [1]	Approx. percent of regional population (best) [2]
Mysticetes:			
North Pacific right whale *(Eubalaena japonica)*	0	1	0
Humpback whale *(Megaptera novaeangliae)*	0	2	0
Minke whale *(Balaenoptera acutorostrata)*	0	0	0
Bryde's whale *(Balaenoptera brydei)*	6	10	0.03
Sei whale *(Balaenoptera borealis)*	5	7	0.05
Fin whale *(Balaenoptera physalus)*	0	2	0
Blue whale *(Balaenoptera musculus)*	0	2	0
Odontocetes:			
Sperm whale *(Physeter macrocephalus)*	19	29	0.07
Pygmy sperm whale *(Kogia breviceps)*	46	68	N.A.
Dwarf sperm whale *(Kogia sima)*	112	168	<0.01
Cuvier's beaked whale *(Ziphius cavirostris)*	97	146	0.49
Longman's beaked whale *(Indopacetus pacificus)*	9	13	N.A.
Blainville's beaked whale *(Mesoplodon densirostris)*	18	28	0.07
Ginkgo-toothed beaked whale *(Mesoplodon ginkgodens)*	0	0	N.A.
Rough-toothed dolphin *(Steno bredanensis)*	5	7	<0.01
Bottlenose dolphin *(Tursiops truncatus)*	3	5	<0.01
Pantropical spotted dolphin *(Stenella attenuata)*	355	532	0.04
Spinner dolphin *(Stenella longirostris)*	49	74	<0.01
Striped dolphin *(Stenella coeruleoalba)*	97	145	0.01
Fraser's dolphin *(Lagenodelphis hosei)*	65	98	0.02
Short-beaked common dolphin *(Delphinus delphis)*	0	0	0

TABLE 3—THE ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 DB DURING L–DEO'S PROPOSED SEISMIC SURVEY IN THE CNMI IN APRIL TO JUNE, 2010*—Continued

Species	No. of individuals exposed (best) [1]	No. of individuals exposed (max) [1]	Approx. percent of regional population (best) [2]
Risso's dolphin			
(Grampus griseus)	15	23	0.01
Melon-headed whale			
(Peponocephala electra)	67	101	0.15
Pygmy killer whale			
(Feresa attenuata)	2	3	<0.01
False killer whale			
(Pseudorca crassidens)	17	26	<0.01
Killer whale			
(Orcinus orca)	2	3	0.04
Short-finned pilot whale			
(Globicephala macrorhynchus)	25	37	<0.01
Sirenians: Dugong			
(Dugong dugon)	0	0	N.A.

* The proposed sound source consists of a 36 airgun, 6,600 in^3 array. Received levels are expressed in dB re 1 μPa (rms) (averaged over pulse duration), consistent with NMFS' practice. Not all marine mammals will change their behavior when exposed to these sound levels, but some may alter their behavior when levels are lower *(see* text). *See* Tables 2 to 4 in L–DEO's application for further detail.

N.A.—Data not available or species status was not assessed

[1] Best estimate and maximum density estimates are from Table 3 of L–DEO's application.

[2] Regional population size estimates are from Table 2.

Table 4 of L–DEO's application shows the best and maximum estimates of the number of exposures and the number of different individual marine mammals that potentially could be exposed to greater than or equal to 160 dB re 1 μPa (rms) during the seismic survey if no animals moved away from the survey vessel. For ESA listed species, the maximum estimate and Requested Take Authorization have been increased to the mean group size for the particular species in cases where the calculated maximum number of individuals exposed was between 0.05 and the mean group size *(i.e.,* for North Pacific, right, humpback, fin, and blue whales).

The "best estimate" of the total number of individual marine mammals that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) during the survey is 1,011 animals and is shown in Table 4 of L–DEO's application and Table 3 (shown above). These estimates were derived from the best density estimates calculated for these species in the area. That total includes 11 baleen whales, five of which are ESA-listed sei whales, or 0.05 percent of the regional population. In addition, 19 ESA-listed sperm whales or 0.07 percent of the regional population could be exposed during the survey, and 121 beaked whales including Cuvier's, Longman's, and Blainville's beaked whales. Most (69.4 percent) of the cetaceans exposed are delphinids; pantropical spotted, striped, and Fraser's dolphins and melon-headed whales are estimated to be the most common species in the area, with best estimates of 355 (0.04 percent of the regional population), 97 (0.01 percent), 65 (0.02 percent), and 67 (0.15 percent) exposed to greater or equal to 160 dB re 1 μPa (rms) respectively.

Potential Effects on Marine Mammal Habitat

The proposed L–DEO seismic survey will not result in any permanent impact on habitats used by marine mammals, including the food sources they use. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as described above. The following sections briefly review effects of airguns on fish and invertebrates, and more details are included in Appendices C and D of the L–DEO EA, respectively.

Potential Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish populations is limited (*see* Appendix D of the EA). There are three types of potential effects on fish and invertebrates from exposure to seismic surveys:

(1) Pathological,

(2) Physiological, and

(3) Behavioral.

Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (*e.g.,* startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes potentially could lead to an ultimate pathological effect on individuals (*i.e.,* mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale. This makes drawing conclusions about impacts on fish problematic because ultimately, the most important aspect of potential impacts relates to how exposure to seismic survey sound affects marine fish populations and their viability, including their availability to fisheries.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (*see* Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are then noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question (*see* Appendix D of the L–DEO EA). For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (*e.g.,* predator avoidance, prey capture, orientation and navigation, reproduction, *etc.*) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. There are only two known valid papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns with adverse anatomical effects. One such study indicated anatomical damage and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of "pink snapper" (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coreogonus nasus*) that received a sound exposure level of 177 dB re 1 $\mu Pa^2 \cdot s$ showed no hearing loss. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airgun arrays [less than approximately 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)] likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m in the former case and less than 2 m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the "cut-off frequency") at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure, and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish and invertebrates would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in morality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a 'worst-case scenario' mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; McCauley *et al.,* 2000a, 2000b). The periods necessary for the biochemical changes to return to normal are variable, and depend on numerous aspects of the biology of the species and of the sound stimulus (*see* Appendix D of the EA).

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp "startle" response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

There is general concern about potential adverse effects of seismic operations on fisheries, namely a potential reduction in the "catchability" of fish involved in fisheries. Although reduced catch rates have been observed in some marine fisheries during seismic testing, in a number of cases the findings are confounded by other sources of disturbance (Dalen and Raknes, 1985; Dalen and Knutsen, 1986; Løkkeborg, 1991; Skalski *et al.,* 1992; Engas *et al.,* 1996). In other airgun experiments, there was no change in catch per unit effort (CPUE) of fish when airgun pulses were emitted, particularly in the immediate vicinity of the seismic survey (Pickett *et al.,* 1994; La Bella *et al.,* 1996). For some species, reductions in catch may have resulted from a change in behavior of the fish, *e.g.,* a change in vertical or horizontal distribution, as reported in Slotte *et al.,* (2004).

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on

effects of airguns on fish, particularly under realistic at-sea conditions.

Potential Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001; *see* Appendix E of the L–DEO EA).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is provided in Appendix E of the L–DEO EA.

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) the received peak pressure, and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but there is no evidence to support such claims.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (*i.e.,* changes in haemolymph levels of enzymes, proteins, *etc.*) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effect of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (*e.g.,* squid in McCauley *et al.,* 2000a,b). In other cases, no behavioral impacts were noted (*e.g.,* crustaceans in Christian *et al.,* 2003, 2004; DFO, 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

During the proposed study, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior once the seismic activity ceased. The proposed seismic program is predicted to have negligible to low behavioral effects on the various life stages of the fish and invertebrates during its relatively short duration and extent.

Because of the reasons noted above and the nature of the proposed activities, the proposed operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations or stocks. Similarly, any effects to food sources are expected to be negligible.

Proposed Mitigation

In order to issue an Incidental Take Authorization (ITA) for small numbers of marine mammals under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. As noted, NMFS has determined that the proposed IHA would not impact marine mammals for purposes of their use for subsistence.

Mitigation and monitoring measures and procedures described herein to be implemented for the proposed seismic survey have been developed and refined during previous L–DEO seismic research cruises as approved by NMFS, and associated environmental assessments (EAs), IHA applications, and IHAs, and on recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007). The following information provides more detailed

information about the mitigation measures that would be an integral part of the planned activities designed to affect the least practicable impact on stocks and species of affected marine mammals and their habitat. The measures are described in detail below.

Planning Phase

In designing the proposed seismic survey, L–DEO and NSF have considered potential environmental impacts including seasonal, biological, and weather factors; ship schedules; and equipment availability during a preliminary assessment carried out when ship schedules were still flexible. Part of the considerations was whether the research objectives could be met with a smaller source or with a different survey design that involves less prolonged seismic operations.

Proposed Exclusion Zones (EZ)

Received sound levels have been predicted by L–DEO, in relation to distance and direction from the airguns, for the 36 airgun array and for a single 1900LL 40 in^3 airgun, which will be used during power-downs. Results were recently reported for propagation measurements of pulses from the 36 airgun array in two water depths (approximately 1,600 m and 50 m) in the Gulf of Mexico in 2007 to 2008 (Tolstoy *et al.,* 2009). It would be prudent to use the empirical values that resulted to determine EZs for the airgun array. Measurements were not reported for the mitigation airgun, so model results will not be used.

Results of the propagation measurements (Tolstoy *et al.,* 2009) showed that radii around the airguns for various received levels varied with water depth. During the proposed study, all survey effort will take place in deep (greater than 1,000 m) water, so propagation in shallow water is not relevant here. However, the depth of the array was different in the Gulf of Mexico calibration study (6 m or 20 ft) than in the proposed survey (9 m or 30 ft). Because propagation varies with array depth, correction factors have been applied to the distances reported by Tolstoy *et al.* (2009). The correction factors used were the ratios of the 160, 180, and 190 dB distances from the modeled results for the 6,600 in^3 airgun array towed at 6 m and 9 m depths; these distances were used for the L–DEO seismic survey in the Northeast Pacific Ocean (*see* Table 1 in LGL Ltd., 2009). The factors are 1.34 to 1.38 for the 180 to 190 dB distances, and 1.29 for the 160 dB distance. Using the corrected measurements (array) or model (mitigation gun), Table 1 shows the distances at which four rms sound levels are expected to be received from the 36 airgun array and a single airgun. The 180 and 190 dB levels are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish the EZs. If the PSVO detects marine mammal(s) within or about to enter the appropriate EZ, the airguns will be powered-down (or shut-down if necessary) immediately (*see* below).

Detailed recommendations for new science-based noise exposure criteria were published in early 2008 (Southall *et al.,* 2007). L–DEO will be prepared to revise its procedures for estimating numbers of mammals "taken," EZs, *etc.,* as may be required by any new guidelines that result. As yet, NMFS has not specified a new procedure for determining EZs. Such procedures, if applicable would be implemented through a modification to the IHA if issued.

Mitigation measures that will be adopted during the proposed CNMI survey include:

(1) Power-down procedures;

(2) Shut-down procedures; and

(3) Ramp-up procedures;

Power-down Procedures—A power-down involves reducing the number of airguns in use such that the radius of the 180 dB (or 190 dB) zone is decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power-down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, one airgun will be operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut-down occurs when all airgun activity is suspended.

If a marine mammal (other than right whales [immediate shut-down, *see* end of section]) is detected outside the EZ but is likely to enter the EZ, the airguns will be powered-down to a single airgun before the animal is within the EZ. Likewise, if a mammal is already within the EZ when first detected, the airguns will be powered-down immediately. During a power-down of the airgun array, the 40 in^3 airgun will be operated. If a marine mammal is detected within or near the smaller EZ around that single airgun (*see* Table 1 of L–DEO's application and Table 1 above), all airguns will be shut down (*see* next subsection).

Following a power-down, airgun activity will not resume until the marine mammal is outside the EZ for the full array. The animal will be considered to have cleared the EZ if it:

(1) Is visually observed to have left the EZ, or

(2) Has not been seen within the EZ for 15 minutes in the case for species with shorter dive durations (*e.g.,* small odontocetes); or

(3) Has not been seen within the EZ for 30 minutes in the case for species with longer dive durations (*e.g.,* mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

During airgun operations following a power-down (or shut-down) whose duration has exceeded the limits specified above and subsequent animal departures, the airgun array will be ramped-up gradually. Ramp-up procedures are described below.

Shut-down Procedures—The operating airguns(s) will be shut-down if a marine mammal is detected within or approaching the EZ for a single airgun source. Shut-downs will be implemented (1) if an animal enters the EZ of the single airgun after a power-down has been initiated, or (2) if an animal is initially seen within the EZ of a single airgun when more than one airgun (typically the full array) is operating. Airgun activity will not resume until the marine mammal has cleared the EZ, or until the PSVO is confident that the animal has left the vicinity of the vessel (or the PSVO not observing the animal(s) within the EZ for 15 or 30 min depending upon the species). Criteria for judging that the animal has cleared the EZ will be as described in the preceding subsection.

Ramp-up Procedures—A ramp-up procedure will be followed when the airgun array begins operating after a specified period without airgun operations or when a power-down has exceeded that period. It is proposed that, for the present cruise, this period would be approximately 8 minutes. This period is based on the largest modeled 180 dB radius for the 36 airgun array (940 m or 3,084 ft) in relation to the minimum planned speed of the *Langseth* while shooting (7.4 km/hr or 4.6 mi/hr). Similar periods (approximately 8 to 10 minutes) were used during previous L–DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40 in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5 min period over a total duration of approximately 35 minutes. During ramp-up, the PSVOs will monitor the EZ, and if marine mammals are sighted, a power-down or shut-down will be

implemented as though the full array were operational.

If the complete EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, ramp up will not commence unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the EZ for that array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. Ramp-up of the airguns will not be initiated if a marine mammal is sighted within or near the applicable EZ during the day or close to the vessel at night.

Procedures for Species of Particular Concern—One species of particular concern could occur in the study area.

Considering the conservation status for North Pacific right whales, the airgun(s) will be shut-down immediately in the unlikely event that this species is observed, regardless of the distance from the *Langseth*. Ramp-up will only begin if the right whale has not been seen for 30 minutes.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) require that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

L–DEO proposes to sponsor marine mammal monitoring during the proposed project, in order to implement the proposed mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA. L–DEO's proposed Monitoring Plan is described below as well as in their IHA application. L–DEO understands that this Monitoring Plan will be subject to review by NMFS, and that refinements may be required as part of the MMPA consultation process.

The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. L–DEO is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-Based Visual Monitoring

Protected Species Visual Observers (PSVOs) will be based aboard the seismic source vessel and will watch for marine mammals and other protected species near the vessel during daytime airgun operations and during start-ups of airguns at night. PSVOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations and after an extended shut-down of the airguns. When feasible, PSVOs will also observe during daytime periods when the seismic system is not operating for comparison of sighting rates and animal behavior with vs. without airgun operations. Based on PSVO observations, the airguns will be powered-down or shut-down (*see* below) when marine mammals are detected within or about to enter a designated EZ, and in the case of the North Pacific right whale immediately when any individuals of that species is spotted at any distance. The PSVOs will continue to maintain watch to determine when the animal(s) are outside the EZ in accordance with the criteria established above in the mitigation section, and airgun operations will not resume until the animal has left that EZ. The predicted distances for the safety radius are listed according to the sound source, water depth, and received isopleths in Table 1. The EZ is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations in CNMI, five PSOs will be based aboard the *Langseth*. PSOs will be appointed by L–DEO with NMFS concurrence. At least one PSVO, and when practical two PSVOs, will monitor for marine mammals and other specified protected species near the seismic vessel during ongoing daytime operations and nighttime start-ups of the airguns. Use of two simultaneous PSVOs will increase the effectiveness of detecting animals near the sound source. PSVO(s) will be on duty in shift of duration no longer than 4 hours. The vessel crew will also be instructed to assist in detecting marine mammals and other specified protected species, and implementing mitigation measures (if practical). Before the start of the seismic survey the crew will be given additional instruction regarding how to do so.

The *Langseth* is a suitable platform for observations for marine mammals and other protected species. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the observer will have a good view around the entire vessel. During the daytime, the PSVO(s) will scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7x50 Fujinon), Big-eye binoculars (25x150), and with the naked eye. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training PSVOs to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars' lenses.

Passive Acoustic Monitoring (PAM)

PAM will take place to complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility (*e.g.,* bad weather) or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night and does not depend on good visibility. It will be monitored in real time so that the visual observers can be advised when cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (*i.e.,* hydrophones) and software. The "wet end" of the system consists of a low-noise, towed hydrophone array that is connected to the vessel by a "hairy" faired cable. The array will be deployed from a winch located on the back deck. A deck cable will connect from the winch to the main computer lab where the acoustic station and signal condition and processing system will be located. The lead-in from the hydrophone array

is approximately 400 m (1,312 ft) long, and the active part of the hydrophone is approximately 56 m (184 ft) long. The hydrophone array is typically towed at depths less than 20 m (65.6 ft).

The towed hydrophone array will be monitored 24 hours per day while at the survey area during airgun operations, and during most periods when the *Langseth* is underway while the airguns are not operating. One Protected Species Observer will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real time spectrographic display for frequency ranges produced by cetaceans. PSOs monitoring the acoustical data will be on a shift for one to six hours. Besides the visual PSOs, an additional PSO with primary responsibility for PAM will also be aboard. All PSOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected while visual observations are in progress, the acoustic PSO will contact the PSVO immediately to alert him/her to the presence of the cetacean(s) (if they have not already been seen), and to allow a power-down or shut-down to be initiated, if required. The information regarding the vocalization will be entered into a database. The data to be entered include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (*e.g.,* unidentified dolphin, sperm whale), types and nature of sounds heard (*e.g.,* clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, *etc.*), and any other notable information. The acoustic detection can also be recorded for further analysis.

L–DEO will coordinate the planned protected species monitoring program associated with the CNMI seismic survey with other parties that may have interest in the area and/or be conducting marine mammal studies in the same region during the proposed seismic survey. L–DEO and NSF will coordinate with applicable U.S. agencies (*e.g.,* NMFS), and will comply with their requirements.

PSVO Data and Documentation

PSVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power-down or shut-down of the seismic source when a marine mammal is within or near the EZ.

When a sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, and age/size/sex categories (if determinable); behavior when first sighted and after initial sighting; heading (if consistent), bearing, and distance from seismic vessel; sighting cue; apparent reaction to the seismic source or vessel (*e.g.,* none, avoidance, approach, paralleling, *etc.*); and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) above will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations, as well as information regarding seismic source power-downs and shut-downs, will be recorded in a standardized format. The accuracy of data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results for the vessel-based observations will provide:

(1) The basis for real-time mitigation (airgun power-down or shut-down).

(2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS per terms of MMPA authorizations or regulations.

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

(4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

(5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report will be submitted to NMFS and NSF within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will be providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the amount and nature of potential "take" of marine mammals by harassment or in other ways.

All injured or dead marine mammals (regardless of cause) will be reported to NMFS as soon as practicable. Report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

Negligible Impact and Small Numbers of Marine Mammals Analysis and Determination

The Secretary, in accordance with paragraph 101(a)(5)(D) of the MMPA, shall authorize the take of small numbers of marine mammals incidental to specified activities other than commercial fishing within a specific geographic region if, among other things, he determines that the authorized incidental take will have a "negligible impact" on species or stocks affected by the authorization. NMFS implementing regulations codified at 50 CFR 216.103 states that a "negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Based on the analysis contained herein, of the likely effects of the specified activity on marine mammals and their habitat within the specific area of study for the CNMI marine geophysical survey, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS, on behalf the Secretary, preliminarily finds that L–DEO's proposed activities would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the proposed seismic survey would have a negligible impact on the affected species or stocks of marine mammals.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There is no subsistence hunting for marine mammals in the waters off of the coast of the CNMI that implicates MMPA Section 101(a)(5)(D).

Endangered Species Act (ESA)

Under Section 7 of the ESA, NSF has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this proposed seismic survey. NMFS Office of Protected Resources, Permits, Conservation and Education Division, has initiated formal consultation under Section 7 of the ESA with NMFS Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, if appropriate, authorizing incidental take. NMFS will conclude formal Section 7 consultation prior to making a determination on whether or not to issue the IHA. If the IHA is issued, L–DEO will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion issued to both NSF and NMFS Office of Protected Resources.

National Environmental Policy Act (NEPA)

With its complete application, L–DEO provided NMFS an EA analyzing the direct, indirect and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. The EA, prepared by LGL Environmental Research Associated (LGL) on behalf of NSF and L–DEO is entitled Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Commonwealth of the Northern Mariana Islands, April–June 2010 (L–DEO EA). Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or, after review and evaluation of the L–DEO EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopt the L–DEO EA and make a decision of whether or not to issue a Finding of No Significant Impact (FONSI).

Preliminary Determinations

NMFS has preliminarily determined that the impact of conducting the specific seismic survey activities described in this notice and the IHA request in the specific geographic region within the U.S. EEZ within the CNMI may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this proposed action.

For reasons stated previously in this document, the specified activities associated with the proposed survey are not likely to cause TTS, PTS or other non-auditory injury, serious injury, or death to affected marine mammals because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The fact that cetaceans would have to be closer than 940 m (0.6 mi) in deep water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing PTS;

(3) The fact that marine mammals would have to be closer than 3,850 m (2.4 mi) in deep water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance at causing TTS; and

(4) The likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel.

As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed monitoring and mitigation measures.

While the number of marine mammals potentially incidentally harassed will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential Level B incidental harassment takings (*see* Table 3 above) is estimated to be small, less than a few percent of any of the estimated population sizes based on the data disclosed in Table 2 of this notice, and has been mitigated to the lowest level practicable through incorporation of the monitoring and mitigation measures mentioned previously in this document. Also, there are no known important reproduction or feeding areas in the proposed action area.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to L–DEO for conducting a marine geophysical survey in the CNMI from April to June, 2010, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS' preliminary determination of issuing an IHA (*see* **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register,** NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 19, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–3869 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU21

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application for the Northeast Fisheries Science Center's (NEFSC) Study Fleet Program contains all of the required information and warrants further consideration. The EFP would exempt fishing vessels from minimum fish sizes and possession and landing limits for the purpose of collecting fishery dependent catch data and biological samples.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested

parties the opportunity to comment on EFP applications.

DATES: Comments must be received on or before *March 12, 2010.*

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *NERO.EFP@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: "Comments on NEFSC Study Fleet EFP." Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on NEFSC Study Fleet EFP." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, *phone:* 978–281–9165, *fax:* 978–281–9135.

SUPPLEMENTARY INFORMATION: The EFP would exempt federally permitted commercial fishing vessels from the regulations detailed below while participating in the Study Fleet Program and operating under projects managed by the NEFSC. The EFP would temporarily exempt participating vessels from minimum size and possession limits for the purpose of at-sea sampling and, in limited situations for research purposes only, to retain and land fish that would otherwise be prohibited.

Crew trained by the NEFSC Study Fleet Program in methods that are consistent with the current NEFSC observer protocol, while under normal fishing operations, would sort, weigh, and measure fish that are to be discarded. An exemption from the minimum fish sizes and possession limits for at-sea sampling is required because some discarded species would be on deck slightly longer than under normal sorting procedures.

The participating vessels would also be exempt from minimum size and possession limits because participating vessels, in limited situations, would be authorized to retain and land otherwise prohibited fish, for research purposes only. The vessels would be authorized to retain specific amounts of particular species in whole or round weight condition, including some undersized individuals and above the possession limits, in marked totes, which would be delivered to Study Fleet Program technicians. The participating vessels would be allowed to retain species below the minimum size requirement and above possession limits so that the vessels may collect biological samples. The NEFSC would require participating vessels to obtain written approval from the NEFSC Study Fleet Program prior to landing any fish in excess of possession limits and/or below minimum size limits to ensure that the landed fish do not exceed any of the Study Fleet Program's collection needs, as detailed below. None of the landed biological samples from these trips would be sold for commercial use or used for any other purpose other than research.

The table below details the regulations from which the participating vessels would be exempt. The participating vessels would be required to comply with all other applicable requirements and restrictions specified at 50 CFR part 648, unless specifically exempted in this EFP. Upon implementation of approved measures in Amendment 16 to the Multispecies Fishery Management Plan (FMP), all participating vessels must also comply with any other applicable requirements contained in regulations implementing the amendment. This includes the proposed regulation, at § 648.87(b)(1)(v) (74 FR 69454, December 31, 2009), that all catches of stocks allocated to Sectors by vessels on a Sector trip shall be deducted from the Sector's Annual Catch Entitlement (ACE) for each NE multispecies stock regardless of what fishery the vessel was participating in when the fish was caught. Additionally, once Amendment 16 to the Multispecies FMP is implemented, this EFP may be revised to reflect any changes in regulatory citations and to address any exemptions that may no longer be necessary.

NEFSC Study Fleet Program EFP

# of Vessels	Up to 50.
Possession	Temporary Possession for at-sea sampling plus limited landing.
Exempted regulations in 50 CFR part 648	*Size limits* § 648.83(a)(3) NE multispecies minimum size. § 648.93 Monkfish minimum fish size. § 648.103 Summer flounder minimum fish size. § 648.143(a) Black sea bass minimum fish size. *Possession limits* § 648.86(b) Atlantic cod. § 648.86(c) Atlantic halibut. § 648.86(e) White hake. § 648.86(g) Yellowtail flounder. § 648.86(g)(1) SNE Yellowtail flounder possession limit. § 648.86(j) GB Winter flounder. § 648.86(n)(1) Zero retention of SNE Winter flounder. § 648.94 Monkfish possession limit. § 648.22(c) Incidental possession limit of *Loligo.* § 648.322 Skate possession and landing restrictions. § 648.145 Black sea bass possession limits.

The following descriptions detail the NEFSC Study Fleet Program's Sampling Needs:

Haddock—Whole fish would be retained for maturity and fecundity research. The haddock retained would not exceed 30 fish per trip, or 360 fish for all trips. The maximum weight of haddock on any trip would not exceed 120 lb (54.43 kg) total weight per trip, and would not exceed 1,440 lb (653.17 kg) for all trips combined.

Yellowtail Flounder—Whole fish would be retained for maturity, fecundity, bioelectrical impedance analysis (BIA), food habits, and genetic research. The yellowtail flounder retained would not exceed 60 fish per month from each of the three stock areas (Gulf of Maine (GOM), Georges Bank (GB), Southern New England/Mid-Atlantic (SNE/MA)), or 1,800 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 50 lb (22.70 kg) total weight, and would not exceed 1,500 lb (680.39 kg) for all trips combined.

Summer Flounder—Whole fish would be retained for maturity, fecundity, BIA, food habits, and genetic research. The summer flounder retained would not exceed 60 fish per month from each of the three stock areas (GOM, GB, SNE/MA), or 1,800 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 100 lb (45.36 kg) total weight, and would not exceed 3,000 lb (1,360.78 kg) for all trips combined.

Winter Flounder—Whole fish would be retained for maturity, fecundity, BIA, food habits, and genetic research. The winter flounder retained would not exceed 60 fish per month from each of the three stock areas (GOM, GB, SNE/MA), or 1,800 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) total weight, and would not exceed 2,250 lb (1020.58 kg) for all trips combined.

Monkfish—Whole fish would be retained for maturity and fecundity research. Monkfish retained would not exceed 10 fish per trip, or 120 fish total for all trips. The maximum weight on any trip would not exceed 100 lb (45.36 kg) total weight, and would not exceed 1,200 lb (544.31 kg) for all trips combined.

Cod—Whole fish would be retained for tagging demonstrations and educational purposes. Cod to be retained would not exceed 15 fish per trip, or 60 cod for all trips. The maximum weight on any trip would not exceed 100 lb (45.36 kg) total weight, and would not exceed 600 lb (272.16 kg) for all trips combined.

Barndoor Skate—Whole and, in some cases, live skates would be retained for age and growth research and species confirmation. The barndoor skates retained would not exceed 20 fish per trip, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) total weight, and would not exceed 300 lb (136.08 kg) total for all trips combined.

Thorny Skate—Whole and, in some cases, live skates would be retained for age and growth research and species confirmation. Thorny skates retained would not exceed 20 fish per trip, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) whole weight, and would not exceed 300 lb (136.08 kg) total for all trips combined.

Black Sea Bass—Whole fish would be retained for examination of seasonal and latitudinal patterns in energy allocation. This effort is in support of an ongoing study at the NEFSC to evaluate BIA to measure fish energy density and reproductive potential for stock assessment. Black sea bass retained would not exceed 75 fish per trip or 300 black sea bass total for all trips. The maximum weight on any trip would not exceed 250 lb (113.40 kg) total weight, and would not exceed 1,000 lb (453.59 kg) total for all trips combined.

The applicant may make requests to NMFS for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted by NMFS without further notice if they are deemed essential to facilitate completion of the proposed research and result in only a minimal change in the scope or impact of the initially approved EFP request. In accordance with NOAA Administrative Order 216–6, a Categorical Exclusion or other appropriate NEPA document would be completed prior to the issuance of the EFP. Further review and consultation may be necessary before a final determination is made to issue the EFP. After publication of this document in the **Federal Register,** the EFP, if approved, may become effective following a 15-day public comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 22, 2010.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–3890 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XU57

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will conduct an educational workshop on catch shares in cooperation with the Fisheries Leadership and Sustainability Forum (FLSF), the Atlantic States Marine Fisheries Commission (ASMFC), and the National Marine Fisheries Service (NMFS). The intent of this workshop is to share information and concerns about the use of catch shares by the MAFMC in managing fisheries within its jurisdiction and help decision makers learn from catch share management successes, failures, and challenges in other regions.

DATES: The workshop will be held Tuesday, March 16, 2010 through Thursday, March 18, 2010.

ADDRESSES: The workshop will be held at the Kingsmill Conference Center, 1010 Kingsmill Road, Williamsburg, VA, 23185; telephone: (800) 832–5665.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The workshop will begin with participants' registration at 10 a.m. on Tuesday, March 16, 2010 and recess at 5:30 p.m. or when business is completed; reconvene at 8:30 a.m. on Wednesday, March 17, 2010 and recess at 5:45 p.m. or when business is completed; and, reconvene at 8:30 a.m. on Thursday, March 18, 2010 and recess no later than 4 p.m. An agenda and briefing materials will be posted to the Council website (*www.mafmc.org*) as they become available.

The workshop will be an educational forum to discuss catch share fishery management strategies. The term ≥catch share≥ encompasses a broad spectrum of fishery management systems that share a common approach: allocating a portion of a scientifically determined catch limit to a discrete set of users (i.e. individuals, groups, or communities). The MAFMC adopted the first catch share programs in the United States when it implemented an ITQ (individual transferable quota) program for the surfclam and ocean quahog fisheries in 1990. The MAFMC also recently (2009) implemented a catch share system for tilefish (IFQ - individual fishing quota).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aid should be directed to M. Jan Bryan, (302) 674–2331 ext 18, at least 5 days prior to the meeting date.

Dated: February 22, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–3805 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XU58

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold the following meetings in the Mariana islands: Rota Community Meeting; Tinian Community Meeting, Saipan Community Meeting, Commonwealth of the Northern Mariana Islands (CNMI) Student Symposium, Mariana Archipelago Fishery Ecosystem Plan Team (PT) Meeting, CNMI Regional Ecosystem Advisory Committee (REAC), Guam REAC, Mariana Archipelago Advisory Panel (AP) Meeting, Guam Student Symposium, 103rd Scientific and Statistical Committee (SSC) and 147th Council meetings to take recommendations and action on fishery management issues in the Western Pacific Region.

DATES: The Rota Community meeting to be held March 11, 2010, Tinian Community Meeting to be held March 12, 2010, Saipan Community Meeting and CNMI Student Symposium to be held March 13, 2010, Mariana Archipelago Ecosystem PT to be held March 15, 2010, the CNMI REAC to be held March 16, 2010, the Guam REAC to be held March 18, 2010, the 103rd SSC Meeting to be held March 17–19 2010, Mariana Archipelago AP and Guam Student Symposium to be held March 20, 2010, and the 147th Council meeting to be held March 21–26, 2010. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The CNMI Community Meetings will be held at the Rota Social Hall, Tinian Elementary School Cafeteria and the Fiesta Resort and Spa, Saipan.

The Marianas PT and CNMI REAC meetings will be held at the Multipurpose Center, Saipan. The Marianas AP and Guam REAC meeting will be held at the Guam Hilton.

The CNMI Student Symposium will be held at the Fiesta Resort and Spa, Saipan, and the Guam Student Symposium will be held at the Guam Hilton, Guam.

The 103rd SSC will be held at the Guam Hilton.

The 147th Council meeting will be held at the Fiesta Resort and Spa, Saipan and at the Guam Hilton on Guam.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the SSC and Council will hear recommendations from Council advisory groups. Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for Rota, Tinian and Saipan Community Meetings

Rota 3 p.m. - 9 p.m. Thursday, March 11, 2010; Tinian 3 p.m. - 9 p.m. Friday, March 12, 2010; Saipan 3 p.m. - 9 p.m. Saturday, March 13, 2010

The Rota, Tinian and Saipan community meetings will feature a traditional fishing demonstration and discussion of traditional fishing practices from 3 p.m. to 5:30 p.m. The remainder of the meeting will include presentations and discussions on the Mariana Archipelago Lunar Calendar, CNMI Bottomfish Permit Requirement, CNMI Division of Fish and Wildlife Biosampling Program and Community Grant Opportunities. The Council will seek public comment on proposed Management Measures for Non-commercial Fishing in the Marianas Trench Marine National Monument.

Schedule and Agenda for CNMI Student Symposium

9 a.m. - 2 p.m. Saturday, March 13, 2010

The Student Symposium will include presentations on the High School Summer Courses in the Marianas and highlights of the Hawaii and American Samoa courses and videos. Students will be able to participate in an "open house" session to feature information on the Council, traditional fisheries in the Marianas, local fishery agency programs, educational opportunities for students, and fisheries role in the community.

Schedule and Agenda for the Mariana Archipelago Fishery Ecosystem Plan Team Meeting

9 a.m. - 4 p.m. Monday, March 15, 2010

The PT will review the status of 2009 PT recommendations. The PT will discuss and may make recommendations on the Mariana Archipelago Annual Report Modules for bottomfish, coral reef, and crustacean fisheries and on the separation of Coral Reef Ecosystem Management Unit Species and Bottomfish Management Unit Species complexes. Reports will be provided on monitoring activities and projects including, the November 2009 Fishery Data Workshop, NMFS biosampling program, Guam bottomfish biosampling project, CNMI bottomfish regulations and compliance, Mariana Humphead Wrasse Study and coral reef priority setting. The PT will review and make recommendations on the following Council actions:

A. Marianas Trench Monument Non-Commercial Fishing Management Measures

B. Recommendations on a Process for Establishing Annual Catch Limits

C. Recommendations on Framework Measures for Fishery Ecosystem Plans of the Western Pacific

D. Recommendations on Management Measures for Aquaculture in the Western Pacific

E. Recommendations on Options for Exemptions from Federal Fishery Permits

F. Recommendations on Cooperative Research Projects

Schedule and Agenda for Marianas Archipelago Fishery Ecosystem Plan Regional Ecosystem Advisory Committee (CNMI REAC)

9 a.m. - 4 p.m. Tuesday, March 16, 2010

The CNMI REAC will meet to review progress on the 2009 REAC recommendations and to hear reports on, discuss and consider developing recommendations on the following upcoming 147th Council Meeting Actions:

A. Management Measures for Non-Commercial Fishing in the Marianas Trench Marine National Monument

B. Recommendations on Management Measures for Aquaculture in the Western Pacific

C. Recommendations on Cooperative Research Projects

In addition, the CNMI REAC will hear reports on, discuss and consider developing recommendations on CNMI Coral Reef Priority Setting Document,

Micronesian Challenge meeting, Division of Fish and Wildlife biosampling program, tangison and atuhong in the Marianas, Mariana Archipelago lunar calendar and the status of the sea turtle recovery plan and funding. The REAC will also hear reports on the status of the CNMI bottomfish regulations and compliance, marine education and training program, Community Demonstration Projects Program, sanctuary scoping and outreach funding and other local issues.

Schedule and Agenda for SSC Meeting

8:30 a.m. - 5 p.m. Wednesday, March 17, 2010

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 102nd SSC Meeting Recommendations
4. Report from the Pacific Islands Fisheries Science Center Director
5. Program Planning
A. ACLs Process-Ongoing Action
B. Data Workshop Report
C. Second National SSC Meeting Report
1. Catch Data Work Group Report
D. NOAA National Catch Shares Guidelines
E. Public Comment
F. Discussion and Recommendations
6. Insular Fisheries
A. Mariana Archipelago
1. Draft omnibus FEP amendment for non commercial fishing in the Marianas Trench, Rose Atoll, Pacific Remote Island Area Monuments
2. History of the Pelagic Fishing in the Marianas
B. Mariana Division of Fish & Wildlife reef fish life history investigations
C. American Samoa Archipelago
1. Tsunami Impacts on Nearshore Ecosystems
D. Hawaii Archipelago
1. Options for Refining Essential Fish Habitat for Main Hawaiian Islands Bottomfish
E. Insular Fishery Ecosystem Plan Team Recommendations
F. Public Comment
G. Discussion and Recommendations

8:30 a.m. - 5 p.m. Thursday, March 18, 2010

7. Pelagic Fisheries
A. Hawaii Longline Bigeye Tuna Management Under a Catch Limit
B. Options to modify Hawaii deep set tuna longline swordfish catch limit
C. Monitoring the dynamic changes of economic performance of the Hawaii Longline Fisheries
D. Addressing Hawaii Bigeye and Yellowfin Insular Populations
E. American Samoa and Hawaii Longline Quarterly Reports
F. Bigeye Tuna Catch Limit Monitoring
G. Bigeye Tuna Stock Assessment Review
H. International Fisheries/Meetings
1. Sixth Session of the Western and Central Pacific Fishery Commission
2. Eighth meeting to establish a North Pacific Regional Fishery Management Arrangement
I. Pelagic Plan Team Recommendations
J. Public Comment
K. Discussion and Recommendations
8. Protected Species
A. False Killer Whale Take Reduction Team Report
B. Monk Seal Recovery Team Meeting Report
C. Public Comment
D. Discussion and Recommendations

8:30 a.m. - 5 p.m. Friday March 19, 2010

9. Other Business
A. Coral Reef Fisheries Workshop
B. 104th SSC Meeting
10. Summary of SSC Recommendations to the Council

Schedule and Agenda for the Guam REAC Meeting

9 a.m. - 4 p.m. Thursday March 18, 2010

The Guam REAC will meet to hear reports on, discuss and consider developing recommendations on the following upcoming 147th Council Meeting Actions:

A. Management Measures for Non-Commercial Fishing in the Marianas Trench Marine National Monument

B. Recommendations on Management Measures for Aquaculture in the Western Pacific

C. Recommendations on Cooperative Research Projects

In addition, the Guam REAC will hear reports on and discuss Council comments on the Military buildup Draft Environmental Impact Statement, recommendations to the US Department of Defense on Military Activities, Green Sea Turtle Recovery Plan, Marine Spatial Planning, coral reef ecosystem threats, truth in science, Western and Central Pacific Fisheries Commission, indigenous Fishing Rights -- access to safe, healthy habitat for sustainable fishing, developing a community consultation process and community opportunities.

Schedule and Agenda for Mariana Archipelago Advisory Panel Meeting

9 a.m. - 5 p.m. Saturday March 20, 2010

The Mariana Archipelago Advisory Panel members will meet to review, discuss and consider recommendations on the following upcoming 147th Council Meeting Actions:

A. Management of Marianas Trench Marine National Monument Non-Commercial Fishing Measures

B. Recommendations on a Process for Establishing Annual Catch Limits

C. Recommendations on Management Measures for Aquaculture in the Western Pacific

D. Recommendations on Cooperative Research Projects

In addition, the AP will hear reports on the status of past fishery management actions, including purse seine Fish Aggregation Device (FAD) amendment, longline and purse seine area closure and CNMI Bottomfish permit and reporting. Other issues to be discussed will include military activities in the Mariana archipelago, coral reef Local Action Strategy (LAS) priority setting, indigenous fishing rights, NMFS biosampling program, UOG fish life history studies, fishery agency reports, green sea turtle Endangered Species Act recovery criteria and emerging fishery issues.

Schedule and Agenda for Guam Student Symposium

9 a.m. - 4 p.m. Saturday March 20, 2010

The Student Symposium will include presentations on the High School Summer Courses in the Marianas and highlights of the Hawaii and American Samoa courses and videos. Students will be able to participate in an "open house" booth session that will feature information on the Council, traditional fisheries in the Marianas, local fishery agency programs, educational opportunities for students, and fisheries role in the community.

Schedule and Agenda for 147th Council Meeting

147th Council Meeting, Fiesta Resort & Spa, Saipan

Sunday, March 21, 2010 - 2 p.m. - 4 p.m.

Executive and Budget Standing Committee Meeting

Monday, March 22, 2010 - 8:30 p.m. - 5 p.m.

1. Opening Ceremony
2. Introductions
3. Approval of Agenda
4. Approval of the 146th Meeting Minutes
5. Executive Director's Report
6. Agency Reports
A. National Marine Fisheries Service
1. Pacific Islands Regional Office
2. Pacific Islands Fisheries Science Center

B. NOAA Regional Counsel
C. U.S. Fish and Wildlife Service
D. Enforcement
1. U.S. Coast Guard
2. NMFS Office for Law Enforcement
3. NOAA GC for Enforcement and Litigation
4. National Marine Sanctuaries Program
7. Marianas Archipelago
A. Arongo flaeey
B. Legislative Report
C. Enforcement Issues
D. Action Items
1. Recommendations on Management Measures for Non-Commercial Fishing in the Marianas Trench Marine National Monument
E. Community Activities and Issues
1. Economic Stimulus
2. Report on Student Symposium
3. Report on Marianas Community Workshop
F. Update on Military Activities
1. Marianas Islands Range Complex
2. Military Build up
G. NMFS PIRO CNMI Sea Turtle Coordinator Report
H. Education and Outreach Initiatives
I. Marianas Fishery Ecosystem Plan (FEP)-CNMI Advisory Panel Recommendations
J. Marianas FEP-CNMI Plan Team Recommendations
K. Marianas FEP-CNMI REAC Recommendations
L. SSC Recommendations
M. Public Hearing
N. Council Discussion and Action
8. American Samoa Archipelago
A. Motu Lipoti
B. Fono Report
C. Enforcement Issues
D. Action Items
1. Recommendations on Management Measures for Non-Commercial Fishing in the Rose Atoll Marine National Monument
E. Community Activities and Issues
1. Economic Recovery and Stimulus
2. Disaster Relief
F. Education and Outreach Initiatives
G. American Samoa Plan Team Recommendations
H. SSC Recommendations
I. Public Hearing
J. Council Discussion and Action

6 p.m. - 9 p.m. Fishers Forum - Fishermen as Scientists

Tuesday, March 23, 2010 - 9 a.m. - 5 p.m.

9. Program Planning and Research
A. Action Items
1. Recommendations on a Process for Establishing Annual Catch Limits
2. Recommendations on Management Measures for Non-commercial Fishing in the PRI Marine National Monument
3. Recommendation on Framework Measures for Fishery Ecosystem Plans of the Western Pacific
4. Recommendations on Management Measures for Aquaculture in the Western Pacific
5. Recommendations on Management Measures for Hancock Seamount
6. Recommendations on Options for Exemptions from Federal Fishery Permits
B. Report on Western Pacific Fishery Data Workshop
C. Report on Joint AP Meeting
D. NOAA Draft Catch Shares Policy
E. National Ocean Policy and Marine Spatial Planning
F. Local, National & International Education and Outreach Initiatives
G. Hawaii Plan Team Recommendations on PRIA Monument
H. SSC Recommendations
I. Public Hearing
J. Council Discussion and Action
10. Public Comment on Non-Agenda Items

147th Council Meeting, Guam Hilton, Guam

Thursday, March 25, 2010 - 9 a.m. - 5 p.m.

11. Opening Ceremony
12. Introductions
Guest Speaker: TBA
13. Marianas Archipelago - Guam
A. Isla Informe
B. Legislative Report
C. Enforcement Issues
D. Action Items
1. Recommendations on Management Measures for Non-Commercial Fishing in the Marianas Trench Monument
E. Community Activities and Issues
1. Report on Student Symposium
2. Report on Marianas Community Workshop
F. Education and Outreach Initiatives
G. Marianas FEP-Guam Advisory Panel Recommendations
H. Marianas FEP-Guam Plan Team Recommendations
I. Marianas FEP-Guam REAC Recommendations
J. SSC Recommendations
K. Public Hearing
L. Council Discussion and Action
14. Pelagic & International Fisheries
A. Action Items
1. Recommendations on Hawaii Longline Bigeye Tuna Management Under a Catch Limit
2. Recommendations on Options to Modify the Hawaii Deep-set Tuna Longline Swordfish Fishery Catch Limit
3. Recommendations on Modifications to the American Samoa Longline Limited Entry Program
B. Review of Pacific Bigeye Tuna Stock Assessment
C. International Fisheries
1. 5th International Fishers Forum (IFF5)
2. Western Central Pacific Fisheries Commission
D. Protected Species
1. Japan Sea Turtle Community Network
2. False Killer Whale Take Reduction Team Workshop Report
3. Monk Seal Recovery Team Meeting Report
E. Pacific Pelagic Advisory Panel Recommendations for the Marianas
F. Pelagic Plan Team Recommendations
G. SSC Recommendations
H. Public Hearing
I. Council Discussion and Action
15. Public Comment on Non-Agenda Items

6 p.m. - 9 p.m. - Fishers Forum

Friday, March 26, 2010 - 9 a.m. - 5 p.m.

16. Hawaii Archipelago
A. Moku Pepa
B. Legislative Report
C. Enforcement Issues
D. Action Items
1. Recommendations on Options for Refining Essential Fish Habitat for the MHI Bottomfish Fishery
E. Community Activities and Issues
1. Economic Stimulus
F. SSC Recommendations
G. Public Comment
H. Council Discussion and Action
17. Administrative Matters
A. Financial Reports
B. Administrative Reports
C. Standard Operating Procedures and Practices Review and Changes
D. Meetings and Workshops
E. Other Business
F. Standing Committee Recommendations
G. Public Comment
H. Council Discussion and Action
18. Other Business

Non-Emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 147th meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language

interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 22, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–3806 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–964, A–201–838]

Seamless Refined Copper Pipe and Tube From the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations

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

DATES: *Effective Date:* February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan (the People's Republic of China) or Joy Zhang (Mexico), AD/CVD Operations, Offices 4 and 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4081 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determinations

On October 20, 2009, the Department of Commerce ("the Department") initiated the antidumping investigations of Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico. *See Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations,* 74 FR 42852 (October 27, 2009).

The notice of initiation stated that unless postponed the Department would issue the preliminary determinations for these investigations no later than 140 days after the date of initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended ("the Act"). The preliminary determinations were originally due no later than March 9, 2010. After being tolled for seven days, the preliminary determinations are currently due no later than March 16, 2010. *See* Memorandum For The Record from Ronald Lorentzen, DAS for Import Administration, titled "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

On February 12, 2010, Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "Petitioners"), made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determinations. The petitioners requested postponement of the preliminary determinations in order to ensure that the Department has adequate time to conduct a complete and thorough investigation of respondents in these proceedings.

Because there are no compelling reasons to deny the request, the Department is postponing the deadline for the preliminary determinations pursuant to section 733(c)(1)(A) of the Act to May 5, 2010, the 190th day from the date of initiation, when adjusted for the seven days referenced above. The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations, unless postponed.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: February 18, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–3881 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT90

Takes of Marine Mammals Incidental to Specified Activities; Seabird and Pinniped Research Activities in Central California

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to PRBO Conservation Science (PRBO), to incidentally harass, by Level B harassment only, four species of marine mammals during the specified activity.

DATES: This authorization is effective from February 19, 2010, through February 18, 2011.

ADDRESSES: A copy of the IHA and the application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application may be obtained by writing to this address, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody (301) 713–2289, ext. 113 or Monica DeAngelis, NMFS Southwest Region, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or stock, for periods of not more than one year, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45–day time limit for NMFS' review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

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

Summary of Request

NMFS received an application on October 13, 2009, from PRBO for the taking by harassment, of marine mammals incidental to conducting seabird and pinniped research operations in central California.

Seabird research activities involve censusing shorebirds; conducting observational and marking studies of breeding seabirds and viewing breeding seabirds from observation blinds. Pinniped research activities involve monitoring breeding northern elephant seals (*Mirounga angustirostris*) to determine attendance patterns; resighting previously-tagged elephant seals; and conducting weekly pinniped censuses.

The action area consists of the following four locations: Southeast Farallon Island (SEFI), West End Island (WEI), Año Nuevo Island (ANI), and Point Reyes National Seashore (PRNS). SEFI and WEI are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, California, and are located within the waters of the Gulf of the Farallones National Marine Sanctuary (NMS). ANI is located one-quarter mile (402 m) offshore of Año Nuevo Point in San Mateo County, CA, is part of the Año Nuevo State Reserve, and lies within the Monterey Bay NMS and the newly established Año Nuevo State Marine Conservation Area. PRNS is located 40 miles (64.3 km) north of San Francisco Bay and lies within close proximity (6 mi, 9.6 km) of the Cordell Bank NMS.

Acoustic and visual stimuli generated by noise generated during boat landing operations, research activities (e.g., mark and recapture of seabirds, censusing of pinnipeds) and human presence (e.g., transiting in the vicinity of the haul out areas, resupplying field stations), may have the potential to cause the pinnipeds hauled out to flush into the surrounding water or to cause a short-term behavioral disturbance. These types of disturbances are the principal means of marine mammal taking associated with these activities and PRBO has requested an authorization to take 5,000 California sea lions (*Zalophus californianus*); 418 Pacific harbor seals (*Phoca vitulina*); 253 northern elephant seals; and 20 Steller sea lions (*Eumetopias jubatus*) by Level B harassment.

Summary of the Final Report for the 2008 IHA

In compliance with the 2008 IHA, PRBO submitted a final report on the seabird and pinniped research activities conducted during the period of December 12, 2007 to December 11, 2008. A summary of that report follows.

Researchers at Southeast Farallon Island observed marine mammal takes during year round daily observations, bimonthly field station resupply trips, and murre observations at North Landing during the spring and summer. PRBO reported three takes of Steller sea lions, 39 takes of Pacific harbor seals, 45 takes of northern elephant seals, and 616 takes of California sea lions.

Researchers at Año Nuevo Island observed marine mammal takes during occasional visits for spring/summer seabird monitoring, and one field station resupply trip. For ANI, PRBO reported nine takes of Pacific harbor seals, 10 takes of Steller sea lions, 43 takes of northern elephant seals, and 430 takes of California sea lions.

PRBO did not conduct seabird research on PRNS during December 12, 2007 to December 11, 2008. Thus, they reported no data for this site.

In summary, the total number of potentially harassed marine mammals for all seabird and pinniped research activities were below the take limits as authorized in 2008 IHA. No dead or injured marine mammals were reported for any of the events. Accordingly, these monitoring results support NMFS' initial findings that PRBO's seabird and pinniped research activities will result in no more than Level B harassment of small numbers of marine mammals and that the effects will be limited to short-term behavioral changes.

Description of the Specified Activity

PRBO will conduct seabird and pinniped research activities on SEFI, WEI, ANI, and PRNS between February 19, 2010 and February 18, 2011. NMFS has provided a detailed overview of the activity in the notice of the proposed IHA (74 FR 61109, November 23, 2009). No changes have been made to the proposed activities.

Seabird Research

Southeast Farallon Island (SEFI): PRBO researchers will census, observe, and conduct marking studies of SEFI's seabird community year-round (approximately 1,080 visits annually). These activities will involve one or two researchers transiting to one of the island's two landings using a 14 to 18 feet (ft) (4.3 to 5.5 meters (m)) open motorboat. The researchers will hoist the motorboat onto the island using a derrick system. During the study, the researchers plan to visit the observation sites approximately one to three times per day for 15–minute (min) periods. From early April through early August, the observers will extend the duration of the work period from 15 min to two- to five-hour (hr) periods. Most intertidal areas of SEFI, where marine mammals are present, are rarely visited during the conduct off seabird research. In both locations (the North Landing and East Landing) the observers are located greater than 50 ft (15.2 m) above any pinnipeds which may be hauled out.

Año Nuevo Island (ANI): PRBO researchers will monitor seabird burrow nesting habitat quality and habitat restoration efforts year-round (approximately 30 visits annually). This activity involves two to three researchers accessing the island by a 12–ft (3.7 m) Zodiac boat. During the study, the researchers plan to monitor the seabirds (April through August); conduct restoration and monitoring activities (September through November); and carry out intermittent visits throughout the rest of the year. During the study, the researchers plan to visit the nesting boxes approximately once a week for 15 min. The landing area and the nesting boxes are located more than 50 ft (15.2 m) away from any pinniped haul out area.

Point Reyes National Seashore (PRNS): PRBO researchers will monitor seabird breeding and roosting colonies; conduct habitat restoration; remove non-native plants, monitor the intertidal areas, and maintain coastal dune habitat year round (approximately 18 visits annually). Seabird monitoring involves one or two researchers surveying the colonies using small boats (12 to 22 ft)

along the PRNS shoreline. A majority of the research occurs in areas where pinnipeds are not present.

Pinniped Research

West End Island (WEI): PRBO researchers in collaboration with the National Park Service conduct marine mammal research under NMFS Scientific Permit 373–1868. PRBO intends to survey breeding elephant seals on WEI between early December and late February. PRBO conducts approximately five surveys per year, each lasting approximately two hours. These surveys involve three observers moving approximately 1,500 ft (457.2 m) above pinniped colonies to census northern elephant seal areas. The researchers will transit adjacent to a Steller sea lion haulout area to reach the northern elephant seal colony and their journey will last approximately 30 min in duration.

Field Station Resupply on SEFI

PRBO will resupply the field station once every two weeks for a maximum of 26 visits per year. These visits to either the North Landing or East Landing will last one to three hours and involve launching of the boat with one operator along with two to four researchers assisting with the operations from land. At East Landing the primary landing site all personnel assisting with the landing will stay on the loading platform 30 ft (9.1 m) above the water. At North Landing, loading operations would occur at the water level in the intertidal areas.

NMFS expects that acoustic and visual stimuli resulting from these activities (resupply activities, boat approaches and departures, operation of the derrick system, and human presence) have the potential to disturb pinnipeds hauled out on SEFI, WEI, ANI, and PRNS.

Comments and Responses

NMFS published a notice of receipt of the PRBO application and proposed IHA in the **Federal Register** on November 23, 2009 (74 FR 61109). During the 30–day comment period, NMFS received a letter from the Marine Mammal Commission (Commission) which recommended that NMFS issue the requested authorization, provided that the required mitigation measures and monitoring are carried out (e.g., researchers speaking in hushed voices, use of observation blinds, postponing landing boats after pinnipeds have entered the water, and coordinating visits to the island) as described in NMFS' November 23, 2009 (74 FR 61109), notice of the proposed IHA and the application. All measures proposed in the initial **Federal Register** notice are included in the authorization and NMFS has determined that they will effect the least practicable impact on the species or stocks and their habitats.

Comment 1: The Commission further recommended that any IHA issued to PRBO for seabird and pinniped research activities specify that, if a death or serious injury of a marine mammal occurs that appears to be related to the research activities be suspended while the Service determines whether steps can be taken to avoid further injuries or deaths or until such taking has been authorized by regulations promulgated under section 101(a)(5)(A) of the MMPA.

Response: NMFS concurs with the Commission's recommendation and has included a requirement to this effect in the IHA. NMFS authorizes the applicant to take marine mammals by Level B harassment only.

Marine Mammals Affected by the Activity

The marine mammal species most likely to be harassed incidental to seabird and pinniped research activities are the California sea lion, Pacific harbor seal, the eastern Distinct Population Segment (DPS) of Steller sea lion, and the northern elephant seal on SEFI, WEI, ANI, and PRNS.

California sea lions, Pacific harbor seals, and northern elephant seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The eastern DPS of the Steller sea lion is listed as threatened under the ESA and is categorized as depleted under the MMPA. NMFS' discussion of these species is included in the notice of the proposed IHA (74 FR 61109, November 23, 2009). Refer to Caretta *et al.* (2008) and Angliss and Allen (2009) for information on these species at the following URLs: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2008.pdf* and *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2008.pdf*.

Potential Effects of the Activities on Marine Mammals

Level B harassment of pinnipeds has the potential to occur during approach to landing sites on SEFI, WEI, ANI, or PRNS due to acoustic and visual stimuli caused by the motorboat and the use of the derrick system. It is likely that the initial motorboat approach to the shore would cause a subset, or all of the marine mammals hauled out to depart the beach and flush into the water. The pinnipeds' movement into the water is expected to be gradual due to the required, controlled boat approaches (see Mitigation) as well as behavioral habituation on the part of the animals to repeated boat trips throughout the day. During the sessions of boat activity, some animals may be temporarily displaced from the landing areas and either raft in the water or relocate to other haul outs.

Level B harassment also has the potential to occur as a result of acoustic and visual stimuli related to human presence. The only anticipated impacts would be temporary disturbances caused by the appearance of researchers near the pinnipeds. The potential disturbance might alter pinniped behavior and cause animals to flush from the area. Animals may return to the same site once researchers have left or go to an alternate haul out site, which usually occurs within 30 min (Allen *et al.*, 1985). Long term effects of this disturbance are unlikely, as very few breeding animals will be present in the vicinity of the proposed seabird research areas.

It is expected that any incidental disturbance to pinnipeds from seabird and pinniped research would have minimal, short-term effects and no long-term effects on the individuals. Incidental disturbance is believed to have minimal impacts because pinnipeds usually return to a site or a nearby site within 30 min upon conclusion of research activities (Allen *et al.*, 1985). Numerous IHAs and Letters of Authorizations issued under the MMPA, Incidental Take Statements issued under Section 10(a)(1)(b) of the ESA (e.g. 72 FR 124, January 3, 2007), and reports on more localized areas (e.g., Demarchi and Bentley, 2004) have analyzed the potential effects of incidental disturbance to pinnipeds from various sources. Based on these reports, the effects to pinnipeds appear, at the most, to displace the animals temporarily from their haul out sites. Based on previous monitoring reports from PRBO, maximum disturbance to Steller sea lions would result in the animals flushing into the water in response to presence of the researchers. It is not expected that pinnipeds would permanently abandon a haul-out site during PRBO's research, as precautions would be taken to not disturb the same haul-out site on frequent occasions.

No research would occur on pinniped rookeries; therefore, the potential for mother and pup separation or crushing of pups is negligible. In PRBO's final report of activities conducted between December 12, 2007 to December 11, 2008 for the 2008 IHA, they reported disturbing three Steller sea lions on

SEFI and 10 Steller sea lions on ANI during all surveys.

Possible Effects of Activities on Marine Mammal Habitat

PRBO's seabird and pinniped research activities will not significantly affect the geology or the marine environment in and around SEFI, WEI, ANI, and PRNS. No impacts to marine mammal habitats used by northern elephant seals, Pacific harbor seals, northern elephant seals, or Steller sea lions that may haul-out on SEFI, WEI, ANI, and PRNS are anticipated.

Mitigation and Monitoring

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities, PRBO and/or its designees will undertake the following marine mammal mitigation measures and monitoring protocols:

(1) Abide by all of the Terms and Conditions listed in the Incidental Take Statement for NMFS' 2008 Biological Opinion.

(2) Abide by the Terms and Conditions of Scientific Research Permit 373–1868.

(3) Minimize the potential for disturbance (to the lowest level practicable near known pinniped haul outs by boat travel and pedestrian approach during pinniped and seabird research operations).

(4) Postpone beach landings on Año Nuevo Island only after any pinnipeds that might be present on the beach have entered the water.

(5) Select a pathway of approach to research sites that minimizes the number of marine mammals harassed, with the first priority being avoiding the disturbance of Steller sea lions at haul-outs.

(6) Monitor for offshore predators and not approach hauled out Steller sea lions if great white sharks (Carcharodon carcharias) or killer whales (Orcinas orca) are seen in the area. If predators are seen, eastern DPS Steller sea lions must not be disturbed until the area is free of predators.

(7) Keep voices hushed and bodies low in the visual presence of pinnipeds.

(8) Conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled out pinnipeds.

(9) Crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.

(10) Coordinate research visits to intertidal areas of Southeast Farallon Island (to reduce potential take) and to coordinate research goals for Año Nuevo Island to minimize the number of trips to the island. Once on Año Nuevo Island, researchers would coordinate monitoring schedules so that areas near any pinnipeds would be accessed only once per visit.

(11) Coordinate monitoring schedules on Año Nuevo Island, so that areas near any pinnipeds would be accessed only once per visit.

(12) Have the lead biologist serve as an observer to evaluate incidental take and halt any research activities should the potential for incidental take be too great.

(13) Take notes of pinnipeds observed within the research area. The notes would provide dates, location, species, the researcher's activity, behavioral state, numbers of pinnipeds that moved greater than one meter, and numbers of pinnipeds that flushed into the water.

NMFS conducted a formal section 7 consultation under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) in 2008. After issuance of the proposed 2010 IHA, NMFS reviewed the Terms and Conditions of the 2008 Biological Opinion (BiOp) which directed the PRBO researchers to monitor the offshore environment for predators such as great white sharks or killer whales before approaching hauled out Steller sea lions. If predators were seen, the researchers would halt operations until the area was deemed free of predators. NMFS deemed this mitigation measure appropriate for ensuring Steller sea lion safety in the study area and adopted this requirement into the 2010 IHA.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one Añother: (1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Draft Report: PRBO will submit a draft final report to the Assistant Regional Administrator (ARA) for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 and to the Chief, Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, 1315 East West Highway, SSMC3 13822, Silver Spring, MD 20910 within 90 days after the expiration of the IHA. This report must contain the following information: dates, location, species, the researcher's activity, behavioral state, numbers of pinnipeds that moved greater than one meter, and numbers of pinnipeds that flushed into the water, along with an executive summary. If NMFS decides that the draft final report needs no comments, the draft final report will be considered to be the final report.

Final Report: PRBO will submit a final report to the ARA for Protected Resources, Southwest Region and to the Chief, Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft final report.

In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, (which is highly unlikely), PRBO and/or its designees will immediately cease operations and report the incident,

within 48 hours, to the Southwest Region, Assistant Regional Administrator (ARA) for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4020; fax (562) 980–4027; and to the Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service (NMFS), phone (301) 713–2289.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

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

Only take by Level B harassment is anticipated and authorized as a result of the seabird and pinniped research activities. Acoustic and visual stimuli generated by boat landings/departures, the operation of the derrick system, and noise generated during research activities and maintenance activities have the potential to cause the pinnipeds hauled out on SEFI, WEI, ANI, and PRNS to flush into the surrounding water or to cause a short-term behavioral disturbance. There is no evidence that the planned activities could result in injury or mortality. The required mitigation and monitoring measures will minimize any potential risk for injury or mortality.

NMFS estimates that a maximum of 5,000 California sea lions, 418 Pacific harbor seals, 253 northern elephant seals, and 20 Steller sea lions could be potentially affected by Level B harassment over the course of the IHA. This estimate is based on PRBO's previous research experiences conducted in the proposed research area and on marine mammal research activities in these areas. All of the potential takes are expected to be Level B behavioral harassment only. Because of the mitigation measures that will be required and the likelihood that some pinnipeds will avoid the area, injury or mortality to pinnipeds is neither expected nor requested.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined" negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified altivity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers: (1) the number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, and intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

As mentioned previously, NMFS estimates that a maximum of 5,000 California sea lions, 418 Pacific harbor seals, 253 northern elephant seals, and 20 Steller sea lions could be potentially affected by Level B harassment over the course of the IHA. These incidental harassment take numbers represent approximately one percent of the U.S. stock of California sea lion, 1.2 percent of the California stock of Pacific harbor seal, less than one percent of the California breeding stock of northern elephant seal, and 0.04 percent of the eastern DPS of Steller sea lion. For each species, these numbers are small relative to the population size.

No injuries or mortalities are anticipated to occur as a result of the PRBO's planned seabird and pinniped research activities, and none are authorized. Takes will be limited to Level B behavioral harassment over the course of the IHA.

Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the research activities. No mortality or injury is expected to occur, and due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting seabird and pinniped research on SEFI, WEI, ANI, and PRNS may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the seabird and pinniped research activities, may be made by these species to avoid the resultant boat landing/takeoff and visual disturbance from human presence, the availability of alternate areas within these areas and haulout sites, and the short and sporadic duration of the research activities, have led NMFS to determine that this action will have a negligible impact on California sea lions, Pacific harbor seals, northern elephant seals, and Steller sea lions.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that the PRBO's planned seabird and pinniped research activities, will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from seabird and pinniped research activities will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act

The Steller sea lion, eastern DPS is listed as threatened under the ESA and occurs in the research area. NMFS Headquarters' Office of Protected Resources, Permits, Conservation, and Education Division conducted a formal section 7 consultation under the ESA. On November 18, 2008, NMFS issued a Biological Opinion (2008 BiOp) and concluded that the issuance of an IHA is likely to affect, but not likely to jeopardize the continued existence of Steller sea lions. NMFS has also issued an incidental take statement (ITS) for Steller sea lions pursuant to section 7 of the ESA. The ITS contains reasonable and prudent measures for implementing terms and conditions to minimize the effects of this take. NMFS has reviewed the 2008 BiOp and determined that there is no new information regarding effects to Stellar sea lions; the action has not been modified in a manner which would cause adverse effects not previously evaluated; there has been no new listing of species or designation of critical habitat that could be affected by the action; and, the action will not exceed the extent or amount of incidental take authorized in the 2008 BiOp. Therefore, the proposed IHA does not require the reinitiation of Section 7 consultation under the ESA.

National Environmental Policy Act (NEPA)

To meet NMFS' NEPA requirements for the issuance of an IHA to PRBO, NMFS prepared an Environmental Assessment (EA) in 2007 that was specific to seabird and pinniped research activities on SEFI, WEI, ANI, and PRNS and evaluated the impacts on the human environment of NMFS' authorization of incidental Level B harassment resulting from seabird

research in Central California. At that time, NMFS determined that conducting the seabird research would not have a significant impact on the quality of the human environment and issued a Finding of No Significant Impact (FONSI) and, therefore, it was not necessary to prepare an environmental impact statement for the issuance of an IHA to PRBO for this activity. In 2008, NMFS prepared a supplemental EA (SEA) titled "Supplemental Environmental Assessment For The Issuance Of An Incidental Harassment Authorization To Take Marine Mammals By Harassment Incidental To Conducting Seabird And Pinniped Research In Central California And Environmental Assessment For The Continuation Of Scientific Research On Pinnipeds In California Under Scientific Research Permit 373–1868–00," to address new available information regarding the effects of PRBO's seabird and pinniped research activities that may have cumulative impacts to the physical and biological environment. At that time, NMFS concluded that issuance of an IHA for the December 2008 through 2009 season would not significantly affect the quality of the human environment and issued a FONSI for the 2008 SEA regarding PRBO's activities. In conjunction with this year's application, NMFS has again reviewed the 2007 EA and the 2008 SEA and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the IHA requiring evaluation in a supplemental EA and NMFS, therefore, reaffirms the 2008 FONSI. A copy of the EA, SEA, and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**).

Authorization

As a result of these determinations, NMFS has issued an IHA to PRBO to conduct seabird and pinniped research on Southeast Farallon Island, West End Island, Año Nuevo Island, and Point Reyes National Seashore in central California from February 19, 2010 through February 18, 2011, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 19, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–3893 Filed 2–24–10; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission (Commission).

DATE AND TIME: Thursday, March 25, 2010, commencing at 9 a.m. and ending at 3 p.m.

PLACE: Three Lafayette Center, 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room (Room 1000).

STATUS: Open.

MATTERS TO BE CONSIDERED: Public meeting to examine the trading of futures and options in the precious and base metals markets, and to consider Federal position limits in the precious and base metals markets and related hedge exemptions on regulated futures exchanges, derivatives transaction execution facilities and electronic trading facilities.

CONTACT PERSONS AND ADDRESSES: Written materials should be mailed to the Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC, 20581, attention Office of the Secretariat; transmitted by facsimile at 202–418–5521; or transmitted electronically to *metalshearing@cftc.gov.*

Reference should be made to "metals position limits." For questions, please contact Sauntia Warfield, 202–418–5084.

SUPPLEMENTARY INFORMATION: The Commission is undertaking a review of issues related to the trading of futures and options in the precious and base metals markets, and to consider Federal position limits in the precious and base metals markets and related hedge exemptions on regulated futures exchanges, derivatives transaction execution facilities and electronic trading facilities. In furtherance of that review, the Commission hereby announces that it will hold a public meeting on Thursday, March 25, 2010 from 9 a.m. to 3 p.m. at the Commission headquarters in Washington, DC. At this meeting the Commission will have oral presentations by panels of experts representing all segments of futures market participants and experts.

This meeting will generally focus on precious and base metals markets issues, including: the application of speculative position limits to address the burdens of excessive speculation in the precious and base metals markets; how such limits should be structured; how such limits should be set; the aggregation of positions across different markets; and the types of exemptions, if any, that should be permitted. The focus will be on gold, silver and copper markets.

A transcript of the meeting will be made and entered into the Commission's public comment files, which will remain open for the receipt of written comments until April 30, 2010.

Advanced Registration Requested: Advanced registration for attending the metals meeting is requested. Please transmit full name and organization represented to *metalsmeetingregistration@cftc.gov,* no later than March 18, 2010. Upon arrival on March 25, 2010, *all attendees will be required to show valid, government-issued identification before being granted admittance.* Unregistered attendees arriving on the day of the meeting will be seated on a space available basis. Overflow seating will be available for additional public viewing via live videocast. Registrants will be notified if attendance capacity has been met.

Issued in Washington, DC, on February 22, 2010 by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. 2010–3968 Filed 2–23–10; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0019]

U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

ACTION: Notice of proposed changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 21(b) and 21(b)(5)(G), and proposed new Rule 21A of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment.

DATES: Comments on the proposed changes must be received within 30 days of the date of this notice.

ADDRESSES: Comments may be submitted, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon,

OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number 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 personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of the Court, telephone (202) 761–1448.

Dated: February 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Rule 21(b)

A. Remove the first sentence of existing Rule 21(b) which currently reads:

(b) The supplement to the petition shall be filed in accordance with the applicable time limit set forth in Rule 19(a)(5)(A) or (B), shall include an Appendix containing a copy of the decision of the Court of Criminal Appeals, unpublished opinions cited in the brief, relevant extracts of rules and regulations, and shall conform to the provisions of Rules 24(b), 35A, and 37.

B. Add the following to Rule 21(b) in its place:

(b) The supplement to the petition shall be filed in accordance with the applicable time limit set forth in Rule 19(a)(5)(A) or (B), shall include an Appendix containing a copy of the decision of the Court of Criminal Appeals, unpublished opinions cited in the brief, relevant extracts of rules and regulations, and shall conform to the provisions of Rules 35A and 37. Unless authorized by order of the Court or by motion of a party granted by the Court, the supplement and any answer thereto shall not exceed 25 pages, except that a supplement or answer containing no more than 9,000 words or 900 lines of text is also acceptable. Any reply to the answer shall not exceed 10 pages except that a reply containing 4,000 words or 400 lines of text is also acceptable.

C. The remainder of Rule 21(b) is unchanged except as noted below regarding Rule 21(b)(5)(G).

Comment: The proposal to reduce the length of supplements, answers and replies would follow the practice at the Supreme Court of the United States where different limits apply to petitions for certiorari (9,000 words) and briefs following a grant of certiorari (15,000 words). In exceptional cases, counsel would still be able to request to exceed the limit by motion under Rule 30.

Rule 21(b)(5)(G)

A. Rule 21(b)(5)(G) currently reads:

(b) * * * The supplement shall contain:

* * * (5) A direct and concise argument showing why there is good cause to grant the petition, demonstrating with particularity why the errors assigned are materially prejudicial to the substantial rights of the appellant. Where applicable, the supplement to the petition shall also indicate whether the court below has:

* * * (G) taken inadequate corrective action after remand by the Court subsequent to grant of an earlier petition in the same case and that appellant wishes to seek review from the Supreme Court of the United States; * * *

B. The proposed change is to remove subparagraph (G) and replace it with the following new subparagraph (G):

* * * (G) taken inadequate corrective action after remand by the Court subsequent to grant of an earlier petition in the same case and that appellant wishes to seek review in the Supreme Court of the United States specifying the issue or issues on which certiorari review would be sought, whether related to the remand or to the original decision by this Court; * * *

Comment: The recent practice of the Court has been to grant petitions for grant of review in cases that have been previously remanded to the convening authority or the Court of Criminal Appeals for corrective action and are returned to the Court on a second petition. The grant of review is intended to protect the right to seek certiorari review at the Supreme Court, and may be accompanied by a summary order of affirmance. The proposed change to the Rule would add a requirement that appellate defense counsel specify the issue or issues on which certiorari review would be sought, related to either the remand or the original decision of the Court. The amendment will make it clear that there is no right to further review in this Court in all remanded cases, and also provide a more orderly process for identifying the issues that are being preserved for review on petition for certiorari. The Court can then decide whether to grant and affirm or take other action it deems appropriate.

Rule 21A

Adopt new Rule 21A as follows:

Rule 21A. Submissions Under United States v. Grostefon

(a) Issues raised pursuant to *United States* v. *Grostefon,* 12 M.J. 431 (C.M.A. 1982), shall be presented in a separate Appendix to the supplement not to exceed 15 pages.

(b) Grostefon issues shall be identified by counsel with particularity, substantially in the following form:

Grostefon Issue Appendix

Pursuant to *United States* v. *Grostefon,* 12 M.J. 431 (C.M.A. 1982), appellant, through appellate defense counsel, personally requests that this Court consider the following matters:

[List issues and any argument for each issue.]

(c) Grostefon issues raised within 30 days of the filing of the supplement under Rule 19(a)(5)(C) are subject to and included within the 15-page limit in this Rule.

Comment: This new Rule is designed to fill a gap that currently exists in the Rules regarding page limits for submissions of personally asserted matters under Grostefon. The new Rule will allow counsel more than enough space to identify issues that the appellant wishes to raise and to attach any reasonably sized written submission that the appellant prepared. The 15-page limit is all-inclusive, *i.e.,* all stated issues, argument, and written submissions from the appellant must not exceed a total of 15 pages. The Rule is consistent with Grostefon and allows counsel to describe the issues the appellant wants to raise, without needlessly burdening the Court with voluminous filings of material that would never be permitted for filings by counsel.

[FR Doc. 2010–3818 Filed 2–24–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 29, 2010.

ADDRESSES: Written comments should be addressed to the Office of

Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director Information Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 22, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.
Title: IEPS Fulbright-Hays Group Projects Abroad Customer Surveys.
Frequency: On Occasion.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:

Responses: 1,829.
Burden Hours: 809.

Abstract: The purpose of this evaluation is to assess the impact of the Group Projects Abroad (GPA) program in enhancing the foreign language capacity of the United States. Three surveys will be conducted: a survey of the GPA Project Directors; A survey of 2002–2008 GPA alumni; and a survey of 2009 alumni. Results from the three surveys will inform the writing of a final report determining the impact of the GPA program.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 4182. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

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

[FR Doc. 2010–3870 Filed 2–24–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 29, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 22, 2010.

James Hyler,

Acting Director, Information Collection Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Report on IDEA Part B Maintenance of Effort Reduction (34 CFR 300.205(a)) and Coordinated Early Intervening Services (34 CFR 300.226).
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:

Responses: 60.
Burden Hours: 1,032,480.

Abstract: This package provides instructions and forms necessary for States to report on the provisions of coordinated early intervening services (CEIS) and maintenance of effort (MOE) reduction in IDEA. The form satisfies reporting requirements and is used by OSEP to monitor SEAs and for Congressional reporting.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4146. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue,

SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

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

[FR Doc. 2010–3872 Filed 2–24–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. 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: Tuesday, March 9, 2010, 9 a.m. to 5 p.m. and Wednesday, March 10, 2010, 8:30 a.m. to 12 p.m.

ADDRESSES: The Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, Maryland 20877.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585–1290; Telephone: 301–903–4941.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The charge to the Committee to conduct a review of the program by a Committee of Visitors (COV) will be completed with the Committee hearing a report from the COV and then transmitting the report to the Department if FESAC approves it, and there will be presentations and discussions about the potential future areas of research.

Tentative Agenda:

- Office of Science Perspectives
- FES Program Perspectives
- Report from the Committee of Visitors
- Discussion of alternate experimental platforms for code validation
- Report on the results from the Fusion-Fission Workshop
- Report on the results of the High Energy Density Laboratory Physics Research Needs Workshop
- Preparation of Letter to DOE
- Public Comments
- Adjourn

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 of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). Reasonable provision will be made to include the scheduled oral statements during the Public Comments time 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. This notice is being published less than 15 days before the date of the meeting due to the February blizzard.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays, and on the Fusion Energy Sciences Advisory Committee Web site—*http://www.science.doe.gov/ofes/fesac.shtml.*

Issued at Washington, DC, on February 19, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–3845 Filed 2–24–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 18, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–47–000.

Applicants: Ashtabula Wind II, LLC.

Description: Ashtabula Wind II, LLC et al. *requests authorization for the indirect upstream disposition of their jurisdictional facilities.*

Filed Date: 02/12/2010.

Accession Number: 20100217–0207.

Comment Date: 5 p.m. Eastern Time on Friday, March 05, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–2801–028; ER07–1236–004; ER99–2156–020; ER96–719–027.

Applicants: PacifiCorp; Yuma Cogeneration Associates; Cordova Energy Company LLC; MidAmerican Energy Company.

Description: PacifiCorp et al submits several changes in status with regard to the characteristics that they previously relied upon et al.

Filed Date: 02/01/2010.

Accession Number: 20100212–0035.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER99–1610–036.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Company submits supplement to the Triennial Market Power Analysis filed on 7/31/09.

Filed Date: 02/17/2010.

Accession Number: 20100218–0053.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 10, 2010.

Docket Numbers: ER06–226–001; ER00–2603–006; ER03–717–004; ER06–1291–003; ER07–1040–003; ER07–565–002; ER07–566–002; ER08–200–003; ER94–142–030; ER98–3774–007.

Applicants: Syracuse Energy Corporation; Hot Spring Power Company, LLC; Mt. Tom Generating Company; Choctaw Gas Generation, LLC; Hopewell Cogeneration Ltd Partnership; FirstLight Hydro Generating Company; FirstLight Power Resources Management, LLC; Waterbury Generation, LLC; SUEZ Energy Marketing NA, Inc.; Choctaw Generation Limited Partnership.

Description: Notice of Non-Material Change in Status of Choctaw Gas Generation, LLC, et al.

Filed Date: 02/18/2010.

Accession Number: 20100212–5237.

Comment Date: 5 p.m. Eastern Time on Thursday, March 11, 2010.

Docket Numbers: ER10–426–003.

Applicants: Stetson Wind II, LLC.

Description: Stetson Wind II, LLC request FERC to consider the incorrect references to be references to Stetson Wind II, in addition Stetson submits a replacement page of its proposed tariff.

Filed Date: 02/12/2010.

Accession Number: 20100216–0215.

Comment Date: 5 p.m. Eastern Time on Friday, March 05, 2010.

Docket Numbers: ER10–706–001.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc

submits an amendment to its Feb. 1st Filing, as well as the corrected Amended and Restated Large Generator Interconnection Agreement etc.

Filed Date: 02/12/2010.

Accession Number: 20100217–0209.

Comment Date: 5 p.m. Eastern Time on Friday, March 05, 2010.

Docket Numbers: ER10–729–000.

Applicants: Viridian Energy MD LLC.

Description: Viridian Energy NJ LLC submits the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 02/17/2010.

Accession Number: 20100218–0206.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 10, 2010.

Docket Numbers: ER10–745–001.

Applicants: PacifiCorp.

Description: PacifiCorp submits Substitute First Revised Sheet 318F et al. to FERC Electric Tariff, 7R11.

Filed Date: 02/17/2010.

Accession Number: 20100217–0236.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 10, 2010.

Docket Numbers: ER10–757–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Notice of Cancellation of Service Agreement 228 under PacifiCorp's Seventh Revised Volume 11 Open Access Transmission Tariff.

Filed Date: 02/16/2010.

Accession Number: 20100217–0211.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 09, 2010.

Docket Numbers: ER10–758–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits revised sheets to its Open Access Transmission Tariff reflecting updated Load Ratio Share figures to be effective 7/31/10 and an updated Oregon District Access Monthly Demand Charge.

Filed Date: 02/16/2010.

Accession Number: 20100217–0212.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 09, 2010.

Docket Numbers: ER10–759–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits filing seeking Commission approval to revise certain sections of its Open Access Transmission Tariff related to PacifiCorp's Load Ration Share calculation.

Filed Date: 02/16/2010.

Accession Number: 20100217–0213.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 09, 2010.

Docket Numbers: ER10–760–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits notice of cancellation of the Point-to-Point Transmission Service Agreement between SPP as Transmission Provider and Southwestern Public Service Company et al. as Transmission Customer.

Filed Date: 02/16/2010.

Accession Number: 20100217–0214.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 09, 2010.

Docket Numbers: ER10–766–000.

Applicants: Southern Companies.

Description: Southern Companies submits the Network Integrated Transmission Service Agreement.

Filed Date: 02/17/2010.

Accession Number: 20100217–0234.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 10, 2010.

Docket Numbers: ER10–767–000.

Applicants: WSPP Inc.

Description: WSPP Inc submits revised pages to Schedule Q of the WSPP Agreement to modify the cost-based rates.

Filed Date: 02/17/2010.

Accession Number: 20100217–0232.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 10, 2010.

Docket Numbers: ER10–768–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits revised sheets for the Small Generator Interconnection Agreement.

Filed Date: 02/17/2010.

Accession Number: 20100217–0233.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 10, 2010.

Docket Numbers: ER10–769–000.

Applicants: Glenwood Energy Partners, Ltd.

Description: Glenwood Energy Partners, Ltd submits petition for acceptance of initial rate schedule, waivers and blanket authority for FERC No 1.

Filed Date: 02/16/2010.

Accession Number: 20100216–0598.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 09, 2010.

Docket Numbers: ER10–771–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits a Facilities Construction Agreement among Settlers Trail Wind Farm, LLC et al. a corporation organized and existing under the laws of State of Indiana et al. etc.

Filed Date: 02/16/2010.

Accession Number: 20100218–0208.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 09, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–36–004.

Applicants: Cleco Power LLC.

Description: Revision to August 17, 2009 Attachment K Compliance Filing of Cleco Power LLC.

Filed Date: 02/12/2010.

Accession Number: 20100212–5236.

Comment Date: 5 p.m. Eastern Time on Friday, March 05, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or

call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–3795 Filed 2–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

February 17, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–46–000.

Applicants: Wheelabrator Portsmouth Inc.

Description: Application of Wheelabrator Portsmouth Inc. for Authorization for Consolidation of Jurisdictional Facilities and Acquisition of an Existing Generation Facility and Request for Expedited Action.

Filed Date: 02/12/2010.

Accession Number: 20100212–5218.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–22–000.

Applicants: EC&R Papalote Creek II, LLC.

Description: Notice of Self-Certification for Exempt Wholesale Generator Status of EC&R Papalote Creek II, LLC.

Filed Date: 02/12/2010.

Accession Number: 20100212–5217.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–2640–033; ER98–4590–030; ER99–1610–038.

Applicants: Public Service Company of Colorado; Southwestern Public Service Company.

Description: Northern States Power Company *et al.* submits change in status report compliance filing.

Filed Date: 02/12/2010.

Accession Number: 20100216–0223.

Comment Date: 5 p.m. Eastern Time on Friday, March 05, 2010.

Docket Numbers: ER01–3103–022.

Applicants: Astoria Energy LLC.

Description: Astoria Energy Submits Order 652 Notice of Non-Material Change in Status.

Filed Date: 02/11/2010.

Accession Number: 20100211–5036.

Comment Date: 5 p.m. Eastern Time on Thursday, March 4, 2010.

Docket Numbers: ER08–1056–003.

Applicants: Entergy Services, Inc.

Description: Compliance Filing of Entergy Services, Inc.

Filed Date: 02/12/2010.

Accession Number: 20100212–5228.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER08–1237–003; ER08–1288–006; ER07–357–007; ER03–1340–006; ER05–41–003; ER09–1302–001.

Applicants: Chanarambie Power Partners LLC, Fenton Power Partners I, LLC, Hoosier Wind Project, LLC, Northwest Wind Partners, LLC, Oasis Power Partners, LLC, Shiloh Wind Project 2, LLC, Wapsipinicon Wind Project, LLC.

Description: Chanarambie Power Partners, LLC *et al.* submits Substitute Fifth Revised Sheet 2 *et al.* to FERC Electric Tariff, Original Volume 1.

Filed Date: 02/12/2010.

Accession Number: 20100216–0083.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER09–1453–002.

Applicants: Gateway Energy Services Corporation.

Description: Gateway Energy Services Corporation Notice of non-material change in status.

Filed Date: 02/16/2010.

Accession Number: 20100216–5013.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–231–001.

Applicants: New York Independent System Operator Inc.

Description: New York Independent System Operator, Inc submits proposed revisions to its Market Administration and Control Area Services Tariff.

Filed Date: 02/12/2010.

Accession Number: 20100216–0219.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–239–001.

Applicants: PacifiCorp.

Description: PacifiCorp submits a Transmission Interconnection Agreement for Points of Delivery dated 10/26/09 designated as Rate Schedule FERC No. 654.

Filed Date: 02/12/2010.

Accession Number: 20100216–0218.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–251–002.

Applicants: Florida Power & Light Company.

Description: Compliance Electric Refund Report of Florida Power & Light Company.

Filed Date: 02/12/2010.

Accession Number: 20100212–5223.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–252–002.

Applicants: Florida Power & Light Company.

Description: Compliance Electric Refund Report of Florida Power & Light Company.

Filed Date: 02/12/2010.

Accession Number: 20100212–5222.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–266–002.

Applicants: Trans Bay Cable LLC.

Description: Trans Bay Cable LLC submits revisions to FERC Electric Tariff Original Volume No. 1.

Filed Date: 02/16/2010.

Accession Number: 20100216–0231.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–279–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Substitute First Revised Sheet 1228 *et al.* to its FERC Electric Tariff, Fourth Revised Volume 1 to be effective 3/1/10.

Filed Date: 02/12/2010.

Accession Number: 20100216–0216.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–320–001.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits a minor revision to Section 362 Meter Corrections between Market Participants, *et al.* of the Amended and Restated Operation Agreement of PJM Interconnection, LLC etc.

Filed Date: 02/12/2010.

Accession Number: 20100216–0217.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–321–001.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company LLC submits Second Revised Sheet No 2B effective 12/1/09.

Filed Date: 02/12/2010.

Accession Number: 20100216–0220.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–461–001.

Applicants: Aquilon Power Ltd.

Description: Aquilon Power Ltd submits Substitute Original Sheet 1 to FERC Electric Tariff, Volume 1 to be effective 2/28/10.

Filed Date: 02/12/2010.

Accession Number: 20100216–0224.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–518–001.

Applicants: Southwest Power Pool, Inc.

Description: Motion of Southwest Power Pool, Inc. to Withdraw the Doniphan Electric Cooperative Agreements.

Filed Date: 01/29/2010.

Accession Number: 20100129–5206.

Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–580–001.

Applicants: Silverhill Investments Corp.

Description: Silverhill Investments Corp. Clarifications to Notification of Jurisdictional Status.

Filed Date: 02/12/2010.

Accession Number: 20100212–5227.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–716–000.

Applicants: Algonquin Power Windsor Locks, LLC.

Description: Algonquin Power Windsor Locks LLC submits the Application of Algonquin for Order Accepting Rates for Filing and Granting Waivers and Blanket Approvals.

Filed Date: 02/12/2010.

Accession Number: 20100216–0227.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–727–000.

Applicants: AEP Retail Energy Partners LLC.

Description: Application of AEP Retail Energy Partners, LLC for Market-Based Rate Authority.

Filed Date: 02/12/2010.

Accession Number: 20100216–0226.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–730–000.

Applicants: Wheelabrator Portsmouth Inc.

Description: Petition of Wheelabrator Portsmouth Inc for order accepting market-based rate tariff for filing etc.

Filed Date: 02/12/2010.

Accession Number: 20100216–0232.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–731–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits Original Service Agreement 2164 *et al.* to FERC Electric Tariff, Fourth Revised Volume 1 to be effective 2/1/10.

Filed Date: 02/12/2010.

Accession Number: 20100216–0213.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–732–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits the Large Generator Interconnection Agreement among Solar Partners I.

Filed Date: 02/12/2010.

Accession Number: 20100216–0212.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–733–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits acceptance and amendment to the Standard Large Generator Interconnection Agreement for the project known as the Colusa Generating Station etc.

Filed Date: 02/12/2010.

Accession Number: 20100216–0214.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–734–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits amendment to Exhibit B to a 1991 Operation, Maintenance, and Replacement of Facilities Agreement with the Western Area Power Administration.

Filed Date: 02/12/2010.

Accession Number: 20100216–0211.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–736–000.

Applicants: Entergy Services, Inc.

Description: Entergy Arkansas, Inc submits First Revised Network Integration Transmission Service Agreement with the City of Osceola, Arkansas ESI requests effective 3/1/2010.

Filed Date: 02/12/2010

Accession Number: 20100216–0210

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010

Docket Numbers: ER10–737–000

Applicants: Xcel Energy Services Inc.

Description: NSP Companies submits the proposed termination of various Service Agreement under NSP Companies, FERC Electric Tariff, Original Volume 4 with various counterparties etc.

Filed Date: 02/12/2010

Accession Number: 20100216–0209

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010

Docket Numbers: ER10–738–000

Applicants: Southwest Power Pool, Inc

Description: Southwest Power Pool, Inc submits an executed Meter Agent Services Agreement between Kansas Power Pool as Market Participants and Sunflower Electric Power Corporation as Meter Agent.

Filed Date: 02/12/2010

Accession Number: 20100216–0208

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010

Docket Numbers: ER10–739–000

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed non-conforming Large Generator Interconnection Agreement between SPP as Transmission Provider, Kansas City Power & Light as Interconnection Customers *et al.*

Filed Date: 02/12/2010

Accession Number: 20100216–0207

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010

Docket Numbers: ER10–740–000

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services Inc submits the proposed reassignment of three Large Generator Interconnection Agreements, etc.

Filed Date: 02/12/2010

Accession Number: 20100216–0228

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010

Docket Numbers: ER10–741–000

Applicants: ISO New England Inc.

Description: ISO New England Inc submits its Capital Projects Report and schedule of the unamortized costs of the ISO's funded capital expenditures for the quarter ending 12/31/09.

Filed Date: 02/12/2010

Accession Number: 20100216–0245

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010

Docket Numbers: ER10–742–000

Applicants: Pacific Gas and Electric Company

Description: Pacific Gas and Electric Company submits for filing and acceptance a Notice of Termination for two Generator Special Facilities Agreements etc.

Filed Date: 02/12/2010

Accession Number: 20100216–0244

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010

Docket Numbers: ER10–743–000

Applicants: NSTAR Electric Company

Description: NSTAR Electric Company submits Second Revised Sheet 44 of its Rate Schedule FERC 205, which is the Wholesale Distribution Service Agreement with the Massachusetts Port Authority.

Filed Date: 02/12/2010

Accession Number: 20100216–0243

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010

Docket Numbers: ER10–744–000

Applicants: Elm Road Services LLC

Description: Elm Road Service, LLC notifies the Commission of the ERS Rate Schedule FERC No 1 (Test Power PPA) etc.

Filed Date: 02/12/2010

Accession Number: 20100216–0242

Comment Date: 5 p.m. Eastern Time on Friday, March 05, 2010

Docket Numbers: ER10–745–000

Applicants: PacifiCorp

Description: PacifiCorp submits a revised sheet to Attachment C of its Open Access Transmission Tariff to eliminate one inapplicable sentence.

Filed Date: 02/12/2010

Accession Number: 20100216–0241

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010

Docket Numbers: ER10–746–000

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with FC Landfill Energy *et al.*

Filed Date: 02/12/2010

Accession Number: 20100216–0240

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010

Docket Numbers: ER10–747–000

Applicants: Southern California Edison Company

Description: Southern California Company submits filing revised rate sheets to the Blythe Solar I Project Tie-Line Facilities Agreement between SCE and FSE Blythe I, LLC, Rate Schedule FERC 480.

Filed Date: 02/05/2010

Accession Number: 20100216–0239

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010

Docket Numbers: ER10–748–000

Applicants: Renewable Energy Services of Ohio, LLC

Description: Ohio Edison Company *et al.* submits Wholesale Distribution Service Agreement with American Transmission Systems, Incorporated.

Filed Date: 02/05/2010

Accession Number: 20100216–0238

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010

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.

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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. 2010–3796 Filed 2–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 17, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–1005–012; ER03–1079–012; ER09–304–003

Applicants: Kansas City Power & Light Company; KCP & L Greater Missouri Operations Company

Description: Quarterly Report Pursuant to Order 697–C of Kansas City Power & Light Company and KCP & L Greater Missouri Operations Company.

Filed Date: 01/29/2010

Accession Number: 20100129–5195

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010

Docket Numbers: ER99–3151–016; ER97–837–013; ER08–448–006; ER03–327–008; ER08–447–006

Applicants: PSEG Energy Resources & Trade LLC; Public Service Electric and Gas Company; PSEG Power Connecticut LLC; PSEG Fossil LLC; PSEG Nuclear LLC

Description: Order 697–C "Catch-Up" Generation Siting Report for the PSEG Companies.

Filed Date: 01/29/2010

Accession Number: 20100129–5115

Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010

Docket Numbers: ER99–3151–015; ER97–837–012; ER08–447–005; ER08–448–005; ER03–327–007

Applicants: PSEG Energy Resources & Trade LLC; Public Service Electric and Gas Company; PSEG Power Connecticut LLC; PSEG Fossil LLC; PSEG Nuclear LLC

Description: Order 697–C—Quarterly Generation Siting Report for the PSEG Companies.

Filed Date: 01/29/2010

Accession Number: 20100129–5114

Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010

Docket Numbers: ER00–1803–006; ER01–457–007; ER02–1485–009; ER03–1109–009; ER03–1108–009; ER94–1384–036; ER99–2329–007; ER04–733–005; ER08–1432–003

Applicants: Morgan Stanley Capitol Group Inc.; MS Solar Solutions Corp.; Naniwa Energy LLC; Power Contract Finance, L.L.C.; Power Contract Financing II, Inc.; Power Contract Financing II, L.L.C.; South Eastern Generating Corp.; South Eastern Electric Development Corp.; Utility Contract Funding II, LLC

Description: Notice of Change in Status of Morgan Stanley Capital Group Inc., *et al.* Pursuant to Order 697–C.

Filed Date: 01/29/2010.

Accession Number: 20100129–5118.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER00–3068–011; ER01–1071–017; ER01–1972–010; ER01–2074–010; ER01–2139–014; ER01–838–010; ER02–1903–013; ER02–2018–011; ER02–2120–009; ER02–2166–011; ER02–2559–012; ER02–256–004; ER02–669–010; ER03–1025–006; ER03–1103–007; ER03–1104–013; ER03–1105–013; ER03–1332–006; ER03–1333–007; ER03–1375–008; ER03–155–010; ER03–179–009; ER03–34–016; ER03–623–010; ER04–127–008; ER04–187–009; ER04–290–007; ER04–947–009; ER05–222–

007; ER05–236–009; ER05–487–007; ER05–714–006; ER06–1261–011; ER06–9–012; ER07–1157–006; ER07–174–011; ER07–875–005; ER08–1293–006; ER08–1294–006; ER08–1296–006; ER08–1297–006; ER08–1300–006; ER08–197–010; ER08–250–007; ER09–1297–002; ER09–138–004; ER09–1462–002; ER09–1656–002; ER09–1760–001; ER09–832–005; ER09–900–003; ER09–901–003; ER09–902–003; ER09–988–005; ER09–989–005; ER09–990–004; ER10–1–001; ER10–149–002; ER10–2–001; ER10–256–001; ER10–296–001; ER10–297–001; ER10–3–001; ER10–402–001; ER97–3359–017; ER98–2076–019; ER98–3511–015; ER98–3563–015; ER98–3564–017; ER99–2917–013.

Applicants: FPL Group Companies

Description: Fourth Quarter Site Control Quarterly Filing of FPL Group Companies Pursuant to Order 697–C.

Filed Date: 02/01/2010.

Accession Number: 20100202–5054.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER00–3614–013

Applicants: BP Energy Company

Description: BP Energy Company submits supplements to its 12/31/09 filing of updated market power analysis for study period of 12/1/06–11/30/07.

Filed Date: 02/01/2010.

Accession Number: 20100204–0035.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER01–1403–011; ER04–366–009; ER06–1443–007; ER01–2968–012; ER01–845–010; ER05–1122–008; ER08–107–005.

Applicants: FirstEnergy Operating Companies; Pennsylvania Power Company; Jersey Central Power & Light Company; FirstEnergy Solutions Corp; FirstEnergy Generation Corporation; First Energy Nuclear Generation Corp.; FirstEnergy Generation Mansfield Unit 1 Corp.

Description: Non-Material Change in Status Report Regarding Acquisition of Control Over Generation Site of FirstEnergy Generation Corp., *et al.* Pursuant to Order 697–C.

Filed Date: 01/29/2010.

Accession Number: 20100129–5160.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER01–1822–006

Applicants: Indigo Generation LLC; Larkspur Energy LLC; Wildflower Energy LP.

Description: Indigo Generation LLC, *et al.* submits their Second Supplement to September 11 Supplement to the Notification of Non-Material Change in Status and Request for Waiver.

Filed Date: 01/29/2010.

Accession Number: 20100129–5239.

Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER05–717–014; ER05–721–014; ER04–374–015; ER06–230–011; ER07–810–009; ER08–237–009; ER08–1172–008; ER09–430–005; ER09–429–005; ER99–2341–017; ER06–1334–011; ER07–277–010; ER09–946–004; ER09–1339–004; ER09–1340–004; ER09–1341–004; ER09–1342–004.

Applicants: Spring Canyon Energy LLC; Judith Gap Energy LLC; Invenergy TN LLC; Wolverine Creek Energy LLC; Grays Harbor Energy LLC; Forward Energy LLC; Grand Ridge Energy LLC; Willow Creek Energy LLC; Sheldon Energy LLC; Hardee Power Partners Limited; Spindle Hill Energy LLC; Invenergy Cannon Falls LLC; Beech Ridge Energy LLC; Grand Ridge Energy II LLC; Grand Ridge Energy III LLC; Grand Ridge Energy IV LLC; Grand Ridge Energy V LLC.

Description: Change in Facts Notice of Spring Canyon Energy LLC, *et al.* Pursuant to Order 697–C.

Filed Date: 01/29/2010.

Accession Number: 20100129–5120.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER05–1482–005; ER94–1188–049; ER08–1168–002; ER09–1505–003; ER98–4540–018; ER99–1623–018.

Applicants: Electric Energy Inc.; Kentucky Utilities Company; LG&E Energy Marketing Inc.; Louisville Gas & Electric Company; Munnsville Wind Farm, LLC; Stony Creek Wind Farm, LLC.

Description: Electric Energy, Inc., *et al.*, Notice of Non-Material Change in Status under 18 CFR 35.42(d) Q4 2009.

Filed Date: 01/29/2010.

Accession Number: 20100129–5110.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER06–1014–009.

Applicants: NYISO.

Description: NYISO Seventh Price Validation Informational Report.

Filed Date: 01/29/2010.

Accession Number: 20100129–5204.

Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER06–1407–006; ER06–1408–006; ER06–1409–006; ER06–14130–006; ER08–577–007; ER08–578–007; ER08–579–008.

Applicants: Noble Bliss Windpark, LLC; Noble Ellenburg Windpark, LLC; Nobile Altona Windpark, LLC; Noble Clinton Windpark I, LLC.

Description: Quarterly Report for the fourth quarter of 2009 under Order 697–C of Noble Bliss Windpark, LLC, *et al.*

Filed Date: 01/29/2010.

Accession Number: 20100129–5168.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER08–1226–006; ER09–1320–002; ER03–1284–010; ER05–1202–010; ER09–1321–004; ER08–1225–008; ER05–1262–025; ER06–1093–021; ER07–407–008; ER06–1122–007; ER09–1323–003; ER09–1322–003; ER09–1481–002; ER07–522–007; ER08–1111–007; ER08–1227–005; ER09–1482–002; ER07–342–006; ER08–1228–004.

Applicants: Arlington Wind Power Project LLC; Blackstone Wind Farm LLC; Blue Canyon Windpower LLC; Blue Canyon Windpower II LLC; Blue Canyon Windpower V LLC; Cloud County Wind Farm, LLC; Flat Rock Windpower LLC; Flat Rock Windpower II LLC; High Prairie Wind Farm II, LLC; High Trial Wind Farm, LLC; Lost Lakes Wind Farm LLC; Meadow Lakes Wind Farm LLC; Meadow Lake Wind Farm II LLC; Old Trail Wind Farm, LLC; Pioneer Prairie Wind Farm I, LLC; Rail Splitter Wind Farm, LLC; Sagebrush Power Partners, LLC; Telocaset Wind Power Partners, LLC; Wheat Field Wind Power Project LLC.

Description: Notice of Non-Material Change in Status of Arlington Wind Power Project LLC, *et al.* Pursuant to Order 697–C.

Filed Date: 01/29/2010.

Accession Number: 20100129–5117.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER09–174–005; ER10–426–002.

Applicants: Evergreen Wind Power V, LLC; Stetson Wind II, LLC.

Description: Notice of Consummation and Non-Material Change in Status of First Wind Holdings, *et al.*

Filed Date: 02/04/2010.

Accession Number: 20100204–5120.

Comment Date: 5 p.m. Eastern Time on Thursday, February 25, 2010.

Docket Numbers: ER10–310–002; ER10–642–001; ER10–643–001.

Applicants: Algonquin Energy Services Inc.; Algonquin Tinker Gen Co.

Description: Algonquin Companies submits notice of change regarding market-based rate authority.

Filed Date: 01/28/2010.

Accession Number: 20100203–0208.

Comment Date: 5 p.m. Eastern Time on Thursday, February 18, 2010.

Docket Numbers: ER10–374–001.

Applicants: Medicine Bow Power Partners, LLC.

Description: Request of Medicine Bow Power Partners, LLC for Waiver of Requirements Under 18 CFR 35.42(d) and (e).

Filed Date: 01/29/2010.

Accession Number: 20100129–5238.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER10–553–001.

Applicants: Hannaford Energy, LLC.

Description: Hannaford Energy, LLC submits Original Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 1 to be effective 3/8/10.

Filed Date: 02/05/2010.

Accession Number: 20100216–0221.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER10–621–000.

Applicants: Noble Energy Marketing and Trading Corp.

Description: Amendment of Application of Noble Energy Marketing and Trading Corp.

Filed Date: 02/05/2010.

Accession Number: 20100205–5045.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER10–644–001.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits errata filing to correct a formatting error in the submitted Operating Agreement sheets.

Filed Date: 02/05/2010.

Accession Number: 20100216–0222.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER10–712–000.

Applicants: AES ES Westover, LLC.

Description: Application of AES ES Westover, LLC for Acceptance of Market-Based Rate Tariff etc.

Filed Date: 02/05/2010.

Accession Number: 20100216–0247.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER10–718–000.

Applicants: February Futures LLC.

Description: February Futures, LLC submits an application for market-based rate authorization.

Filed Date: 02/16/2010.

Accession Number: 20100217–0206.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–720–000.

Applicants: Northeastern Power Company.

Description: Northeastern Power Company requests acceptance of initial market-based rate tariff, waivers and blanket authority, effective February 5, 2010.

Filed Date: 02/04/2010.

Accession Number: 20100212–0202.

Comment Date: 5 p.m. Eastern Time on Thursday, February 25, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–18–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Supplement to Application for Authorization of the Assumption of Liabilities and the Issuance of Securities Under Section 204 of the Federal Power Act by Wolverine Power Supply Cooperative, Inc.

Filed Date: 02/05/2010.

Accession Number: 20100205–5046.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ES10–22–001.

Applicants: Rochester Gas and Electric Corporation.

Description: Rochester Gas and Electric Corporation's Supplement to Application for Authorization to Issue Short-Term Debt Under Section 204 of the Federal Power Act.

Filed Date: 02/16/2010.

Accession Number: 20100216–5218.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ES10–23–001.

Applicants: New York State Electric & Gas Corp.

Description: New York State Electric & Gas Corporation's Supplement to Application for Authorization to Issue Short-Term Debt Under Section 204 of the Federal Power Act.

Filed Date: 02/16/2010.

Accession Number: 20100216–5229.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ES10–24–001.

Applicants: Central Maine Power Company.

Description: Central Maine Power Company's Supplement to Application for Authorization to Issue Short-Term Debt Under Section 204 of the Federal Power Act.

Filed Date: 02/16/2010.

Accession Number: 20100216–5228.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–3798 Filed 2–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 3

February 17, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–749–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement.

Filed Date: 02/05/2010.

Accession Number: 20100216–0236.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER10–750–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc et al submits to the Commission revisions

to the rules governing the Forward Capacity Market etc.

Filed Date: 02/16/2010.

Accession Number: 20100216–0235.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–751–000.

Applicants: Xcel Energy Services Inc.

Description: Northern States Power Company et al submits Original Sheet 1 et al to FERC Electric Tariff, Original Volume 3—FERC Electric Rate Schedule 280–NSP.

Filed Date: 02/05/2010.

Accession Number: 20100216–0234.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER10–752–000.

Applicants: ISO New England Inc.

Description: ISO New England, Inc et al submits transmittal letter describing two minor changes to the ISO New England Financial Assurance Policy etc.

Filed Date: 02/16/2010.

Accession Number: 20100216–0237.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–753–000.

Applicants: California Independent System Operator Corporation.

Description: The California Independent System Operator Corporation submits filing to modify the credit policy and billing provisions of the ISO tariff and to make related tariff changes.

Filed Date: 02/05/2010.

Accession Number: 20100216–0233.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER10–754–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool submits an executed service agreement for Network Integration Transmission Service etc.

Filed Date: 02/05/2010.

Accession Number: 20100216–0246.

Comment Date: 5 p.m. Eastern Time on Friday, February 26, 2010.

Docket Numbers: ER10–755–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits an Interconnection Agreement with the Waverly Municipal Electric Utility, dated 2/1/2010.

Filed Date: 02/16/2010.

Accession Number: 20100216–0229.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–756–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement entered into among PJM, Recurrent Energy Develo p.m.ent Holdings, LLC et al executed on 1/8/2010.

Filed Date: 02/12/2010.

Accession Number: 20100216–0230.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–757–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Notice of Cancellation of Service Agreement 228 under PacifiCorp's Seventh Revised Volume 11 Open Access Transmission Tariff.

Filed Date: 02/16/2010.

Accession Number: 20100217–0211.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–758–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits revised sheets to its Open Access Transmission Tariff reflecting updated Load Ratio Share figures to be effective 7/31/10 and an updated Oregon District Access Monthly Demand Charge.

Filed Date: 02/16/2010.

Accession Number: 20100217–0212.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–759–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits filing seeking Commission approval to revise certain sections of its Open Access Transmission Tariff related to PacifiCorp's Load Ration Share calculation.

Filed Date: 02/16/2010.

Accession Number: 20100217–0213.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–760–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits notice of cancellation of the Point-to-Point Transmission Service Agreement between SPP as Transmission Provider and Southwestern Public Service Company et al as Transmission Customer.

Filed Date: 02/16/2010.

Accession Number: 20100217–0214.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–761–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits amendments to its Open Access Transmission Tariff to include a new Attachment AR and related provisions, which provide for a screening study process to evaluate potential Long-Term Service etc.

Filed Date: 02/16/2010.

Accession Number: 20100217–0215.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–762–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Small Generator Interconnection Agreement between SPP as Transmission Provider et al.

Filed Date: 02/16/2010.

Accession Number: 20100217–0219.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–763–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits Second Restated and Amended Transmission Facilities Agreement between Idaho Power and PacifiCorp.

Filed Date: 02/16/2010.

Accession Number: 20100217–0217.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–764–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power Company submits Engineering and Procurement Agreement.

Filed Date: 02/16/2010.

Accession Number: 20100217–0216.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER10–765–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp request to modify the ISO tariff in order to reduce barriers to the participation of demand response in the ISO's market through the implementation of a new demand response etc.

Filed Date: 02/16/2010.

Accession Number: 20100217–0218.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–3797 Filed 2–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–711–000]

Respond Power LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

February 17, 2010.

This is a supplemental notice in the above-referenced proceeding of Respond Power LLC'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 March 9, 2010.

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 Street, NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–3802 Filed 2–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–719–000]

Matched LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

February 17, 2010.

This is a supplemental notice in the above-referenced proceeding of Matched LLC'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 March 9, 2010.

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 Street, 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. 2010–3801 Filed 2–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–716–000]

Algonquin Power Windsor Locks LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

February 17, 2010.

This is a supplemental notice in the above-referenced proceeding of Algonquin Power Windsor Locks LLC'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 March 9, 2010.

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 Street, 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. 2010–3800 Filed 2–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–720–000]

Northeastern Power Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

February 17, 2010.

This is a supplemental notice in the above-referenced proceeding of Northeastern Power Company'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 March 9, 2010.

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 Street, 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. 2010–3799 Filed 2–24–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0719, FRL–9118–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; Animal Sectors; EPA ICR No. 1989.07; OMB Control No. 2040–0250

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2012. 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 April 26, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–

OW–2008–0719, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: ow-docket@epa.gov* (Identify Docket ID No. EPA–HQ–OW–2008–0719 in the subject line).
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of three copies.
- *Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments identified by the Docket ID No. EPA–HQ–OW–2008–0719. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The 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: Amelia Letnes, State and Regional Branch, Water Permits Division, OWM Mail Code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564–5627; *e-mail address: letnes.amelia@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–OW–2008–0719, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Water Docket 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 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 Water Docket is 202–566–2426.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of technical information/data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected Entities: Entities potentially affected by this action are concentrated animal feeding operations (CAFOs) as specified in section 502(14) of the Clean Water Act, 33 U.S.C. 1362(14) and defined in the NPDES regulations at 40 CFR 122.23 and a subset of facilities engaged in aquatic animal production defined in 40 CFR part 451.

Title: Animal Sectors ICR.

ICR Number: EPA ICR No. 1989.07, OMB Control No. 2040–0250.

ICR Status: This ICR is currently scheduled to expire on July 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The purpose of this ICR is to consolidate, streamline, and update EPA's concentrated animal feeding operations (CAFOs) and concentrated aquatic animal production (CAAP) facility ICRs into the currently approved ICR for CAFOs (OMB Control No.:

2040–0250). The two ICRs that are being consolidated in this ICR are: (1) NPDES and ELG Regulatory Revisions for Concentrated Animal Feeding Operations (Final Rule) (OMB Control No. 2040–0250); and (2) Concentrated Aquatic Animal Production (CAAP) Effluent Guidelines (OMB Control No. 2040–0258). Additionally, two activities reported in the NPDES Program ICR (OMB Control No. 2040–0004) that are directly related with CAAP facilities or CAFOs will be incorporated in this ICR. (The two activities are the Permit Application for CAAP facilities using form 2B and Other Noncompliance Reports for CAFOs.)

Burden Statement: The individual ICRs provide a detailed explanation of the Agency's estimate before update and consolidation, which is only briefly summarized here on Tables 1 and 2. The frequency of response for these ICRs varies from once to ongoing.

TABLE 1—ICRS RESPONSES, BURDEN, AND COST SUMMARY

OMB ICR No.	EPA ICR No.	Title	Annual number of responses	Annual burden (hours)	Annual cost burden (dollars)
2040–0250 ...	1989.06	NPDES and ELG Regulatory Revisions for Concentrated Animal Feeding Operations (Final Rule).	179,483	2,998,603	7,780,524
2040–0258 ...	2087.03	Concentrated Aquatic Animal Production Point Source Category Effluent Guidelines Reporting and Recordkeeping Requirements.	734	44,196	0
2040–0004 ...	0229.19	NPDES program ICR	385	1,341	0

TABLE 2—ICRS RESPONDENTS AND AVERAGES SUMMARY

OMB ICR No.	EPA ICR No.	Title	Number of potential respondents	Average number of responses for each respondent	Average hours per response
2040–0250 ...	1989.06	NPDES and ELG Regulatory Revisions for Concentrated Animal Feeding Operations (Final Rule).	20,729	8.7	16.7
2040–0258 ...	2087.03	Concentrated Aquatic Animal Production Point Source Category Effluent Guidelines Reporting and Recordkeeping Requirements.	245	3.0	60.2
2040–0004 ...	0229.19	NPDES program ICR	242	1.6	3.5

After the consolidation and update are completed, the agency estimates a burden of 2,810,266 hours annually for 22,844 operator respondents at a cost of $63.6 million ($56.7 million burden cost and $6.9 million capital and O&M cost). Burden for the state respondents will be 463,412 hours annually at a cost of $10.0 million ($8.1 million burden cost and $1.8 million capital and O&M cost). Updated agency burden will be 15,188 hours annually at a cost of $0.8 million. The annual reporting and record-keeping burden for this collection of information is estimated to average 1.1 hours per response.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Change in Burden: The current burden approved by OMB for the two ICRs being consolidated plus the activities from the NPDES Program ICR being migrated to this ICR is 3,044,140 hours. This consolidated ICR estimates a total burden that is 229,537 hours more than the currently approved burden for the same ICRs. This increase in burden corresponds to 7.5 percent of the overall burden. The main cause of increase is that the animal agricultural industry has continued to change. These changes have included further growth and consolidation, which has resulted in a greater number of AFOs that meet the size threshold for being defined as a Large CAFO. The projections also reflect more robust estimates from States and EPA regions on numbers of CAFOs in each. EPA estimates that the industry will grow at an average annual rate of 5.6% over the life of this ICR; with permitted CAFOs growing at an average annual rate of 6.0%.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: February 16, 2010.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 2010–3842 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9115–1]

Notice of Availability of Class Deviation; Disputes Resolution Procedures Related to Clean Water and Drinking Water State Revolving Fund (CWSRF and DWSRF, Respectively) Reallocation Under the American Reinvestment and Recovery Act of 2009 (ARRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This document provides notice of availability of a Class Deviation from EPA's assistance agreement dispute procedures and also sets forth the procedures that will apply to the resolution of disputes that may arise in connection with the CWSRF and DWSRF reallocation decisions made by EPA under the ARRA. Currently, with respect to states and local governments, assistance agreement disputes and disagreements are resolved in accordance with EPA assistance agreement disputes procedures at 40 CFR 31.70. EPA has determined, however, through a Class Deviation, that these procedures are not practicable to use for CWSRF and DWSRF reallocation disputes and that it is appropriate to replace those procedures with the procedures contained in this document. The Class Deviation and this action only affect the dispute resolution procedures for CWSRF and DWSRF reallocation decisions under the ARRA.

DATES: These procedures are effective as of February 17, 2010.

FOR FURTHER INFORMATION CONTACT: Jordan Dorfman, (202) 564–0614.

SUPPLEMENTARY INFORMATION: Under EPA's appropriation provisions contained in Division A, Title VII of the ARRA, the Administrator is required to "reallocate funds appropriated * * * for the Clean and Drinking Water State Revolving Funds (Revolving Funds) where projects are not under contract or construction within 12 months of the date of enactment of this Act * * *." On December 24, 2009, EPA's Office of Water (OW) issued a memorandum to implement this requirement. *See* "Reallocation Process for Funds Deobligated after February 17, 2010 under the American Reinvestment and Recovery Act of 2009." That memorandum, among other things, requires states to certify by March 1, 2010, that they have complied with the statutory requirement that projects were under contract or construction, gives EPA the opportunity to assess the compliance, and describes the reallocation process. It also notes that EPA's Office of Grants and Debarment will provide guidance regarding the resolution of any reallocation disputes.

In addition to the February 17, 2010, reallocation requirement, Section 1603 of the general provisions of the ARRA requires, with limited exceptions not applicable to the CWSRF or DWSRF programs, that all funds appropriated under the ARRA are available for obligation until September 30, 2010. To ensure that SRF funds are fully obligated for construction projects by September 30th, the OW guidance memorandum makes clear that any funds reallocated to a State that are not under assistance agreements and under contract by June 17, 2010 will be subject to further reallotment.

As described in 40 CFR 31.70, the dispute resolution process can involve up to four levels of review and take several months to complete. Specifically, an entity disputing a decision can attempt to resolve the issue at the lowest level possible, request a final Agency decision, and request a reconsideration of the final decision. A possible fourth step is an EPA headquarters discretionary review of a final Regional decision. This timeframe is too long to permit the Agency to meet ARRA requirements for timely reallocation.

EPA's Office of Grants and Debarment has therefore issued a Class Deviation to streamline the 40 CFR 31.70 procedures. The Class Deviation will allow the Agency to comply with ARRA reallocation requirements and at the same time provide States with a meaningful disputes resolution process in the event a State disagrees with a reallocation decision.

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.* generally provides that before certain actions may take affect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

List of Subjects in 40 CFR Part 31

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

ARRA CWSRF and DWSRF Assistance Agreement Reallocation Decision Dispute Resolution Procedures:

EPA establishes ARRA CWSRF and DWSRF Assistance Agreement Reallocation dispute resolution procedures as follows:

1. The authority citation for the ARRA CWSRF and DWSRF assistance agreement reallocation disputes resolution procedures in this document is the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301(3).

2. The disputes resolution procedures that will apply to ARRA CWSRF and DWSRF assistance agreement reallocation disputes are as follows:

Dispute Resolution Procedures:

1. After receiving certifications provided by states, but not later than March 2, 2010, EPA will assess the certifications. As soon as possible thereafter, EPA will notify states that have any amount of ARRA funds identified as not under contract by February 17, 2010, that those funds will be deobligated and reallocated to eligible states.

2. If a state disagrees with the decision to deobligate funds or the amount of funds that the Agency determined is appropriate for deobligation of the state's CWSRF or DWSRF assistance agreement, it must

file a written request for reconsideration within three (3) calendar days of receiving the notification of intent to deobligate the funds. Any detail or arguments regarding why the state disagrees with the deobligation decision shall be provided at that time.

3. The written request for reconsideration shall be sent via E–Mail (PDF) or Facsimile to Jordan Dorfman. E–Mail address is *Dorfman.Jordan@epa.gov;* Fax is 202–501–2346.

4. The Assistant Administrator for the Office of Water shall review all reconsideration submissions, and shall issue a decision in writing within three (3) calendar days of receiving the reconsideration request. This decision shall be the final decision of the Agency.

5. The Agency will follow the same type of procedure for any subsequent reallotments.

Craig E. Hooks,

Assistant Administrator, Office of Administration and Resources Management.

[FR Doc. 2010–3847 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9118–5]

Clean Water Act Section 303(d): Availability of Ten Total Maximum Daily Loads (TMDLs) in Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment on the administrative record files and the calculations of ten TMDLs prepared by EPA Region 6.

This notice covers waters in the State of Louisiana's Atchafalaya and Mississippi River Basins that were identified as impaired on the States Section 303(d) list. These TMDLs were completed in response to a court order in the lawsuit styled *Sierra Club, et al.* v. *Clifford, et al.,* No. 96–0527, (E.D. La.).

DATES: Comments must be submitted in writing to EPA on or before March 29, 2010.

ADDRESSES: Comments on the ten TMDLs should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733 or e-mail: *smith.diane@epa.gov*. For further information, contact Diane Smith at (214) 665–2145 or fax 214.665.7373. The administrative record files for the ten TMDLs are available for public inspection at this address as well. Documents from the administrative record files may be viewed at *http://www.epa.gov/earth1r6/6wq/npdes/tmdl/index.htm*, or obtained by calling or writing Ms. Smith at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford, et al.,* No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. EPA proposes these ten TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comment on Ten TMDLs

By this notice EPA is seeking comment on the following ten TMDLs for waters located within Louisiana:

Subsegment	Waterbody name	Pollutant
010301	West Atchafalaya Basin Floodway	Dissolved Oxygen.
070203	Devil's Swamp Lake and Bayou Baton Rouge	Fecal Coliform.
070401	Mississippi River Passes (estuarine)	Fecal Coliform.
070403	Octave Pass and Main Pass (estuarine)	Fecal Coliform.
070404	Tiger Pass, Red Pass, Grand Pass, and Tante Phine Pass (estuarine).	Fecal Coliform.
070501	Bayou Sara	Fecal Coliform.
070502	Thompson Creek	Fecal Coliform.
070503	Capitol Lake	Fecal Coliform.
070505	Tunica Bayou	Fecal Coliform.
070601	Mississippi River Basin Coastal Bays and Gulf Waters to the State three-mile limit.	Fecal Coliform.

EPA requests the public provide to EPA any water quality related data and information that may be relevant to the calculations for the ten TMDLs. EPA will review all data and information submitted during the public comment period and will revise the TMDLs where appropriate. EPA will then forward the TMDLs to the Louisiana Department of Environmental Quality (LDEQ). The LDEQ will incorporate the TMDLs into its current water quality management plan.

Dated: February 18, 2010.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 2010–3830 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2009–0921; FRL–9118–6]

Extension of Request for Scientific Views for Draft 2009 Update Aquatic Life Ambient Water Quality Criteria for Ammonia—Freshwater

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of the request for scientific views.

SUMMARY: On December 30, 2009 (74 FR 69086), EPA announced the availability of draft national recommended water quality criteria for ammonia for the

protection of aquatic life entitled "Draft 2009 Update Aquatic Life Ambient Water Quality Criteria for Ammonia—Freshwater". Written scientific views on the draft recommended criteria were to be submitted to EPA on or before March 1, 2010 (a 60-day request for scientific views). Since publication, the Agency has received several requests for additional time to submit comments. Therefore, EPA is extending the period of time in which the Agency will accept scientific views on the draft criteria document for an additional 30 days.

DATES: Scientific views must be received on or before April 1, 2010. Comments postmarked after this date may not be considered.

ADDRESSES: Submit your scientific views, identified by Docket ID No. EPA–HQ–OW–2009–0921, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: OW-Docket@epa.gov.*
- *Mail:* U.S. Environmental Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 28221T; 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Ave., NW., EPA West, Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2009–0921. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Office of Water Docket/EPA/DC, 1301 Constitution Ave., NW., EPA West, Room 3334, Washington, DC. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., EST, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Lisa Huff, Health and Ecological Criteria Division (4304T), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 566–0787; *huff.lisa@epa.gov.*

Dated: February 18, 2010.

Peter S. Silva,

Assistant Administrator for Water.

[FR Doc. 2010–3833 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9117–9]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the Good Neighbor Environmental Board (Board). The Board usually meets three times each calendar year, twice at different locations along the U.S. border with Mexico, and once in Washington, DC. It was created in 1992 by the Enterprise for the Americas Initiative Act, Public Law 102–532, 7 U.S.C. Section 5404. Implementing authority was delegated to the Administrator of EPA under Executive Order 12916. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the States of Arizona, California, New Mexico and Texas; and Tribal and private organizations to provide advice on environmental and infrastructure issues along the U.S./Mexico Border.

The purpose of the meeting is to continue discussion and finalize the Board's 13th report. Presentations will also be heard on the environmental impacts of the border fence. The meeting will include a planning session, a business meeting and a public comment session. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/gneb.*

DATES: The Good Neighbor Environmental Board will hold an open meeting on Thursday, March 11, from 8:30 a.m. (registration at 8 a.m.) to 5:30 p.m. The following day, March 12, the Board will hold a business meeting from 8 a.m. until 1 p.m.

ADDRESSES: The meeting will be held at Esplendor Resort, 1069 Camino Caralampi, Rio Rico, AZ 85648, phone number: 520–281–1901. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Dolores Wesson, Designated Federal Officer, *wesson.dolores@epa.gov*, 202–564–1351, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Dolores Wesson at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *http://www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Dolores Wesson at 202–564–1351 or by e-mail at *wesson.dolores@epa.gov.* To request accommodation of a disability, please contact Dolores Wesson at least 10 days prior to the meeting to give EPA as

much time as possible to process your request.

Dated: February 16, 2010.

Dolores Wesson,

Designated Federal Officer.

[FR Doc. 2010–3715 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9117–8]

Science Advisory Board Staff Office; Request for Nominations of Experts To Augment the SAB Ecological Processes and Effects Committee (EPEC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations of non-EPA experts to augment the SAB Ecological Processes and Effects Committee (EPEC) to provide advice on technologies and systems to minimize the impacts of invasive species in vessel ballast water discharge.

DATES: Nominations should be submitted by March 18, 2010 per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 343–9995; by fax at (202) 233–0643 or via e-mail at *armitage.thomas@epa.gov.*

General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web site at *http://www.epa.gov/sab.* Inquiries as to the types of treatment technologies and information relevant to this effort should be directed to Ms. Robin Danesi of EPA's Office of Water at: *Danesi.Robin@epa.gov* or (202) 564–1846 or Mr. Marcus Zobrist of EPA's Office of Water (OW) at: *zobrist.marcus@epa.gov* or (202) 564–8311.

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. Generally, SAB meetings are announced in the **Federal Register,** conducted in public view, and provide opportunities for public input during deliberations. The Ecological Processes and Effects Committee is a standing committee of the chartered SAB. Additional information about the SAB and its committees can be obtained on the SAB Web site at *http://www.epa.gov/sab.*

Vessel ballast water discharges are a major source of nonidigenous species introductions to marine, estuarine, and freshwater ecosystems of the United States. Ballast water discharges are regulated by EPA under authority of the Clean Water Act (CWA) and the U.S. Coast Guard under authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act, as amended (NANPCA). NANPCA generally requires vessels equipped with ballast water tanks and bound for ports or places in the United States after operating beyond the U.S. Exclusive Economic Zone to conduct a mid-ocean ballast water exchange, retain their ballast water onboard, or use an alternative environmentally sound ballast water management method approved by the U.S. Coast Guard. Under the authority of the CWA, EPA's Vessel General Permit, in addition to the mid-ocean exchange, requires the flushing and exchange of ballast water by vessels in Pacific near-shore voyages and saltwater flushing of ballast water tanks that are empty or contain only un-pumpable residual ballast water.

While useful in reducing the presence of potentially invasive organisms in ballast water, ballast water exchange and saltwater flushing can have variable effectiveness and may not always be feasible due to vessel safety concerns. On August 28, 2009, the U.S. Coast Guard proposed establishing standards for concentrations of living organisms that can be discharged in vessel ballast water (74 FR 44632), and some States have established standards of their own. In addition, a number of studies and reports have been published on the status and efficacy of ballast water treatment technologies, and data collected on the efficacy of certain systems is available.

OW has requested SAB review of technical documents and available data on the efficacy of ballast water treatment systems and advice on improving the performance of such systems. This advice will be provided by the SAB EPEC augmented with experts who have specialized knowledge of treatment processes and technologies that may be useful to eliminate or reduce the presence of living organisms in vessel ballast water.

Request for Nominations: To augment expertise on the SAB EPEC, the SAB Staff Office is seeking nominations of nationally and internationally recognized scientists in fields such as aquatic biology, aquatic toxicology, microbiology, wastewater engineering, statistics, and naval engineering or architecture. We particularly seek scientists with specialized knowledge and expertise in treatment technologies to eliminate or reduce the presence of living organisms in drinking water, wastewater discharges, and other water-use circumstances.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate individuals qualified in the area of science as described above to be considered for appointment to augment this SAB Committee. Candidates may also nominate themselves. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for "Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed" provided on the SAB Web site. The form can be accessed through the "Nomination of Experts" link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab.* To receive full consideration, nominations should include all of the information requested, and should be submitted in time to arrive no later than March 18, 2010. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

EPA's SAB Staff Office requests contact information about: The person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vitae; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. Thomas Armitage, DFO, at the contact information provided above in this notice. Non-electronic submissions must follow the same format and contain the same information as the electronic.

The SAB Staff Office will acknowledge receipt of the nomination and inform nominees of the Committee for which they have been nominated. From the nominees identified by respondents to this **Federal Register** notice (termed the "Widecast") and other sources, the SAB Staff Office will develop a smaller subset (known as the "list of candidates") for more detailed consideration. The list of candidates will be posted on the SAB Web site at *http://www.epa.gov/sab* and will include, for each candidate, the nominee's name and biosketch. Public comments on the list of candidates will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis, or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Committee.

For the SAB, a balanced Committee is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation) and the collective breadth of experience to adequately address the charge. Public responses to the list of candidates will be considered in the selection of the Committee, along with information provided by candidates and information gathered by SAB Staff independently concerning the background of each candidate (*e.g.,* financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual Committee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; (e) ability to work constructively and effectively in committees; and (f) for the Committee as a whole, diversity of scientific expertise and viewpoints.

Prospective candidates will be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. Ethics information, including EPA Form 3110–48, is available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument.*

Dated: February 18, 2010.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–3718 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9118–1]

Notice of Settlement Agreement Pertaining to Construction of a Waste Repository on the Settlors' Property Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.,* notice is hereby given of a Settlement Agreement pertaining to Construction of a Waste Repository on Settlor's Property located on the Tar Creek Superfund Site in Ottawa County, Oklahoma.

The settlement requires a permanent waste repository on the property by resolving, liability the settling party might otherwise incur under CERCLA sections 106 or 107, 42 U.S.C. 9606 or 9607, for materials placed in the repository on the Property after the effective date of the Agreement. The settlement includes a covenant not to sue pursuant to Sections 106 and 107 of CERCLA, 42, U.S.C. 9606 and 9607, or other applicable law, for liability for response actions and/or claims for natural resource damages arising from the disposal of hazardous substances, pollutants, or contaminants in the Repository that is to be constructed on the Property.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202.

DATES: Comments must be submitted on or before March 29, 2010.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Ursula Lennox, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733 or by calling (214) 665–6743. Comments should reference Tar Creek Superfund site in Ottawa County, Oklahoma, and EPA Docket Number 06–02–10, and should be addressed to Ursula Lennox at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Costello, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733 or call (214) 665–8045.

Dated: February 12, 2010.

Al Armendariz,

Regional Administrator (6RA).

[FR Doc. 2010–3843 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9116–4]

Settlement Agreement for Recovery of Past Response Costs Colorado Bumper Exchange Site, Pueblo, Pueblo County, CO

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public Comment.

SUMMARY: In accordance with the requirements of section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(h)(1), notice is hereby given of a Settlement Agreement under sections 104, 106(a), 107, and 122 of CERCLA, 42 U.S.C. 9604, 9606(a), 9607, and 9622, between the United States Environmental Protection Agency (EPA) and Colorado Bumper Exchange, Inc. (Settling Party) regarding the Colorado Bumper Exchange Site (Site), located at 4804 Dillon Drive, Pueblo, Colorado. This Settlement Agreement proposes to compromise a claim the United States has at this Site for Past Response Costs, as those terms are defined in the Settlement Agreement. Under the terms

of the Settlement Agreement, the Settling Party agrees to immediately pay $18,000.00 to EPA in settlement of its liability for Past Response Costs incurred at the Site. In exchange, the Settling Party will be granted a covenant not to sue under Sections 107(a) of CERCLA, 42 U.S.C. 9607(a), with regard to reimbursement of Past Response Costs.

Opportunity for Comment: For thirty (30) days following the date of publication of this notice, EPA will consider all comments received and may modify or withdraw its consent to that portion of the Settlement Agreement, if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the Superfund Record Center, EPA Region 8, 1595 Wynkoop Street, 2nd Floor, in Denver, Colorado.

DATES: Comments must be submitted on or before March 29, 2010.

ADDRESSES: The Settlement Agreement and additional background information relating to the settlement are available for public inspection at the Superfund Records Center, EPA Region 8, 1595 Wynkoop Street, 2nd Floor, in Denver, Colorado. Comments and requests for a copy of the Settlement Agreement should be addressed to Judith Binegar, Enforcement Specialist (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, and should reference the Colorado Bumper Exchange, Inc. Settlement Agreement for the Colorado Bumper Exchange Site in Pueblo, Pueblo County, Colorado.

FOR FURTHER INFORMATION CONTACT: Judith Binegar, Enforcement Specialist, (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6606.

It is so agreed:

Dated: January 27, 2010.

Sharon L. Kercher,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8.

[FR Doc. 2010–3844 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 19, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduction the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before April 26, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0265.

Title: Section 80.868, Card of Instructions.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents: 4,506 respondents; 4,506 responses.

Estimated Time Per Response: .1 minute.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154, 303, 307(e), 309, and 332.

Total Annual Burden: 451 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Need and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the recordkeeping requirement). There is no change in the Commission's burden estimates.

Section 80.868 required a card of instructions giving a clear summary of the radiotelephone distress procedure must be securely mounted and displayed in full view of the principal operating position.

The information is used by a vessel radio operator during an emergency situation, and is designed to assist the radio operator to utilize proper distress procedures during a time when he or she may be subject to considerable stress or confusion.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–3840 Filed 2–24–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

02/19/2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

DATES: Persons wishing to comment on this information collection should submit comments by April 26, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via e–mail at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), via e–mail at Cathy.Williams@fcc.gov and to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1084.

Title: Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (CARE).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 2,242 respondents; 492,906 responses.

Estimated Time per Response: 1 minute (.017 hours) to 20 minutes (.33 hours).

Frequency of Response: Recordkeeping requirement; Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 1–4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151–154, 201, 202, 222, 258, and 303(r).

Total Annual Burden: 40,885 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is not an issue as individuals and/or households are not required to provide personally identifiable information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In the 2005 Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (2005 Report and Order), CG Docket No. 02–386, FCC 05–29, which was released on February 25, 2005, the Commission adopted rules governing the exchange of customer account information between local exchange carriers (LECs) and interexchange carriers (IXCs). The Commission concluded that mandatory, minimum standards are needed in light of record evidence demonstrating that information needed by carriers to execute customer requests and properly bill customers is not being consistently provided by all LECs and IXCs. Specifically, the 2005 Report and Order requires LECs to supply customer account information to IXCs when: (1) the LEC places an end user on, or removes an end user from, an IXC's network; (2) an end user presubscribed to an IXC makes certain changes to her account information via her LEC; (3) an IXC requests billing name and address information for an end user who has usage on an IXC's network but for whom the IXC does not have an existing account; and (4) a LEC rejects an IXC–initiated PIC order. The 2005 Report and Order requires IXCs to notify LECs when an IXC customer informs an IXC directly of the customer's desire to change IXCs. In the accompanying Further Notice of Proposed Rulemaking, the Commission sought comment on whether to require the exchange of customer account information between LECs. In December 2007, The Commission declined to adopt mandatory LEC–to–LEC data exchange requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–3839 Filed 2–24–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 09–205; DA 10–18]

Auction of Lower and Upper Paging Bands Licenses Scheduled for May 25, 2010; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 87

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of Lower and Upper Bands Licenses (Auction 87). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

DATES: Applications to participate in Auction 87 must be filed prior to 6 p.m. Eastern Time (ET) on March 16, 2010.

Bidding for licenses in Auction 87 is scheduled to begin on May 25, 2010.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal questions: Scott Mackoul at (202) 418–0660. For general auction questions: Roy Knowles or Barbara Sibert at (717) 338–2868. *Mobility Division:* For licensing information and service rule questions: Michael Connelly (legal) or Melvin Spann (technical) at 202–418–0620. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 87 Procedures Public Notice,* which was released on January 22, 2010. The complete text of the *Auction 87 Procedures Public Notice,* including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday and from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY—A257, Washington, DC 20554. The *Auction 87 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or Web site: *http://www.BCPIWEB.com*, using document number DA 10–18 for the *Auction 87 Procedures Public Notice*. The *Auction 87 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/87/*. Due to the large number of licenses in Auction 87, the complete list of licenses available for this auction has been provided in electronic format only, available as separate "Attachment A" files at *http://wireless.fcc.gov/auctions/87/*. A paper copy of the complete list of licenses and any other documents relating to Auction 87 may also be purchased from the Commission's duplicating contractor, BCPI.

I. General Information

A. Introduction

1. The Wireless Telecommunications Bureau (Bureau) announces the procedures and minimum opening bid amounts for the upcoming auction of 9,603 licenses for lower and upper paging bands spectrum. This auction, which is designated as Auction 87, is scheduled to commence on May 25, 2010. On November 30, 2009, the Bureau released a public notice seeking comment on competitive bidding procedures to be used in Auction 87. Interested parties submitted 1 comment and 1 reply comment in response to the *Auction 87 Comment Public Notice,* 74 FR 67221, December 18, 2009.

i. Licenses to be Offered in Auction 87

2. Auction 87 will offer 9,603 paging licenses consisting of 7,752 licenses in the lower paging bands (35 MHz, 43 MHz, 152 and 158 MHz, 454 and 459 MHz) and 1,851 licenses in the upper paging bands (929 MHz and 931 MHz). Auction 87 will include licenses that remained unsold from a previous auction, licenses on which a winning bidder in a previous auction defaulted, and licenses for spectrum previously associated with licenses that cancelled or terminated. In a few cases, the available license does not cover the entire geographic area due to an excluded area or previous partitioning.

3. Attachment A of the *Auction 87 Procedures Public Notice* provides a summary of the licenses available in Auction 87. Due to the large number of licenses in Auction 87, the complete list of licenses available for this auction will be provided in electronic format only, available as separate Attachment A files at *http://wireless.fcc.gov/auctions/87/*. Tables containing the block/frequency cross-reference list for the paging bands are included in Attachment B of the *Auction 87 Procedures Public Notice.*

B. Rules and Disclaimers

i. Relevant Authority

4. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in Title 47, Part 1, Subpart Q of the Code of Federal Regulations, including all amendments and clarifications; rules relating to the lower and upper paging bands and emerging technologies contained in Title 47, Part 22 and Part 90 of the Code of Federal Regulations; and rules relating to applications, environment, practice and procedure contained in Title 47, Part 1, Subpart I of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, terms) contained in this Public Notice and in the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.

5. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibited Communications and Compliance With Antitrust Laws

6. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits auction applicants for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Section 1.2105

7. The prohibited communication provisions of 47 CFR 1.2105(c) will apply to any applicants that submit short-form applications seeking to participate in a Commission auction and select licenses in the same or overlapping markets. In Auction 87, the rule would prohibit any applicants that have selected any of the same licenses or licenses with overlapping markets in their short form applications from communicating absent a disclosed agreement.

8. Under the terms of the rule, applicants that have applied for licenses covering the same or overlapping markets—unless they have identified each other on their short form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii)—must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

9. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and

other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

10. Information concerning applicants' license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same or overlapping geographic areas as the licenses that it has selected in its short-form application.

11. Entities and parties subject to 47 CFR 1.2105(c)'s prohibition on certain communications should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant's bids or bidding strategies. In situations where 47 CFR 1.2105(c)(7)(i) views the same person as the applicant with respect to two different entities filing competing applications, under Bureau precedent the bids and bidding strategies of one applicant are necessarily conveyed to the other and, absent a disclosed bidding agreement, an apparent violation of the rule occurs. The Bureau has not addressed situations where employees who do not qualify as the applicant (*e.g.,* are not officers or directors) receive information regarding a competing applicant's bids or bidding strategies and thus has not ruled on whether that information might be deemed to be necessarily conveyed to the applicant. The Bureau notes that the exception to 47 CFR 1.2105(c) providing that non-controlling interest holders may have interests in more than one competing bidder without violating the rule, provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), does not extend to controlling interest holders.

b. Prohibition Applies Until Down Payment Deadline

12. 47 CFR 1.2105(c)'s prohibition on certain communications take effect at the short-form application filing deadline and continue until the down payment deadline after the auction.

c. Prohibited Communications

13. Applicants for the upcoming Auction 87 and other parties that may be engaged in discussion with such applicants are cautioned on the need to comply with 47 CFR 1.2105(c). The rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

14. The Commission remains vigilant about communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.

15. Applicants are hereby placed on notice that disclosure of information relating to bidder interests and bidder identities that has not yet been made public by the Commission at the time of disclosure may violate the provisions of 47 CFR 1.2105(c) that prohibit certain communications. This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as for Auction 87, a qualified bidder's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of a violation of 47 CFR 1.2105(c). Similarly, an applicant's public statement of intent not to participate in Auction 87 bidding could also violate the rule.

16. Applicants selecting licenses for any of the same or overlapping geographic license areas must not communicate directly or indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.,* law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the 47 CFR 1.2105(c) prohibition on certain communications.

17. A violation of 47 CFR 1.2105(c) could occur in other contexts, such as an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

18. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate 47 CFR 1.2105(c), particularly in light of the limited information procedures in effect for Auction 87. Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

d. Disclosure of Bidding Agreements and Arrangements

19. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application, even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form application filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions, or communications with any other applicants for licenses covering any of the same or overlapping geographic

areas after the short-form application filing deadline.

e. Section 1.2105(c) Certification

20. By electronically submitting a short-form application following the electronic filing procedures set forth in Attachment C of the *Auction 87 Procedures Public Notice,* each applicant certifies its compliance with 47 CFR 1.2105(c). However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that prohibited behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Antitrust Laws

21. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application.

22. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

g. Duty To Report Prohibited Communications; Reporting Procedure

23. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five day period.

24. In addition, 47 CFR 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by 47 CFR 1.65 to report to the Commission any communications of bids or bidding strategies that result in a bidding arrangement, agreement, or understanding after the short-form filing application deadline.

25. The Commission recently amended 47 CFR 1.65(a) and 1.2105(c) to require applicants in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend their short-form applications no more than five days after the applicant becomes aware of the need for amendment. The Commission made this change to facilitate the auction process, by making the information available promptly to all participants and enabling the Bureau to act expeditiously on those changes when such action is necessary.

26. Parties reporting communications pursuant to 47 CFR 1.65 or 1.2105(c)(6) must take care to ensure that any such reports of prohibited communications do not themselves give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

27. The Commission recently amended 47 CFR 1.2105(c) to minimize the risk of inadvertent dissemination by requiring parties to file only a single report and to file that report with Commission personnel expressly charged with administering the Commission's auctions. Pursuant to the amended rule, any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 87 Procedures Public Notice.* For Auction 87, such reports should be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Specifically, any such reports should be submitted by e-mail at the following address: *auction87@fcc.gov,* or delivered to the following address: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 6423, Washington, DC 20554. Parties submitting such a report should include a cover sheet to avoid the inadvertent dissemination of information contained in the report.

28. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection. Such parties are also encouraged to consult with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action.

h. Winning Bidders Must Disclose Terms of Agreements

29. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.

i. Additional Information Concerning Rule Prohibiting Certain Communications

30. A summary listing of documents issued by the Commission and the Bureau addressing the application of 47 CFR 1.2105(c) may be found in Attachment E of the *Auction 87 Procedures Public Notice.*

iii. Incumbency Issues

31. There are pre-existing paging incumbent licenses, including public safety entities licensed under either 47 U.S.C. 337 or 47 CFR 1.925. Incumbent (non-geographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference. Geographic area licensees are likewise afforded co-channel interference protection from incumbent licensees. Adjacent geographic area licensees are obligated to resolve possible interference concerns of adjacent geographic area licensees by negotiating a mutually acceptable agreement with the neighboring geographic licensee.

a. International Coordination

32. Potential bidders seeking licenses for geographic areas adjacent to the

Canadian and Mexican border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of current or future agreements with Canada or Mexico. Licensees on the lower paging channels must submit an FCC Form 601 to obtain authorization to operate stations north of Line A or east of Line C because these channels are subject to the *Above 30 Megacycles per Second Agreement* with Industry Canada. Although the upper paging channels do not require coordination with Canada, the *U.S.-Canada Interim Coordination Considerations for the Band 929–932 MHz, as amended,* assigns specific 929 MHz and 931 MHz frequencies to the United States for licensing along certain longitudes above Line A, and assigns other specific 929 MHz and 931 MHz frequencies to Canada for licensing along certain longitudes along the U.S.-Canada border. In addition, the 929 MHz and 931 MHz frequencies assigned to Canada are unavailable for use by U.S. licensees above Line A as set out in the agreement.

b. Quiet Zones

33. Paging licensees must individually apply for and receive a separate license for each transmitter if the proposed operation would affect the radio quiet zones set forth in the Commission's rules.

iv. Due Diligence

34. Potential bidders are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Geographic area licensees in accordance with the Commission's rules must protect such incumbents from harmful interference. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

35. The Bureau cautions potential applicants formulating their bidding strategies to investigate and consider the extent to which these frequencies are occupied. For example, there are incumbent operations already licensed and operating in the bands that must be protected. These limitations may restrict the ability of paging licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Bidders should become familiar with the status of these operations and applicable Commission rules, orders and any pending proceedings related to the service, in order to make reasoned, appropriate decisions about their participation in this auction and their bidding strategy.

36. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses being offered in this auction. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a licensee subject to certain conditions and regulations. The auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

37. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 87 in order to determine the existence of any pending legislative, administrative, or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction 87 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements as well as other applicable Federal, state, and local laws.

38. Applicants should also be aware that certain pending and future proceedings, including rulemaking proceedings or petitions for rulemaking, applications (including those for modification), requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction 87. Pending and future judicial proceedings may also relate to particular applicants or incumbent licensees, or to the licenses available in Auction 87. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

39. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction 87. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

40. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses being offered.

41. Potential bidders may research the Bureau's licensing database on the Internet in order to determine which frequencies are already licensed to incumbent licensees. Applicants may obtain information about licenses available in Auction 87 through the Bureau's online licensing databases at *http://wireless.fcc.gov/uls.* Applicants may query the database online and download a copy of their search results if desired.

42. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

43. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the geographic area for which they plan to bid, and also to familiarize themselves with the environmental review obligations described in the *Auction 87 Procedures Public Notice.*

v. Use of Integrated Spectrum Auction System

44. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 87 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the

FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

vi. Environmental Review Requirements

45. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's environmental rules for each such facility.

C. Auction Specifics

i. Auction Start Date

46. Bidding in Auction 87 will begin on Tuesday, May 25, 2010, as announced in the *Auction 87 Comment Public Notice.* The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Bidding Methodology

47. The bidding methodology for Auction 87 will be simultaneous multiple round (SMR) bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iii. Pre-Auction Dates and Deadlines

48. The following dates and deadlines apply:

Auction Tutorial Available (via Internet).	March 4, 2010.
Short-Form Application (FCC Form 175) Filing Window Opens.	March 4, 2010; 12 noon ET.
Short-Form Application (FCC Form 175) Filing Window Deadline.	March 16, 2010; prior to 6 p.m. ET.
Upfront Payments (via wire transfer).	April 23, 2010; 6 p.m. ET.
Mock Auction	May 21, 2010.
Auction Begins	May 25, 2010.

iv. Requirements for Participation

49. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. ET, March 16, 2010, following the electronic filing procedures set forth in Attachment C of the *Auction 87 Procedures Public Notice;* (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, April 23, 2010, following the procedures and instructions set forth in Attachment D of the *Auction 87 Procedures Public Notice;* and (3) comply with all provisions outlined in the *Auction 87 Procedures Public Notice* and applicable Commission rules.

II. Short-Form Application (FCC Form 175) Requirements

A. General Information Regarding Short-Form Applications

50. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction must file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments. In the second phase of the process, winning bidders must file a more comprehensive long-form application (FCC Form 601) and have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.

51. Entities seeking licenses available in Auction 87 must file short-form applications electronically via the FCC Auction System prior to 6 p.m. ET on March 16, 2010, following the procedures prescribed in Attachment C of the *Auction 87 Procedures Public Notice.* Applicants filing short-form applications are subject to the Commission's rule prohibiting certain communications beginning on the deadline for filing. The information provided in its short-form application will be used in determining, among other things, if the applicant is eligible for a bidding credit.

52. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment C carefully and should consult the Commission's rules to ensure that, in addition to the materials all the information that is required under the Commission's rules is included with their short-form applications.

53. An entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may become qualified to bid.

54. Applicants also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. An applicant cannot change the certifying official to its application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. License Selection

55. An applicant must select the licenses on which it wants to bid from the *Eligible Licenses* list on its short-form application. To assist applicants in identifying licenses of interest that will be available in Auction 87, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the *Eligible Licenses* list.

56. Applicants will not be able to change their license selections after the short-form application filing deadline. Applicants interested in participating in this auction must have selected license(s) available in Auction 87 by the short-form application deadline. Applicants must confirm their license selections before the deadline for submitting short-form applications. The FCC Auction System will not accept bids from an applicant on licenses that the applicant has not selected on its short-form application.

C. Disclosure of Bidding Arrangements

57. Applicants will be required to identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.

58. Applicants will also be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements, or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and it may not continue such discussions with any applicants after the deadline.

59. While 47 CFR 1.2105(c) of the rules does not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Further, as discussed above, compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

D. Ownership Disclosure Requirements

60. All applicants must comply with the uniform ownership disclosure standards set forth in Title 47, Part 1 of the Code of Federal Regulations, and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

61. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted with an ownership disclosure information report (FCC Form 602) or in a short-form application (FCC Form 175) filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. An applicant is responsible for ensuring that the information submitted in its short-form application for Auction 87 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the Auction 87 deadline for filing the short-form application. If any information that was entered automatically needs to be changed, applicants must do so directly in the short-form application.

E. Designated Entity Provisions

62. Eligible applicants in Auction 87 may claim small business bidding credits. Applicants should review carefully the Commission's decisions regarding the designated entity provisions.

i. Bidding Credits for Small Businesses

63. A bidding credit represents an amount by which a bidder's winning bid will be discounted. For Auction 87, bidding credits will be available to small businesses and consortia thereof.

a. Bidding Credit Eligibility Criteria

64. The level of bidding credit is determined as follows: (1) A bidder with attributed average annual gross revenues that do not exceed $15 million for the preceding three years will receive a 25 percent discount on its winning bid; and (2) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years will receive a 35 percent discount on its winning bid. Bidding credits are not cumulative. A qualifying applicant may claim either a 25 percent or 35 percent bidding credit on its winning bid.

b. Revenue Disclosure on Short-Form Application

65. An entity applying as a small business must provide gross revenues for the preceding three years of each of the following: (1) The applicant, (2) its affiliates, (3) its controlling interests, (4) the affiliates of its controlling interests, and (5) the entities with which it has an attributable material relationship. Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Additionally, if an applicant is applying as a consortium of small businesses, this information must be provided for each consortium member.

ii. Attributable Interests

a. Controlling Interests

66. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis.

67. Applicants should refer to 47 CFR 1.2110(c)(2) and Attachment C of the *Auction 87 Procedures Public Notice* to understand how certain interests are calculated in determining control. For example, pursuant to 47 CFR 1.2110(c)(2)(ii)(F), officers and directors of an applicant are considered to have controlling interest in the applicant.

b. Affiliates

68. Affiliates of an applicant or controlling interest include an individual or entity that: (1) Directly or indirectly controls or has the power to control the applicant; (2) is directly or indirectly controlled by the applicant; (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant; or (4) has an identity of interest with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information regarding affiliates, applicants should refer to 47 CFR 1.2110(c)(5) and Attachment C of the *Auction 87 Procedures Public Notice.*

c. Material Relationships

69. The Commission requires the consideration of certain leasing and resale (including wholesale) relationships—referred to as material relationships—in determining designated entity eligibility for bidding credits. Material relationships fall into two categories: Impermissible and attributable.

70. An applicant or licensee has an impermissible material relationship when it has agreements with one or more other entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any of its licenses. If an applicant or a licensee has an impermissible material relationship, it is, as a result, (i) ineligible for the award of designated entity benefits, and (ii) subject to liability for unjust enrichment on a license-by-license basis.

71. An applicant or licensee has an attributable material relationship when

it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (i) eligibility for designated entity benefits and (ii) liability for unjust enrichment on a license-by-license basis.

72. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order,* 71 FR 26245, May 5, 2006, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity's ongoing eligibility for benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, the occurrence of any of those eligibility events after the release date of the *Designated Entity Second Report and Order* triggers a reexamination of the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.

d. Gross Revenue Exceptions

73. The Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining designated entity eligibility. For example, the Commission has clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.

74. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in 47 CFR 1.2110(b)(3)(iii) are met. An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 CFR 1.2110(b)(3)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule. Applicants seeking to claim this exemption must meet all of the conditions.

e. Bidding Consortia

75. A consortium of small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business. Thus, each member of a consortium of small businesses that applies to participate in Auction 87 must individually meet the criteria for small businesses. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

F. Tribal Lands Bidding Credit

76. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their more detailed, long-form applications.

G. Provisions Regarding Former and Current Defaulters

77. Current defaulters are not eligible to participate in Auction 87, but former defaulters can participate so long as they are otherwise qualified and, make upfront payments that are fifty percent more than the normal upfront payment amounts. An applicant is considered a current defaulter when it, its affiliates, its controlling interests, or the affiliates of its controlling interests, are in default on any payment for any Commission license (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a former defaulter when it, its affiliates, its controlling interests, or the affiliates of its controlling interests, have defaulted on any Commission license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

78. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payments for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether or not it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

79. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to coordinate with the Commission's Office of Managing Director or the Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

80. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission has adopted rules, including a provision referred to as the red light rule, that implement the Commission's

obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

81. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

H. Minor Modifications to Short-Form Applications

82. Applicants are not permitted to make major modifications to their short-form applications (*e.g.,* change their license selections, change control of the applicant, change the certifying official, or change their size to claim eligibility for a higher bidding credit) after the short-form application deadline. Thus, any change in control of an applicant, resulting from a merger, for example, will be considered a major modification to the applicant's short-form application, which will consequently be dismissed.

83. Applicants are, however, permitted to make minor changes to their short-form applications after the filing deadline. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

I. Maintaining Current Information in Short-Form Applications

84. 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application. The Commission recently amended 47 CFR 1.65(a) to require applicants in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend their short-form applications no more than five days after the applicant becomes aware of the need for amendment. Changes that cause a loss of or reduction in eligibility for a bidding credit should be reported immediately. If an amendment reporting substantial changes is a major amendment, as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

85. After the short-form filing deadline, applicants may make only minor changes to their short-form applications.

III. Pre-Auction Procedures

A. Online Auction Tutorial—Available March 4, 2010

86. On Thursday, March 4, 2010, the Commission will post an educational auction tutorial on the Auction 87 web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and paging rules. The tutorial will also provide an avenue to ask questions of FCC staff concerning the auction, auction procedures, filing requirements, and other matters related to this auction.

87. The Auction 87 online tutorial replaces the live bidder seminars that have been offered for most previous auctions. The Bureau believes parties interested in participating in Auction 87 will find this interactive, online tutorial a more efficient and effective way to further their understanding of the auction process.

88. The auction tutorial will be accessible from the FCC's Auction 87 web page at *http://wireless.fcc.gov/auctions/87/* through an Auction Tutorial link. Once posted, this tutorial will remain available for reference in connection with the procedures outlined in the *Auction 87 Procedures Public Notice* and accessible anytime.

B. Short-Form Applications—Due Prior to 6 p.m. ET on March 16, 2010

89. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment C of the *Auction 87 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This application must be received at the Commission prior to 6 p.m. ET on March 16, 2010. Late applications will not be accepted.

C. Application Processing and Minor Corrections

90. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those applications that are complete, (2) those applications that are rejected, and (3) those applications that are incomplete because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

91. After the March 16, 2010, short-form filing deadline, applicants may make only minor corrections to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.,* change their license selections, change control of the applicant, change certifying official, or change their size to claim eligibility for a higher bidding credit).

92. Applicants should be aware the Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be submitted by e-mail at the following address: *auction87@fcc.gov.*

D. Upfront Payments—Due April 23, 2010

93. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in this Public Notice and must be received in the proper account at U.S. Bank before 6 p.m. ET on April 23, 2010.

i. Making Upfront Payments by Wire Transfer

94. Wire transfer payments must be received by 6 p.m. ET on April 23, 2010.

No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

95. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418–4232. On the fax cover sheet, applicants should write Wire Transfer—Auction Payment for Auction 87. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. The applicant is responsible for obtaining confirmation from its financial institution that U.S. Bank has timely received its upfront payment and deposited it in the proper account.

96. Please note the following information regarding upfront payments: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 87 go to a lockbox number different from the lockboxes used in previous FCC auctions; and (4) failure to deliver a sufficient upfront payment as instructed by the April 23, 2010, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

ii. FCC Form 159

97. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction 87 Procedures Public Notice.* An electronic pre-filled version of the FCC Form 159 is available after submitting the short-form application. Payors using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

98. The Commission has delegated to the Bureau the authority and discretion to determine appropriate upfront payments for each auction. Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

99. Applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110.

100. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed, in the *Auction 87 Comment Public Notice,* that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. Under the Bureau's proposal, in order to bid on a particular license, a qualified bidder must have selected the license on its short-form application and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish at least 500 bidding units of eligibility, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its short-form application, but only enough to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids at any given time.

101. In the *Auction 87 Comment Public Notice,* the Bureau proposed to make the upfront payments equal to the minimum opening bids. The Bureau further proposed that each license be assigned a specific number of bidding units equal to the upfront payment listed for the license, on a bidding unit for dollar basis. The bidding unit level for each license will remain constant throughout the auction. The Bureau received no comments on this issue. The Bureau adopts its proposed upfront payments. The upfront payment and bidding units for each license will be $500 and 500 bidding units.

102. In the *Auction 87 Comment Public Notice,* the Bureau noted the presence of pre-existing site-based incumbent licenses within some of the geographic areas available in Auction 87. The Bureau did not specifically address incumbency in its discussion of upfront payments. However, in its discussion of the proposed minimum opening bid amounts, the Bureau noted it had not attempted to adjust minimum opening bid amounts for licenses based on precise levels of incumbency within particular geographic areas, and has instead proposed a formula intended to reflect overall incumbency levels within the paging service areas being offered.

103. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to be active in any given round. Applicants should check their calculation carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

104. Applicants that are former defaulters must calculate their upfront payment for all licenses by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

105. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed below be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted.

E. Auction Registration

106. Approximately ten days before the auction, the Bureau will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted short-form applications that are deemed complete and upfront payments that are sufficient to make them eligible to bid.

107. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the short-form application and will include the SecurID® tokens that will be required to

place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

108. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Wednesday, May 19, 2010, should call (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

109. Only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements for lost or damaged SecurID® tokens.

F. Remote Electronic Bidding

110. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its short-form application. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the short-form application. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 87.

G. Mock Auction—May 21, 2010

111. All qualified bidders will be eligible to participate in a mock auction on Friday, May 21, 2010. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

112. The first round of bidding for Auction 87 will begin on Tuesday, May 25, 2010. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

113. The Bureau will auction all licenses in Auction 87 in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Typically, bidding remains open on all licenses until bidding stops on every license.

ii. Information Available to Bidders Before and During the Auction

114. In the *Auction 87 Comment Public Notice,* the Bureau proposed to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. The Bureau sought comment on the proposal to implement anonymous bidding and on any alternatives, particularly in light of the large number of licenses available in Auction 87.

115. The Bureau received one comment on its proposal to use anonymous bidding procedures for Auction 87. Because the Bureau finds that the competitive benefits associated with anonymous bidding support adoption of such procedures, the Bureau adopts the limited information procedures proposed in the *Auction 87 Comment Public Notice.* Thus, after the conclusion of each round, the Bureau will disclose all relevant information about the bids placed and/or withdrawn except the identities of the bidders performing the actions and the net amounts of the bids placed or withdrawn. As in past auctions conducted with limited information procedures, the Bureau will indicate, for each license, the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, the Bureau will also release, for each license, the number of bidders that placed a bid on the license. Furthermore, the Bureau will indicate whether any proactive waivers were submitted in each round, and the Bureau will release the stage transition percentage—the percentages of licenses (as measured in bidding units) on which there were new bids—for the round. In addition, bidders can log in to the FCC Auction System to see, after each round, whether their own bids are provisionally winning. The Bureau will provide descriptions and/or samples of publicly available and bidder-specific (non-public) results files prior to the start of the auction.

116. The Bureau, however, retains the discretion not to use limited information procedures if the Bureau, after examining the level of potential competition as expressed in the license selection on the short-form applications filed for Auction 87, determines that the circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. For example, if only two applicants become qualified to participate in the bidding, limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder and, therefore, limited information procedures would not serve to deter attempts at signaling and retaliatory bidding behavior.

117. *Other Issues.* Information disclosure procedures established for this auction will not interfere with the administration of or compliance with the Commission's prohibition of certain communications. 47 CFR 1.2105(c)(1) provides that, after the short-form application filing deadline, all applicants for licenses in any of the same or overlapping geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.

118. In Auction 87, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. As in the past, the Commission will disclose the other portions of applicants' short-form applications through its online database, and certain application-based information through public notices.

119. To assist applicants in identifying other parties subject to 47 CFR 1.2105(c), the Bureau will notify separately each applicant in Auction 87 whether applicants with short-form applications to participate in pending auctions, including but not limited to Auction 87, have applied for licenses in any of the same or overlapping geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 87, it will send to

each applicant in Auction 87 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same or overlapping geographic areas. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply with 47 CFR 1.2105(c)—such as the identities of other applicants' controlling interests and entities with a greater than ten percent ownership interest—will be available through the publicly accessible online short-form application database.

120. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's prohibition of certain communications, pursuant to 47 CFR 1.2105(c), particularly in light of the Commission's procedures regarding the availability of certain information in Auction 87. While applicants' license selections will not be disclosed until after Auction 87 closes, the Commission will disclose other portions of short-form applications through its online database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

121. If an applicant is found to have violated the Commission's rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.

122. The Bureau hereby warns applicants that the direct or indirect communication to other applicants or the public disclosure of non-public information (*e.g.,* bid withdrawals, proactive waivers submitted, reductions in eligibility) could violate the Commission's anonymous bidding procedures and 47 CFR 1.2105(c). To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the Securities and Exchange Commission, the Bureau strongly urges that the applicant consult with the Commission staff in the Auctions and Spectrum Access Division before making such disclosure.

iii. Eligibility and Activity Rules

123. The Bureau will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 87. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each license is assigned a specific number of bidding units set forth in the complete list of licenses available for Auction 87, available as separate Attachment A files at *http://wireless.fcc.gov/auctions/87/.* Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its short-form application as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

124. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific minimum percentage of their current bidding eligibility during each round of the auction.

125. A bidder's activity level in a round is the sum of the bidding units associated with any licenses covered by new and provisionally winning bids. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round.

126. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Commission adopts them for Auction 87. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iv. Auction Stages

127. In the *Auction 87 Comment Public Notice,* the Bureau proposed to conduct the auction in two stages and employ an activity rule. Under the Bureau's proposal a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. The Commission received no comments on this proposal.

128. The Bureau has the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant, and also has other mechanisms by which it may influence the speed of an auction. The Bureau finds that two stages for an activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, the Bureau adopts the two stages for Auction 87.

v. Stage Transitions

129. In the *Auction 87 Comment Public Notice,* the Bureau proposed that it would advance the auction to the next stage (*i.e.,* from Stage One to Stage Two) after considering a variety of measures of auction activity. The Bureau received no comments on this issue therefore the Bureau adopts its proposal for stage transitions. Thus, the auction will start in Stage One. The Bureau will regulate the pace of the auction by announcement. The Bureau retains the discretion to transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.

vi. Activity Rule Waivers

130. In the *Auction 87 Comment Public Notice,* the Bureau proposed that each bidder in the auction be provided with three activity rule waivers. The Bureau received no comments on this issue and therefore adopts its proposal to provide bidders with three activity rule waivers. More detail on activity rule waivers can be found in the *Auction 87 Procedures Public Notice.*

vii. Auction Stopping Rules

131. For Auction 87, the Bureau proposed to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.

132. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 87. The Bureau received no comment on its proposals, and therefore adopts the simultaneous stopping rule and its alternatives versions as options.

viii. Auction Delay, Suspension, or Cancellation

133. In the *Auction 87 Comment Public Notice,* the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau received no comment on this issue therefore the Bureau adopts the proposed rules regarding auction delay, suspension, or cancellation.

B. Bidding Procedures

i. Round Structure

134. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

135. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

ii. Reserve Price and Minimum Opening Bids

136. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses are subject to auction (*i.e.,* because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.

137. In the *Auction 87 Comment Public Notice,* the Bureau did not propose to establish a separate reserve price for the licenses to be offered in Auction 87. The Bureau, however, did propose to establish minimum opening bids for each license, reasoning that a minimum opening bid, which has been used on other auctions, is an effective bidding tool for accelerating the competitive bidding process. Specifically, for Auction 87, the Bureau proposed to set the minimum opening bid for each license available in Auction 87 at $500. In the *Auction 87 Comment Public Notice,* the Bureau noted the presence of pre-existing site-based incumbent licenses within some of the geographic areas available in Auction 87. In its discussion of the proposed minimum opening bid amounts, the Bureau noted that it had not attempted to adjust minimum opening bid amounts for licenses based on precise levels of incumbency within particular geographic areas, and have instead proposed a formula intended to reflect overall incumbency levels within the paging areas being offered.

138. The Bureau sought comment on its proposal for minimum opening bids and, in the alternative, on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bids. A commenter expressed concern about the minimum opening bids for licenses in Auction 87 and appeared to be concerned about setting minimum opening bids at the same level that certain paging licenses were won in previous auctions (*i.e.,* $500) and that the proposed minimum opening bid amounts may make it difficult for bidders to maintain the required activity level. In reply, another commenter disagreed and suggested that the success of Auctions 40 and 48 confirm that the minimum opening bid levels proposed will have the desired result of producing a time-efficient auction that places spectrum in the hands of those that value it most.

139. The Bureau finds that the proposed minimum opening bids will promote an appropriate auction pace and avoid unnecessarily prolonging Auction 87. The Bureau therefore adopts its proposal to set the minimum opening bid for each license available in Auction 87 at $500.

iii. Bid Amounts

140. In the *Auction 87 Comment Public Notice,* the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts. Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. The Commission received no comment on this issue. Based on the Commission's experience in prior auctions, the Bureau adopts this proposal for Auction 87.

a. Minimum Acceptable Bids

141. Under the Bureau's proposed procedures, the first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid will be a certain percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. If, for example, the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

142. For Auction 87, the Bureau proposed to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a license will be approximately 10 percent greater than the provisionally winning bid amount for the license.

143. The Bureau received no comments on this proposal. Therefore, the Bureau adopts its proposal to begin

the auction with a minimum acceptable bid increment percentage of 0.10.

b. Additional Bid Amounts

144. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; etc. The Bureau will round the results using the Commission's standard rounding procedures for auctions.

145. The Bureau sought comment on whether to start with eight additional bid amounts (for a total of nine bid amounts), or with fewer or no additional bid amounts, in the event that anonymous bidding is implemented for Auction 87. If additional bid amounts are available in Auction 87, the Bureau proposed to use a bid increment percentage of 5 percent.

146. The Bureau received no comments on this proposal. Therefore, the Bureau adopts its proposal to begin the auction with a bid increment percentage of 0.05 and have eight additional bid amounts per license (for a total of nine bid amounts). The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if it determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis.

iv. Provisionally Winning Bids

147. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

148. In the *Auction 87 Comment Public Notice,* the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (*i.e.,* tied bids). No comments were received on this proposal. Hence, the Bureau adopts the proposal.

v. Bidding

149. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 87. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

150. A bidder's ability to bid on specific licenses is determined by two factors: (1) The licenses selected on the bidder's short-form application and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its short-form application.

151. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

152. In each round, eligible bidders will be able to place bids on a given license in one or more pre-defined bid amounts. For each license, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

153. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for a license will be determined.

154. During a round, an eligible bidder may submit bids for as many licenses as it wishes (provided that the bidder has enough eligibility), remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If a bidder submits multiple bids for the exact same license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's current activity.

155. Finally, bidders are cautioned to select their bid amounts carefully because, as explained below, bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

156. In the *Auction 87 Comment Public Notice,* the Commission proposed bid removal and bid withdrawal procedures. The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals of provisionally winning bids on licenses in no more than one round during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion.

157. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposal.

158. *Bid Removal.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. If a bid is placed on a license during a round, it will count towards the activity for that round, but when that bid is then removed during the same round it was placed, the activity associated with it is also removed, *i.e.,* a bid that is removed does not count toward bidding activity.

159. *Bid Withdrawal.* Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for licenses using the withdraw bids function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the

auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

160. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. The Commission will serve as a placeholder provisionally winning bidder on the license until a new bid is submitted on that license.

161. *Calculation of Bid Withdrawal Payment.* Generally, the Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the winning bid in the same or subsequent auction(s). If there are multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

162. 47 CFR 1.2104(g)(1) sets forth the payment obligations of a bidder that withdraws a provisionally winning bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. In the *Auction 87 Comment Public Notice,* the Bureau proposed to establish the percentage at ten percent for Auction 87 and sought comment on the proposal. The Bureau received no comments on this issue and adopts its proposal.

vii. Round Results

163. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

viii. Auction Announcements

164. The Commission will use auction announcements to announce items such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

165. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, final payments, and ownership disclosure information reports.

A. Down Payments

166. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 87 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business bidding credit).

B. Final Payments

167. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the applicable deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

168. Within ten business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for the license(s) they won through Auction 87. Winning bidders claiming eligibility for a small business bidding credit must demonstrate their eligibility for the bidding credit. Further filing instructions will be provided to winning bidders in the auction closing public notice.

169. Winning bidders organized as bidding consortia must comply with the long-form application procedures established in the *CSEA/Part 1 Report and Order* 71 FR 6992, February 10, 2006. Specifically, each member (or group of members) of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s). If the license is to be partitioned or disaggregated, the member (or group) filing the long-form application must provide the relevant partitioning or disaggregation agreement in its long-form application. In addition, if two or more consortium members wish to be licensed together, they must first form a legal business entity, and any such entity must meet the applicable designated entity criteria.

D. Ownership Disclosure Information Report (FCC Form 602)

170. Within ten business days after release of the auction closing public notice, each winning bidder must also comply with the ownership reporting requirements in 47 CFR 1.913, 1.919, and 1.2112 by submitting an ownership disclosure information report (FCC Form 602) with its long-form application.

171. If an applicant already has a complete and accurate FCC Form 602 on file in the Commission's Universal Licensing System (ULS), it is not necessary to file a new report, but applicants must verify that the information on file with the Commission is complete and accurate. If the applicant does not have an FCC Form 602 on file, or if it is not complete and accurate, the applicant must submit one.

172. When an applicant submits a short-form application, ULS automatically creates an ownership record. This record is not an FCC Form 602, but may be used to pre-fill the FCC Form 602 with the ownership information submitted on the applicant's short-form application. Applicants must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the long-form application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notice.

E. Tribal Lands Bidding Credit

173. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal

lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

174. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vii).

F. Default and Disqualification

175. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.,* fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

176. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction 87 Comment Public Notice,* the Bureau proposed to set the additional default payment for this auction at 10 percent of the applicable bid. The Bureau received no comments on this proposal and therefore adopts the proposal.

177. Finally, in the event of a default, the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

G. Refund of Remaining Upfront Payment Balance

178. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders should not request a refund of their upfront payments before the Commission releases a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, and final payments. More detailed information on refunds is available in the *Auction 87 Procedures Public Notice.*

Federal Communications Commission.

William W. Huber,

Associate Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2010–3875 Filed 2–24–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, February 24, 2010, at 11:30 a.m.

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

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

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

Matters concerning participation in civil actions or proceedings or arbitration.

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

* * * * *

DATE AND TIME: Thursday, February 25, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

Items To Be Discussed

Correction and Approval of Minutes.

Notice of Proposed Rulemaking on FEC Standards of Conduct.

DRAFT ADVISORY OPINION 2010–01: Nevada State Democratic Party by its counsel, Marc E. Elias and Graham M. Wilson.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Darlene Harris, Acting Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

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

Signed:

Darlene Harris,

Acting Secretary of the Commission.

[FR Doc. 2010–3589 Filed 2–24–10; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

February 17, 2010.

TIME AND DATE: 10 a.m., Thursday, March 4, 2010.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Wolf Run Mining Company,* Docket No. WEVA 2008–804. (Issues include whether a violation of a safeguard notice issued by the Secretary may be designated as "significant and substantial.")

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 2010–3995 Filed 2–23–10; 4:15 pm]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 12, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Carol O'Leary, Medford, Wisconsin, as an individual; and Carol O'Leary, Medford, Wisconsin; Tristar Printing Co., Inc., Abbotsford, Wisconsin; Kevin S. Flink and Kristine M. O'Leary, both of Abbotsford, Wisconsin; and Willis R. Whetstone, Medford, Wisconsin, as a group acting in concert to retain control of Central Wisconsin Bancorporation, Inc., and thereby indirectly acquire Community Bank of Central Wisconsin, both of Colby, Wisconsin.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Park Randal Roney, Mapleton, Utah, Blake Marshal Roney, Provo, Utah, Robert Tod Monsen, Mapleton, Utah, and Steven Jay Lund, of Provo, Utah; to acquire voting shares of Community Bancorporation, Pleasant Grove, Utah, and thereby indirectly acquire voting shares of Western Community Bank, Orem, Utah.

Board of Governors of the Federal Reserve System, February 22, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–3810 Filed 2–24–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 22, 2010.

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

1. Gulfshore Bancshares, Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Gulfshore Bank, Tampa, Florida.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Texas State Bankshares, Inc., Harlingen, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Falfurrias State Bank, Falfurrias, Texas.

Board of Governors of the Federal Reserve System, February 22, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–3811 Filed 2–24–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011346–020.

Title: Israel Trade Conference Agreement.

Parties: American President Lines, Ltd.; A.P. Moller-Maersk A/S; Maersk Line Limited; and Zim Integrated Shipping Services, Ltd.

Filing Party: Howard A. Levy, Esq.; Chairman; Israel Trade Conference; 80 Wall Street, Suite 1117; New York, NY 10005–3602.

Synopsis: The amendment deletes the admission fee and financial guarantee that was required by the Agreement.

Agreement No.: 012074–001.

Title: HLAG/UASC Slot Exchange Agreement.

Parties: Hapag-Lloyd AG and United Arab Shipping Company.

Filing Party: Wayne Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment adds Egypt to the geographic scope of the agreement.

Agreement No.: 012089.

Title: MOL/Swiss Shipping Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd. and Swiss Shipping Line GmbH.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West Fifth Street, 46th Floor, Los Angeles, CA 20573.

Synopsis: The agreement authorizes Mitsui O.S.K. Lines, Ltd. to charter space to Swiss Shipping for vehicles on Ro-Ro vessels in the trade from the Atlantic and Gulf Coasts of the United States to Benin.

Agreement No.: 012090.

Title: Seaboard/Seafreight Space Charter Agreement.

Parties: Seaboard Marine Ltd. and Seafreight Line, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher and Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes Seaboard to charter space to Seafreight in the trade between ports of Miami, FL and George Town, Grand Cayman.

Agreement No.: 012091.

Title: HLAG/HSDG Slot Charter Agreement.

Parties: Hamburg Sud and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes Hapag-Lloyd to charter slots to Hamburg Sud on its service in the trade between ports on the U.S. Atlantic and Gulf Coasts and the Gulf Coast of Mexico and ports in France, Italy, and Spain.

By Order of the Federal Maritime Commission.

Dated: February 19, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–3762 Filed 2–24–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier—Ocean Transportation Intermediary Applicants:

Eastern Logistics LLC, 6 Elna Ct., Bayonne, NJ 07002. Officer: Sameh F. Kaldes, President (Qualifying Individual)

Sabrina Shipping, LLC, 51 Cragwood Road, South Plainfield, NJ 07080. Officer: Hans Madsen, President (Qualifying Individual)

Non-Vessel-Operating Common Carrier—Ocean Transportation Intermediary Applicants (Cont'd):

HP International LLC dba A&M International, 367 Brooks Street, Elgin, IL 60120. Officers: Marilou Pedress, President/COO (Qualifying Individual), Shifeng (Alex) Sun, Vice President (Operations)

Flash Forward Logistics Inc., 17 Sunset Avenue, Lynbrook, NY 11563. Officers: Lisa Chirichella, Treasurer (Qualifying Individual), Peter Chirichella, President

Norton Lilly Logistics, LLC, One St. Louis Centre, Suite 3002, Mobile, AL 36602. Officers: Horace W. Thurber, IV, President (Qualifying Individual), Kevin L. Filliater, Vice President

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Ocean Transportation Intermediary Applicants:

A.N. Deringer, Inc., 64 North Main Street, St. Albans, VT 05478. Officers: Jacob E. Holzscheiter, President/CEO (Qualifying Individual), John K. Holzscheiter, Senior Vice President

Continental Shipping Group Inc., 670S 21st Street, Irvington, NJ 07111. Officers: Zdzislaw Lesniewski, President/Treasurer (Qualifying Individual), Katarzyna Strojwas, Vice President

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants (Cont'd):

M S F W, Inc., 500 E. Carson Plaza Drive, Suite 214, Carson, CA 90746. Officers: Robert S. Choung, President/CEO (Qualifying Individual), Julia J. Choung, C.F.O.

SecureGlobal Logistics Inc., 1045 Greens Parkway, Houston, TX 77067. Officers: James P. Middleton, CEO/President (Qualifying Individual), Michael Middleton, Vice President

Contex Shipping (USA) Inc., Courtyard Office Park, 7055 Engle Road, Suite 402, Middleburg Heights, OH 44130. Officers: Edward L. Evans, Vice President (Qualifying Individual), Ralf Riemeier, President/Treasurer

Santiago Cargo Express, Corp., 9–16 37th Avenue, Long Island City, NY 11101. Officer: Lupe Fernandez, President (Qualifying Individual)

American One Freight Forwarders, Inc., 3515 NW. 114 Avenue, Doral, FL 33178. Officers: Luigi Boria, President (Qualifying Individual), Graciela F. de Boria, Treasurer/Secretary

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

John S. James Co., 6002 Commerce Blvd., Suite 115, Garden City, GA 31408. Officers: Pamela J. James, VP/Chief Operations Officer (Qualifying Individual), Thomas C. James, President/Chief Executive Officer

BKA Logistics LLC, 1629 K Street, NW., Suite 500, Washington, DC 20006. Officer: Mark Millard, President/Member (Qualifying Individual)

Latunde Ayopo Sapara dba L.A.S. Shipping, 550 Ginger Lane, Calumet City, IL 60409. Officer: Latunde A. Sapara, Sole Proprietor (Qualifying Individual)

ClearSky Logistics Management, LLC, 887 West Marietta Street NW., #M202, Atlanta, GA 30318. Officers: Maxine L. Little, Vice President, Operations (Qualifying Individual), Christopher S. Wilkins, CEO

Itochu Logistics (USA) Corp., 1830 W. 205th Street, Torrance, CA 90501. Officers: Shinichi Miwa, Vice President (Qualifying Individual), Masahide Oota, President/CEO/Director

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants (Cont'd):

V. Alexander & Co., Inc., 22 Century Blvd., #510, Nashville, TN 37214. Officer: Gary Brown, Senior Vice President/Director (Qualifying Individual), D.F. Brown, Jr., President/COB

Dated: February 19, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–3764 Filed 2–24–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 441F.

Name: Thomson, Jacobs & Moran, Inc.

Address: 16213 Wrights Ferry Road, Charlotte, NC 28278.

Date Revoked: January 27, 2010.

Reason: Surrendered license voluntarily.

License Number: 739F.

Name: Charles A. Redden, Inc.

Address: 1609 Vauxhall Road, Second Floor, Union, NJ 07083.

Date Revoked: January 1, 2010.
Reason: Failed to maintain a valid bond.

License Number: 2815F.
Name: Vanderbilt International, Inc.
Address: 1475 NW. 97th Ave., Suite 103, Miami, FL 33172.
Date Revoked: January 11, 2010.
Reason: Failed to maintain a valid bond.

License Number: 2867F.
Name: M.A.T. International Service, Inc.
Address: 6501 NW. 87th Ave., Miami, FL 33166.
Date Revoked: January 10, 2010.
Reason: Failed to maintain a valid bond.

License Number: 3867NF.
Name: All State International Freight, Inc. dba A.I.F. Company.
Address: 200 E. Stanley Street, Compton, CA 90220.
Date Revoked: January 12, 2010.
Reason: Surrendered license voluntarily.

License Number: 3992NF.
Name: D.L. Bynum & Company, Inc.
Address: 18406 Security Road, Bldg. 10, Suite 100, Houston, TX 77032.
Dates Revoked: January 16, 2010 and December 12, 2009.
Reason: Failed to maintain valid bonds.

License Number: 11384N.
Name: A.H.S. International, Inc.
Address: 15001 South Broadway Street, Gardena, CA 90248.
Date Revoked: January 8, 2010.
Reason: Failed to maintain a valid bond.

License Number: 14624N.
Name: EWP International, Inc.
Address: 624 West 9th Street, Suite 101, San Pedro, CA 90731.
Date Revoked: January 11, 2010.
Reason: Failed to maintain a valid bond.

License Number: 16574F.
Name: International Forwarders Inc.
Address: 501–C Industrial Street, Lake Worth, FL 33461.
Date Revoked: January 24, 2010.
Reason: Failed to maintain a valid bond.

License Number: 017198NF.
Name: OMJ International Freight Inc.
Address: 5539 NW. 72nd Ave., Miami, FL 33166.
Date Revoked: January 15, 2010.
Reason: Failed to maintain valid bonds.

License Number: 017584N.
Name: Cargo Control Express, Inc. dba Lions America.
Address: 1971 West 190th Street, Suite 160, Torrance, CA 90504.
Date Revoked: January 27, 2010.
Reason: Failed to maintain a valid bond.

License Number: 17678N.
Name: Four Link International, Inc.
Address: 146–27 167th Street, Suite 100, Jamaica, NY 11434.
Date Revoked: January 2, 2010.
Reason: Failed to maintain a valid bond.

License Number: 017746N.
Name: Garnetany Enterprises, LLC dba Intlogusa.
Address: 2301 East Artesia Blvd., Long Beach, CA 90805.
Date Revoked: January 9, 2010.
Reason: Failed to maintain a valid bond.

License Number: 017839N.
Name: Empire Container Line, Inc.
Address: 18 Chapel Avenue, Jersey City, NJ 07305.
Date Revoked: January 1, 2010.
Reason: Failed to maintain a valid bond.

License Number: 018219N.
Name: Willy Express Shipping Inc.
Address: 1327 Webster Ave., Bronx, NY 10456.
Date Revoked: January 16, 2010.
Reason: Failed to maintain a valid bond.

License Number: 018759NF.
Name: Meyers Van Lines, Inc.
Address: 370 Concord Avenue, Bronx, NY 10454.
Date Revoked: January 17, 2010.
Reason: Failed to maintain valid bonds.

License Number: 019136N.
Name: Consolidated Logistics LLC.
Address: 7794 NW. 71st Street, Miami, FL 33166.
Date Revoked: January 8, 2010.
Reason: Failed to maintain a valid bond.

License Number: 019656N.
Name: T4 Logistics, LLC.
Address: 3401 K Street, NW., Suite 201, Washington, DC 20007.
Date Revoked: January 11, 2010.
Reason: Surrendered license voluntarily.

License Number: 020405N.
Name: S.L.C. Shipping, Inc.
Address: 211 East Beacon Street, Suite A, Alhambra, CA 91801.
Date Revoked: January 27, 2010.
Reason: Failed to maintain a valid bond.

License Number: 020428NF.
Name: Volvo Group North America, Inc.
Address: 18212 Shawley Drive, Hagerstown, MD 21740.
Date Revoked: January 14, 2010.
Reason: Surrendered license voluntarily.

License Number: 020658N.
Name: Goal Ocean & Air Logistics Inc.
Address: 147–35 Farmers Blvd., Suite 203–204, Jamaica, NY 11434.
Date Revoked: January 8, 2010.
Reason: Failed to maintain a valid bond.

License Number: 020682N.
Name: Raices Express Inc.
Address: 1400 NW. 48th Place, Deerfield Beach, FL 33064.
Date Revoked: January 6, 2010.
Reason: Failed to maintain a valid bond.

License Number: 021418N.
Name: Asbun International Freight, Inc.
Address: 8140 NW. 74th Ave., Suite 13 & 14, Medley, FL 33166.
Date Revoked: January 4, 2010.
Reason: Failed to maintain a valid bond.

License Number: 021476N.
Name: Norma's Cargo Solutions LLC.
Address: 5665 SW. 8th Street, Miami, FL 33134.
Date Revoked: January 21, 2010.
Reason: Surrendered NVOCC license voluntarily.

License Number: 021729NF.
Name: Salviati & Santori Ocean, Inc.
Address: 10 E. Merrick Road, Room 210, Valley Stream, NY 11580.
Date Revoked: January 20, 2010.
Reason: Failed to maintain valid bonds.

License Number: 021877F.
Name: Airpax, Inc.
Address: 334 Ella Grasso Turnpike, Suite 270, Windsor Locks, CT 06096.
Date Revoked: January 27, 2010.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–3765 Filed 2–24–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA)

publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB). To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–0371.

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.

Proposed Project: HRSA AIDS Education and Training Centers Evaluation Activities (OMB No. 0915–0281)—Revision

The AIDS Education and Training Centers (AETC) Program, under the Title XXVI of the Public Health Service Act, as amended, Ryan White HIV/AIDS Program legislation supports a network of regional and national centers that conduct targeted, multi-disciplinary education and training programs for health care providers treating persons with HIV/AIDS. The AETCs' purpose is to increase the number of health care providers who are effectively educated and motivated to counsel, diagnose, treat, and medically manage individuals with HIV infection, and to help prevent high risk behaviors that lead to HIV transmission.

As part of an ongoing effort to evaluate AETC activities, information is needed on AETC training sessions, consultations, and technical assistance activities. Each regional center collects forms on AETC training events, and the centers are required to report aggregate data on their activities to HRSA and the HIV/AIDS Bureau (HAB). This data collection provides information on the number of training events, including clinical trainings and consultations, as well as technical assistance activities conducted by each regional center, the number of health care providers receiving professional training or consultation, and the time and effort expended on different levels of training and consultation activities. In addition, information is obtained on the populations served by the AETC trainees, and the increase in capacity achieved through training events. Collection of this information allows HRSA and HAB to provide information on training activities and types of education and training provided to Ryan White HIV/AIDS Program Grantees, resource allocation, and capacity expansion.

Trainees are asked to complete the Participant Information Form (PIF) for each activity they complete, and trainers, are asked to complete the Event Record (ER). The estimated annual response burden to trainers as well as attendees of training programs is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
PIF	116,624	1	116,624	0.167	19,476.2
ER	18,070	1	18,070	0.2	3,614
Total	134,694	.....	134,694	.....	23,090.2

The estimated annual burden to AETCs is as follows:

	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Aggregate Data Set	12	2	24	32	768

The total burden hours are 23,858.2.

E-mail comments to *paperwork@hrsa.gov* or mail to HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this Notice.

Dated: February 19, 2010.

Sahira Rafiullah,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 2010–3873 Filed 2–24–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10308]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections 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.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Part C and D Complaints Resolution Performance Measures: *Use:* Part C Sponsors provide medical coverage through at-risk arrangements with CMS. Part C Sponsors include: Local Coordinated Care Plans which include health maintenance organizations (HMOs), preferred provider organizations (PPOs), and provider sponsored organizations (PSO) plans; Private fee-for-service plans (PFFS); Special needs plans (SNPs); Medical savings account (MSAs); and Regional PPOs. Part D Sponsors provide prescription drug benefit coverage through private at-risk prescription drug plans that offer drug-only coverage Prescription Drug Plans, or through Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA–PD plans).

Due to Executive Order 13410, "Promoting Quality and Efficient Health Care in Federal Government Administered or Sponsored Health Care Programs," performance measurement ratings for Medicare Parts C & D can be found on Medicare Options Compare and the Medicare Prescription Drug Plan Finder (MPDPF), providing rating information for beneficiary use with plans being assigned a performance-based star rating. These ratings are provided to help beneficiaries make informed choices among the many plan alternatives available to them under Medicare Parts C and D.

The purpose of the project is to develop and support implementation of a performance measure for the Medicare Advantage (Part C) and Prescription Drug (Part D) programs that represents plan resolution of beneficiary complaints from the beneficiary perspective. The project includes development of methodologies for: (1) Identifying a statistically valid sample of beneficiary complaints needed to analyze the complaint's closure; (2) contacting, interviewing, and summarizing beneficiary experience; and, (3) summarizing/analyzing the resultant data to assess accuracy of the resolution of beneficiary complaints from the perspective of the beneficiaries via objective exploration of the beneficiary's complaint resolution experience. *Form Number:* CMS–10308 (OMB#: 0938–New); *Frequency:* Yearly; *Affected Public:* Individuals and households; *Number of Respondents:* 5,300; *Total Annual Responses:* 5,300; *Total Annual Hours:* 884. (For policy questions regarding this collection contact Rachel Schreiber at 410–786–8657. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by April 26, 2010:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 17, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–3790 Filed 2–24–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0739]

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

CDC Oral Health Management Information System (OMB no. 0920–0739, exp. 6/30/2010)—Revision—Division of Oral Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC seeks to improve the oral health of the nation by targeting efforts to improve the infrastructure of state and territorial oral health departments, developing effective programs to improve the oral health of children and adults, and reducing health disparities among high-risk groups. Through a cooperative agreement program, CDC provides funding to oral health programs in states and territories.

The CDC collects information from awardees to support oral health program management, consulting and evaluation. The information collection is supported by an electronic management information system (MIS) known as the Management Overview for Logistics, Analysis, and Reporting (MOLAR) system. The MIS provides a centralized, standardized and searchable repository of information about each awardee's objectives, programmatic activities, performance indicators, and financial status.

CDC requests OMB approval to continue the electronic collection of information for three years. The information collected will continue to facilitate CDC's ability to monitor, evaluate, and compare individual programs; provide technical assistance to states and territories; share and disseminate lessons learned; assess and report aggregate information regarding the overall effectiveness of oral health infrastructure and capacity at the state and territorial level; and monitor national progress toward meeting *Healthy People goals*.

Information will be collected electronically twice per year. No changes to the MIS or the estimated burden per response are proposed. There is an increase in the total estimated annualized burden due to an increase in the number of CDC-funded oral health programs. There are no costs to respondents other than their time. The total estimated annualized burden hours are 462.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Oral Health Programs	21	2	11

Dated: February 17, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–3866 Filed 2–24–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–09CH]

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

A Controlled Evaluation of Expect Respect Support Groups (ERSG): Preventing and Interrupting Teen Dating Violence among At-Risk Middle and High School Students—New—National Center for Injury Prevention and Control (NCIPC), Division of Violence Prevention (DVP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The prevalence and consequences of teen dating violence make it a public health concern that requires early and effective prevention. To date, only three prevention strategies—Safe Dates, the Youth Relationships Project, and 4th R—have demonstrated reductions in dating violence behaviors in rigorous, controlled evaluations, and only one of these (Safe Dates) has effectively prevented sexual violence. In order to protect young people and build the evidence for effective prevention strategies, evaluations of additional programs are needed, including those programs currently in the field. Expect Respect Support Groups (provided by Safe Place) are currently in use in the Austin Independent School District and demonstrates promising results in an uncontrolled program evaluation, which strongly suggests a controlled evaluation is warranted to more rigorously examine program effects.

The proposed study has two primary goals and two exploratory aims. The primary goals are: (1) To evaluate the effectiveness of Expect Respect Support Groups (ERSG) in preventing and reducing teen dating violence and (2) Comparing whether there is increased healthy conflict resolution skills reported by at-risk male and female middle and high school students supported by ERSG, compared to at-risk students in control schools who do not receive ERSG.

The exploratory aims are: (1) To evaluate whether or not the effectiveness of ERSG is enhanced by the presence of universal, school-wide prevention programs, and (2) To examine whether participants with different characteristics respond differently to the intervention. For example, we will determine whether outcome for boys or girls are the same.

The proposed evaluation will use a quasi-experimental/non-randomized design in which a convenience sample of participants in schools receiving universal and/or targeted prevention services are compared to students in control schools in which no dating violence prevention services are available. Based on past experience with an uncontrolled program evaluation of Expect Respect Support groups, we anticipate that in the Austin Independent School District, 800 students will undergo an Intake Assessment. From that number, 600 respondents from the intervention and control groups will be eligible for the Baseline Survey, and from that number, 400 will complete the Completion Survey.

Therefore, over three years we will recruit 1800 students (300 per year from intervention schools and 300 per year from control schools), of whom we anticipate 1200 will have complete data.

Control schools will be selected that have characteristics (*e.g.,* risk status, socio-economic status) similar to the Austin Independent School District intervention schools.

There is no cost to respondents. The total estimated annual burden hours are 2000.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Control Schools (School districts surrounding Austin Independent School District).	Intake assessment	400	1	15/60
	Baseline Survey	300	1	1
	Completion Survey	200	1	1
	Follow-up Survey 1	200	1	1
	Follow-up Survey 2	200	1	1
Intervention Schools (Austin Independent School District)	Intake assessment	400	1	15/60
	Baseline Survey	300	1	1
	Completion Survey	200	1	1
	Follow-up Survey 1	200	1	1

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
	Follow-up Survey 2	200	1	1

Dated: February 12, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–3825 Filed 2–24–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0735]

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 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

CDC Web site and Communication Channels Usability Evaluation, (OMB no. 0925–0735, exp. 3/31/2010)—Revision—National Center for Health Marketing (NCHM), Centers for Disease Control and Prevention, (CDC).

Background and Brief Description

Executive Order 12862 directs Federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they need and their level of satisfaction with existing services. The Centers for Disease Control and Prevention (CDC) seeks approval to conduct usability surveys on CDC Web sites, social media, mobile-based or other electronic communication channels hosting CDC content on an ongoing basis.

It is important for CDC to ensure that health information, interventions, and programs at CDC are based on sound science, objectivity, and continuous customer input. The CDC Web sites, social media, mobile-based or other electronic communication channels hosting CDC content must be designed to be easy to use, easy to access, and effective providers of health information and resources to our target audiences.

CDC is requesting renewal of our existing 3-year generic clearance, with revisions, in order to carry out its mission. Generic clearance is needed to ensure that CDC can continuously improve its Web sites, social media, mobile-based or other electronic communication channels hosting CDC content though regular surveys developed from these pre-defined questions.

Surveying the CDC Web site, social media, mobile-based or other electronic communication channels hosting CDC content on a regular, ongoing basis will help ensure that users have an effective, efficient, and satisfying experience on any of our Web sites or communication channels, maximizing the health impact of the information and resulting in optimum benefit for public health. The surveys will ensure that all CDC Web sites and electronic communication channels meet customer and partner priorities, build CDC's brand, and contribute to CDC health impact goals.

There is no cost to respondents other than their time. The total estimated annualized burden hours are 41,500.

ESTIMATED ANNUALIZED BURDEN HOURS

Survey type	Number of respondents	Number of responses per respondent	Average burden per response (hrs.)
In Person Surveys	8,000	1	1
Remote Surveys	67,000	1	30/60

Dated: February 18, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–3824 Filed 2–24–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Self-Assessment Review and Report.

OMB No.: 0970–0223.

Description: Section 454(15)(A) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, requires each State to annually assess the performance of its child support enforcement program in accordance with standards specified by the Secretary of the Department of Health and Human Services, and to provide a report of the findings to the Secretary. This information is required to determine if States are complying with Federal child support mandates and providing the best services possible. The report is also intended to be used as a management tool to help States evaluate their programs and assess performance.

Respondents: *State Child Support Enforcement Agencies or* the Department/Agency/Bureau responsible for Child Support Enforcement in each State.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Self-assessment report	54	1	4	216

Estimated Total Annual Burden Hours: 216.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: February 19, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–3707 Filed 2–24–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Directory of New Hires.

OMB No.: 0970–0166.

Description: Public Law 104–193, the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," requires the Office of Child Support Enforcement (OCSE) to operate a National Directory of New Hires (NDNH) to improve the ability of State child support enforcement agencies to locate noncustodial parents and collect child support across State lines. The law requires employers to report newly hired employees to States. States are then required to periodically transmit new hire data received from employers to the NDNH, and to transmit wage and unemployment compensation claims data to the NDNH on a quarterly basis. Federal agencies are required to report new hires and quarterly wage data directly to the NDNH. All data is transmitted to the NDNH electronically.

Respondents: Employers, State Child Support Enforcement Agencies, State Workforce Agencies, Federal Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Hire: Employers Reporting Manually	5,166,000	3.484	.025	449,959
New Hire: Employers Reporting Electronically	1,134,000	33.272	.00028	10,565
New Hire: States	54	83.333	66.7	300,150
Quarterly Wage & Unemployment Compensation	53	8	.033	14
Multistate Employers' Notification Form	4,176	1	.050	209

Estimated Total Annual Burden Hours: 760,897.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, FAX: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: February 18, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–3584 Filed 2–24–10; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of Applications on Case Ascertainment to Estimate the U.S. Prevalence of Fetal Alcohol Spectrum Disorders in Young Children (U01), RFA AA–10–005.

Date: March 2, 2010.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, 5635 Fishers, Rockville, MD.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Officer, National Institute on Alcohol Abuse And Alcoholism, Office Of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 2121, Bethesda, MD 20892–9304. 301–443–2369. *lgunzera@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: February 18, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3787 Filed 2–24–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive And Kidney Diseases; Notice of Closed Meetings

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

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

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK KUH–K–Application Review SEP.

Date: March 19, 2010.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; TeenLABS Ancillary Studies.

Date: March 22, 2010.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 18, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3758 Filed 2–24–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV)

Date and Time: March 4, 2010, 1 p.m. to 5:30 p.m. EST. March 5, 2010, 9 a.m. to 12:30 p.m. EST.

Place: Parklawn Building (and via audio conference call), Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Thursday, March 4 from 1 p.m. to 5:30 p.m. (EST) and Friday, March 5 from 9 a.m. to 12:30 p.m. (EST). The public can join the meeting via audio conference call by dialing 1–888–324–3808 on March 4 & 5 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the March meeting will include, but are not limited to: Updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice, National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), and Center for Biologics, Evaluation and Research (Food and Drug Administration). Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail: *aherzog@hrsa.gov.* Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. These persons will be allocated time as it permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or e-mail: *aherzog@hrsa.gov.*

Dated: February 19, 2010.

Sahira Rafiullah,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 2010–3871 Filed 2–24–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–0125]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet at Coast Guard Marine Safety Unit Cleveland, Ohio. GLPAC provides advice and makes recommendations to the Secretary on a wide range of issues related to pilotage on the Great Lakes, including the rules and regulations that govern the registration, operating requirements, and training policies for all U.S. registered pilots. The Committee also advises on matters related to ratemaking to determine the appropriate charge for pilot services on the Great Lakes.

DATES: GLPAC will meet on Tuesday, March 16, 2010, and Wednesday, March 17, 2010 from 9 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations or to have a copy of your material distributed to each member of the committee should reach us on or before March 9, 2010.

ADDRESSES: GLPAC will meet at Coast Guard Marine Safety Unit Cleveland, 1055 E. 9th Street, Cleveland, OH 44114, in the main conference room. Members of the public must produce valid photo identification for access to the facility. Send written material and requests relating to the GLPAC meeting to Mr. John Bobb (*see* **FOR FURTHER INFORMATION CONTACT**). Electronically submitted material must be in Adobe or Microsoft Word format. A copy of this notice is available in our online docket, USCG–2010–0125, at *http://www.regulations.gov*; enter the docket number for this notice (USCG–2010–0125) in the Search box, and click "Go."

FOR FURTHER INFORMATION CONTACT: Mr. John Bobb, GLPAC Assistant Designated Federal Official (ADFO), Commandant (CG–54121), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Stop 7581, Washington, DC 20593–7581; telephone 202–372–1532, fax 202–372–1991, or e-mail at *john.k.bobb@uscg.mil*.

SUPPLEMENTARY INFORMATION: The GLPAC is a Federal advisory committee under 5 U.S.C. App. 2 (Pub. L. 92–463). It was established under the authority of 46 U.S.C. 9307, and advises the Secretary of Homeland Security and the Coast Guard on Great Lakes pilot registration, operating requirements, training policies, and pilotage rates.

GLPAC meets at least once a year but may also meet at other times at the call of the Secretary. Further information about GLPAC is available by searching on "Great Lakes Pilotage Advisory Committee" at *http://www.fido.gov/facadatabase/*.

Agenda of Meeting

The agenda for the March 16–17, 2010 Committee meeting is as follows:

(1) Continue the GLPAC review of public comments solicited by the Coast Guard in the **Federal Register** of July 21, 2009 ("Great Lakes Pilotage Ratemaking Methodology," 74 FR 35838), in accordance with requirements of 46 U.S.C. 9307(d) for Coast Guard consultation with GLPAC before taking any significant action relating to Great Lakes pilotage; and

(2) Appointment of seventh member in compliance with requirements of 46 U.S.C. 9307(b)(2)(E). Applications for this position were solicited in a **Federal Register** notice published August 26, 2009 (74 FR 43148) and will be accepted until the position is filled.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. John Bobb (*see* **FOR FURTHER INFORMATION CONTACT**) as soon as possible.

Dated: February 19, 2010.

W.A. Muilenburg,

Captain, U.S. Coast Guard, Office of Waterways Management.

[FR Doc. 2010–3836 Filed 2–24–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5382–N–02]

Notice of Proposed Information Collection for Public Comment: Section 108 Program Assessment

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* April 26, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Judson L. James, Department of Housing and Urban Development, 457 7th Street, SW., Washington, DC 20410; telephone (202) 402–5707 (this is not a toll-free number). Copies of the proposed data collection and other available documents may be obtained from Mr. James.

SUPPLEMENTARY INFORMATION: This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, such as permitting electronic submission of responses.

Title of Proposal: Section 108 Program Assessment.

Description of the need for the information and proposed use: The U.S. Department of Housing and Urban

Development's (HUD) Section 108 program is the loan guarantee provision of the Community Development Block Grant (CDBG) program. It provides an upfront source of community and economic development financing, allowing an entitlement grantee to borrow up to five times its annual approved CDBG entitlement amount. Grantees address housing, community development, and economic development needs of low- and moderate-income persons and communities. The Section 108 loan guarantee program facilitates the financing of physical and economic revitalization projects—such as neighborhood commercial centers, small business incubators, industrial park rehabilitation, affordable housing activities, or office center construction—that have the potential for renewing neighborhoods or providing affordable housing to low- and moderate-income persons. HUD acts as the guarantor of a Section 108 loan made from private-market funds, promising investors that the loan will be repaid.

The survey is an essential part of a comprehensive evaluation of the Section 108 program, addressed to questions and concerns raised in a recent PART review of the Section 108 program by OMB. In addition to documenting the types of projects funded through Section 108 loans in recent years (FY 2002–FY 2007), the study will develop data from administrative loan files, selected site visits, and a survey of local administrators of all Section 108 loans for the FY 2002–FY 2007 period. The survey will confirm and extend the initial project descriptions found in the administrative files to permit more extensive analysis of the characteristics and progress of the activities funded by these loans. This study will increase understanding of the role of the Section 108 program in the community and economic development strategies of local governments, seek to identify the consequences of Section 108 projects, and identify ways to improve the measurement of the performance of Section 108 loans.

Members of affected public: Local administrators of Section 108 loans made in FY 2002 to FY 2007, involving a total of approximately 320 loans.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response: The researchers will survey the universe of local administrators of the roughly 320 Section 108 loans approved between FY 2002 and FY 2007. The surveys are expected to last 90 minutes. This constitutes a total burden hour estimate of 480 burden hours.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 28, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–3751 Filed 2–24–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5380–N–10]

Notice of Proposed Information Collection: Comment Request; Application and Re-certification Packages for Approval of Nonprofit Organization in FHA Activities

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: April 26, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Leroy McKinney Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–8048 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Program Contact, Ruth Román Director, Program Support Division, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–2112 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application and Re-certification Packages for Approval of Nonprofit Organizations in FHA Activities.

OMB Control Number, if applicable: 2502–0540.

Description of the need for the information and proposed use: HUD-Approved nonprofit organizations participate in the Discount Sales program as FHA insured mortgagors or provide downpayment assistance to homebuyers in the form of secondary financing. A nonprofit organization must be HUD-approved and meet specific requirements to remain on the Nonprofit Organization Roster (Roster). This includes an application, affordable housing plan, annual reports, and required record keeping. HUD uses the information to ensure that a nonprofit organization meets the requirements to participate in Single Family programs.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 11,760. The number of respondents is 355, the number of responses is 1,730, the frequency of response is one or four depending on activity, and the burden hour per response is 6.79.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 19, 2010.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2010–3757 Filed 2–24–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5380–N–09]

Notice of Proposed Information Collection: Comment Request; FHA-Disclosure of Adjustable Rate Mortgages (ARMs) Rates

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 26, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Leroy McKinney, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Leroy.McKinneyJr@HUD.gov* or telephone (202)402–8048 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Joanne Kuzma, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Disclosure of Adjustable Rate Mortgages (ARMs) Rates.

OMB Control Number, if applicable: 2502–0322.

Description of the need for the information and proposed use: Mortgagees must make available to the mortgagor, at the time of loan application, a written explanation of the features of an adjustable-rate mortgage ARM consistent with the disclosure requirements applicable to variable rate mortgages secured by a principal dwelling under TILA. Regulation Z," at 15 U.S.C. 1601, 12 CFR 226.18.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of annual burden hours is 8,065. The number of respondents is 12,670, the number of responses is 161,318, the frequency of response is on occasion, and the burden hour per response is .05.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 19, 2010.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2010–3759 Filed 2–24–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act; Intent To Prepare an Environmental Assessment for the Proposed Realignment of a Portion of the Provo Reach of the Spanish Fork-Provo Reservoir Canal Pipeline

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior (Interior), the Central Utah Water Conservancy District, and the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission), as Joint Leads, will prepare an Environmental Assessment of the impacts associated with the proposed realignment of a portion of the Provo Reach of the Spanish Fork-Provo Reservoir Canal Pipeline. This realignment is necessitated in order to avoid active and historic landslides, and reduce risk to the pipeline and associated features from geologic faults.

DATES: Date and location for public scoping will be announced locally.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained by contacting Mr. Lee Baxter at (801) 379–1174, or by e-mail at *lbaxter@uc.usbr.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the Central Utah Project Completion Act (Pub. L. 102–575), the Secretary of the Interior oversees water development activities associated with the Bonneville Unit of the Central Utah Project. The Spanish Fork-Provo Reservoir Canal Pipeline (SFPRCP), a feature of the Utah Lake Drainage Basin Water Delivery System of the Bonneville Unit, was described in the 2004 Final Environmental Impact Statement for the Utah Lake Drainage Basin Water Delivery System. Records of Decision were signed by Interior on December 22, 2004, and by the Mitigation Commission on January 27, 2005, providing for the construction of the Utah Lake Drainage Basin Water Delivery System, including the 19.7 mile long SFPRCP. The Mapleton and Springville Reaches of the SFPRCP, totaling approximately 8.8 miles of the pipeline, are currently under construction. Detailed information developed as part of the Value Engineering process for the Provo Reach of the SFPRCP suggests realignment of a portion of the Provo Reach in order to avoid active and historic landslides, and reduce risk from geologic faults. The purpose of this Environmental Assessment is to analyze and present the anticipated environmental effects of the proposed realignment.

Dated: January 22, 2010.

Reed R. Murray,

Program Director, Central Utah Project Completion Act, Department of the Interior.

[FR Doc. 2010–3855 Filed 2–24–10; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, as Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: The Department of the Interior (DOI) is issuing public notice of its intent to amend a Department-wide Privacy Act System of Records Notice in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). DOI–71, "Electronic FOIA Tracking System and FOIA Case Files—Interior," is being amended to include a centralized Office of the Solicitor FOIA (Freedom of Information Act) database and related files, as well as add their system owner and system location to the existing notice.

SYSTEM LOCATION:

The additional system location is in the Office of the Solicitor network in the Department of the Interior (DOI), Washington, DC 20240.

SYSTEM MANAGER AND ADDRESS:

The additional system manager is the Office of the Solicitor FOIA Officer, Office of the Solicitor, U.S. Department of the Interior, 1849 C Street, NW., MS–6429 MIB, Washington, DC 20240, who has overall responsibility for the policies and procedures used to operate this system.

DATES: This amendment shall be effective on publication in the **Federal Register** (February 25, 2010). Additional information regarding this amendment may be obtained from the Departmental Privacy Office, 1849 C Street, NW., Mail Stop 7456, Washington, DC 20240, telephone (202) 208–1605.

Dated: February 5, 2010.

Linda S. Thomas,

Privacy Act Specialist, Departmental Privacy Office.

[FR Doc. 2010–3760 Filed 2–24–10; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary of the Interior

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 Daniel J. Little as an associate member of the National Indian Gaming Commission for a term of 3 years.

DATES: Comments must be received before March 29, 2010.

ADDRESSES: Comments should be submitted to the Director, Office of the Executive Secretariat, United States Department of the Interior, 1849 C Street, NW., Mail Stop 7229, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Tim Murphy, Division of General Law, United States Department of the Interior, 1849 C Street, NW., Mail Stop 6456, Washington, DC 20240; telephone 202–208–5216.

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 Daniel J. Little as an associate member of the Commission for a term of 3 years. During more than a decade of experience as manager of national government affairs for the Mashantucket Pequot Tribe, Daniel J. Little has developed an in-depth knowledge of the Indian Gaming Regulatory Act and the regulatory process governing casino operations. He has served as tribal liaison between the Mashantucket Pequot Gaming Commission, the National Indian Gaming Commission, Congress, and other Federal and State agencies. He has also worked closely with the Mashantucket Pequot Gaming Commission commissioners to ensure that the Tribe's casino meets the highest standards of regulatory compliance. Mr. Little's experience includes working with the Tribal Gaming Commission and the National Indian Gaming Commission to implement gaming regulations and working with tribal and government officials at all levels on such gaming-related issues as taxes, economic development, and tribal sovereignty. This experience has given Mr. Little a thorough knowledge of the laws and regulations governing Class II and Class III gaming and casinos. By virtue of his work on gaming issues and his extensive knowledge of relevant laws and regulations, Daniel J. Little is eminently qualified to serve as a member of the National Indian Gaming Commission.

Mr. Little does not have any financial interests that would make him 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 Daniel J. Little may submit written comments to the address listed above. Comments must be received by March 29, 2010.

David J. Hayes,

Deputy Secretary.

[FR Doc. 2010–3586 Filed 2–24–10; 8:45 am]

BILLING CODE 4310–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Grazing Permits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Request for Comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is seeking comments on renewal of Office of Management and Budget (OMB) approval, pursuant to the Paperwork Reduction Act, for the collection of information titled "Grazing Permits, 25 CFR 166." The information collection is currently authorized by OMB Control Number 1076–0157, which expires April 30, 2010. The information collection requires anyone seeking to obtain, modify, or assign a grazing permit for grazing on Indian trust or restricted land to submit certain information for review by the BIA.

DATES: Interested persons are invited to submit comments on or before *April 26, 2010.*

ADDRESSES: You may submit comments on the information collection to David

Edington, Office of Trust Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 4655, Washington, DC 20240, facsimile: (202) 219–0006, or e-mail *David.Edington@bia.gov*.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from David Edington, telephone: (202) 513–0886.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIA is seeking renewal of the approval for the information collection conducted under 25 CFR part 166, related to grazing on trust or restricted land. Approval for this collection expires April 30, 2010. This information collection allows BIA to receive the information necessary to determine whether an applicant to obtain, modify, or assign a grazing permit on trust or restricted lands is eligible and complies with all applicable grazing requirements. Some of this information is collected on forms that may be revised as part of this renewal process. No third party notification or public disclosure burden is associated with this collection. There is no change to the approved burden hours for this information collection.

II. Request for Comments

The BIA requests that you send your comments on this collection to the locations listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. Approval for this collection expires April 30, 2010.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0157.

Title: Grazing Permits, 25 CFR 166.

Brief Description of Collection: Submission of this information allows individuals or organizations to obtain a grazing permit on trust or restricted land and provide notice with regard to land that is the subject of a grazing permit. Some of this information is collected on forms, including Form 5–5514 Bid for Grazing, 5–5524 Application for Allocation of Grazing Privileges, 5–5515 Grazing Permit, 5–5519 Grazing Permit, 5–5523 Application for On/Off Permit, 5–5521 Application for Assignment of Permit, and 5–5523 Cash Penal Bond for Grazing Permit. Response is required to obtain or retain a benefit.

Type of Review: Revision of a currently approved collection.

Respondents: Tribes, tribal organizations, individual Indians, and non-Indian individuals and businesses.

Number of Respondents: 1,000.

Total Number of Responses: 2,570.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden: 856 hours.

Total Annual Cost to Respondents: $175,000.

Dated: February 17, 2010.

Alvin Foster,

Chief Information Officer—Indian Affairs.

[FR Doc. 2010–3815 Filed 2–24–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-LE-2010-N036] [99011-1224-0000-9B]

Proposed Information Collection; OMB Control Number 1018-0092; Federal Fish and Wildlife Permit Applications and Reports—Law Enforcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on November 30, 2010. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by April 26, 2010.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.) makes it unlawful to import or export fish, wildlife, or plants without obtaining prior permission as deemed necessary for enforcing the ESA or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)).

This information collection includes the following permit/license application forms:

(1) FWS Form 3-200-2 (Designated Port Exception Permit). Under 50 CFR 14.11, it is unlawful to import or export wildlife or wildlife products at ports other than those designated in 50 CFR 14.12 unless you qualify for an exception. These exceptions allow qualified individuals, businesses, or scientific organizations to import or export wildlife or wildlife products at a nondesignated port:

(a) When the wildlife or wildlife products will be used as scientific specimens.

(b) To minimize deterioration or loss.

(c) To relieve economic hardship.

To request an import or export of wildlife or wildlife products at nondesignated ports, applicants must complete FWS Form 3-200-2. Designated port exception permits are valid for 2 years. We may require a permittee to file a report on activities

conducted under authority of the permit.

(2) FWS Form 3-200-3 (Import/Export License). It is unlawful to import or export wildlife or wildlife products for commercial purposes without first obtaining an import/export license (50 CFR 14.91). Applicants must complete FWS Form 3-200-3 to request this license. We use the information that we collect on the application as an enforcement tool and management aid to: (a) monitor the international wildlife market and (b) detect trends and changes in the commercial trade of wildlife and wildlife products. Import/export licenses are valid for 1 year. We may require a licensee to file a report on activities conducted under authority of the import/export license.

Import/export licensees must maintain records that accurately describe each importation or exportation of wildlife or wildlife products made under the license, and any additional sale or transfer of the wildlife or wildlife products. In addition, licensees must make these records and the corresponding inventory of wildlife or wildlife products available for our inspection at reasonable times, subject to applicable limitations of law. We believe the burden associated with these recordkeeping requirements is minimal because the records already exist. Importers and exporters must complete FWS Form 3-177 (Declaration for Importation or Exportation of Fish or Wildlife) for all imports or exports of wildlife or wildlife products. This form provides an accurate description of the imports and exports. OMB has approved the information collection for FWS Form 3-177 and assigned OMB Control Number 1018-0012. Normal business practices should produce records (e.g., invoices or bills of sale) needed to document additional sales or transfers of the wildlife or wildlife products.

II. Data

OMB Control Number: 1018-0092.

Title: Federal Fish and Wildlife Permit Applications and Reports—Law Enforcement.

Service Form Number(s): 3-200-2 and 3-200-3.

Type of Request: Revision of a currently approved collection.

Affected Public: Individuals, businesses, and scientific institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or periodically for reports; ongoing for recordkeeping.

Estimated Annual Nonhour Burden: $11,905 for fees associated with permit applications.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
3-200-2 – application and recordkeeping	1,350	1,350	1.25 hours	1,688
3-200-2 report	5	5	1 hour	5
3-200-3 - application and recordkeeping	10,555	10,555	1.25 hours	13,194
3-200-3 report	5	5	1 hour	5
Totals	11,915	11,915		14,892

III. Request for Comments

We invite comments concerning this IC on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 18, 2010

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. 2010–3888 Filed 2–24–10; 8:45 am

Billing Code 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2009–N277; 65411–1112–0000–A2]

Least Chub and Columbia Spotted Frog Candidate Conservation Agreement With Assurances; Receipt of Application for Enhancement of Survival Permit; Bishop Springs, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from Herman Young and Sons, Inc. (Applicant), for an enhancement of survival permit (permit) under the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Candidate Conservation Agreement with Assurances (CCAA) for the least chub (*Iotichthys phlegethontis*) and Columbia spotted frog (*Rana lutreiventris*) between the Applicant, the Utah Division of Wildlife Resources (UDWR), and the Service. The CCAA would be implemented at the Bishop Springs marsh complex (Bishop Springs) in Juab County, Utah. We have made a preliminary determination that the proposed CCAA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this preliminary determination is contained in an Environmental Action Statement. We are accepting comments on the permit application, the proposed CCAA, and the Environmental Action Statement.

DATES: We must receive comments no later than March 29, 2010.

ADDRESSES: Address all written comments to Larry Crist, by U.S. mail at Utah Field Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119; by facsimile to 801–975–3331; or by e-mail to *larry_crist@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Larry Crist, Utah Field Office Supervisor, 801–975–3330. If you use a

telecommunications device for the deaf, you may call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Under a Candidate Conservation Agreement with Assurances, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species that are proposed for listing under the Act, or that are candidates for listing, or may become candidates. Candidate Conservation Agreements with Assurances, and the subsequent permits we issue under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*), encourage private and other non-Federal property owners to implement conservation efforts for species, by assuring property owners that they will not be subjected to increased land use restrictions as a result of efforts to attract or increase the numbers or distribution of a listed species on their property, if that species becomes listed under the Act in the future. Application requirements and issuance criteria for permits through the Candidate Conservation Agreement with Assurances are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d).

Historically, least chub and Columbia spotted frog inhabited a variety of aquatic habitat types throughout the Bonneville Basin in Utah. In the West Desert of Utah these species occur in many of the same spring complexes, including Bishop Springs. Both species have declined to the extent that they have been considered for listing under the Endangered Species Act.

A decline in the distribution and abundance of the least chub was first noted in the 1940s and 1950s. Habitat loss and degradation have been identified as major causes for this decline. Surveys indicate that where nonnative fishes have been introduced, few if any least chub remain.

In 1998, the Service, Utah Department of Natural Resources, Bureau of Land Management (BLM), Bureau of Reclamation, Utah Reclamation Mitigation and Conservation Commission, Confederated Tribes of the Goshute Reservation, and Central Utah Water Conservancy District signed a Least Chub Conservation Agreement and Strategy (LCCAS). The LCCAS is a voluntary agreement to ensure the long-term survival of the least chub within its historic range and assist in the development of rangewide conservation efforts. Significant conservation measures were accomplished for the species and several new populations were located outside the West Desert ecosystem. The only remaining naturally occurring and relatively secure populations of least chub are present in five spring complexes in Snake Valley, Utah, one of which is Bishop Springs. Groundwater pumping may impact these sites in the future.

The Columbia spotted frog was removed as a candidate for listing under the Act in 1999. Since that time, an interagency team continues to manage the species in accordance with Columbia Spotted Frog Conservation Agreement and Strategy (SPCAS). Despite this conservation agreement, some habitat loss and localized impacts to the spotted frog remain.

The proposed CCAA represents another significant milestone in the cooperative conservation efforts for these species and is consistent with section 2(a)(5) of the Act, which encourages creative partnerships among public, private, and government entities to conserve imperiled species and their habitats. The CCAA is also consistent with continued implementation of the LCAS and SPCAS and addresses known impacts to both species at Bishop Springs.

Conservation efforts in the proposed CCAA will provide perennial and legally protected instream flows to Bishop Springs for supporting self sustaining populations of least chub and spotted frog. Under the proposed CCAA, the UDWR would use a water right, conveyed by the Applicant, to maintain instream flow at Bishop Springs to protect and maintain approximately 1,020 acres of habitat for the least chub and Columbia spotted frog. The Applicant previously used this water right to irrigate agricultural lands. The Applicant will agree to: (1) Reduce water diversion from Bishop Springs through the use of a more efficient irrigation system improved by UDWR; (2) reduce acreage irrigated; and (3) not appropriate additional water from Bishop Springs. Certain restrictions on the volume and flow of the Applicant's reserved water right would allow beneficial use of water for irrigation of agricultural lands, while ensuring suitable habitat conditions for both species.

Under certain conditions, such as prolonged drought, a small number of individuals of these species could die if they are unable to retreat to areas with adequate water. Therefore, the Service proposes to issue the permit under this CCAA to provide the Applicant with regulatory certainty regarding take prohibitions of section 9 of the Act should the species become listed in the future. The proposed duration for the CCAA and permit is 99 years.

When determining whether to issue the permit, we will consider a number of factors and information sources, including the project's administrative record, any public comments we receive, and the application requirements and issuance criteria for CCAAs contained in 50 CFR part 17.22(d) and part 17.32(d). We will also evaluate whether the issuance of the permit complies with section 7 of the Act by conducting an intra-Service consultation. The results of this consultation, in combination with the above findings, regulations, and public comments, will determine whether or not we issue the permit.

The proposed CCAA also provides the Applicant with regulatory assurances, that in the event of unforeseen circumstances, we would not require additional conservation measures or the commitment of additional land, water, or resource use restrictions beyond the level obligated in this Agreement, without the consent of the Applicant and UDWR.

We have made the preliminary determination that the Applicant's conservation measures meet the intent of the CCAA policy, based on the proposed protection of established populations and habitat for these species within their historic range. Habitat conditions within Bishop Springs have been evaluated by the Applicant, UDWR, and the Service, and are suitable for sustaining and enhancing populations of least chub and Columbia spotted frog.

We have also made a preliminary determination that the proposed Agreement and permit issuance are eligible for categorical exclusion under NEPA. The basis for this determination is in the Environmental Action Statement, which is available for public review (*see* **ADDRESSES**).

If you wish to comment on the Agreement and associated documents, you may submit your comments to the Service (*see* **ADDRESSES**). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of

section 10(a) of the Act and NEPA regulations at 40 CFR 1506.6. If we determine that the requirements are met, we will sign the proposed Agreement and issue a permit under section 10(a)(1)(A) of the Act to the Applicants for take of the covered species in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period, and we will fully consider all comments we receive during the comment period.

We provide this notice under section 10(c) of the Act and implementing regulations for NEPA (40 CFR 1506.6).

Dated: February 18, 2010.

Larry Crist,

Field Supervisor, Utah Ecological Services Office.

[FR Doc. 2010–3853 Filed 2–24–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N024; 1112–0000–81440–F2]

Endangered and Threatened Wildlife and Plants; Permit, San Luis Obispo County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, us), have received from the California Department of Parks and Recreation (applicant) an application for an incidental take permit under the Endangered Species Act of 1973, as amended (Act). We are considering issuing a permit that would authorize the applicant's take of the Federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) incidental to otherwise lawful activities that would result in the permanent loss of 0.2 acre of Morro shoulderband snail habitat within Morro Bay State Park, San Luis Obispo County, California. We invite comments from the public on the application, which includes a Habitat Conservation Plan (HCP) fully describing the proposed project and measures the applicant would undertake to minimize and mitigate anticipated take of the species. We also invite comments on our preliminary determination that the HCP qualifies as a "low-effect" plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this determination in our draft Environmental Action Statement and associated Low Effect Screening Form, both of which are also available for review.

DATES: To ensure consideration, please send your written comments by March 29, 2010.

ADDRESSES: You may download a copy of the permit application, plan, and related documents on the Internet at *http://www.fws.gov/ventura,* or you may request documents by U.S. mail, e-mail, or phone (see below). Please address written comments to Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Jen Lechuga, HCP Coordinator, at Ventura address above, or (805) 644–1766, extension 224 (telephone).

SUPPLEMENTARY INFORMATION:

Background

The Morro shoulderband snail was listed as endangered on December 15, 1994 (59 FR 64613). Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take (*i.e.,* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to Federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of Federally listed fish, wildlife, or plants.

The applicant proposes the construction and use of a boardwalk, overlook area, and trail project within a 10-acre site at the Morro Bay State Park marina peninsula, San Luis Obispo County, California, that will meet Americans with Disabilities Act (ADA) accessibility guidelines. The 10-acre site contains a mixture of native and introduced plant species. Coastal dune scrub, the only native upland community, occupies the majority of the 10-acre permit area. Disturbed upland habitat is also present and includes illegal trails and areas dominated by nonnative plant species.

The proposed project would result in impacts to a total of 0.41 acre of habitat for the Morro shoulderband snail. Permanent impacts resulting from the construction of the trails, boardwalk, and viewing platforms would be 0.18 acre and 0.03 acre, respectively. Additionally, there would be temporary impacts to 0.2 acre. Both the permanent and temporary impacts are expected to result in take of Morro shoulderband snail.

The applicant proposes to implement measures to minimize and mitigate for the take of Morro shoulderband snails within the permit area. Minimization measures include: (1) Restriction of activities to the dry season (April 15–November 15); (2) implementation of training sessions for all construction and park personnel involved in construction of the project; (3) performance of preconstruction surveys prior to each day of activity involving ground disturbance or vegetation disturbance to construct the boardwalk and peninsula spur trail; (4) relocation of any living Morro shoulderband snails that are found during preconstruction surveys or during construction into adjacent suitable habitat; (5) installation of fencing to delineate work and non-work areas; and (6) use of hand tools to the maximum extent possible.

Mitigation for unavoidable take of Morro shoulderband snails would consist of the establishment and management of a permanent conservation area over approximately 9.6 acres adjacent to the ADA trail and boardwalk system, closure and restoration to native habitat of all volunteer trails and redundant trails in the project area, and nonnative plant species removal. The HCP also considers effects from covered activities on, as well as conservation measures for, the California seablite (*Suaeda californica*), a threatened plant species occurring in the estuarine habitat adjacent to the project area.

In the proposed plan, the applicant considers three alternatives to the taking of listed species in the proposed project. The No Action Alternative would maintain current conditions, the project would not be implemented, and an incidental take permit application would not be submitted to the Service. The second alternative would involve a redesign of the Marina Peninsula Trail Project. Although a reduction in the development area would be possible on the property, it is anticipated that such a reduction would result in a trail

configuration that would encourage the continued use and expansion of volunteer trails, thus continuing and expanding impacts to coastal scrub and salt marsh habitats. The third alternative would involve the relocation of the project site within the Morro Bay State Park. However, the proposed Marina Peninsula Trail project offers an opportunity to use a long stretch of existing disturbed ground, former maintenance road, and existing trails, all of which could be improved to meet accessible guidelines, limit the removal of existing habitat, and provide substantial protection and improvement of habitat for sensitive species.

We are requesting comments on our preliminary determination that the applicant's proposal will have a minor or negligible effect on the species covered in the plan, and that the plan qualifies as a "low-effect" habitat conservation plan as defined by our Habitat Conservation Planning Handbook (November 1996). We base our determination that the plan qualifies as a low-effect plan on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on Federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. As more fully explained in our Environmental Action Statement and associated Low Effect Screening Form, the applicant's proposed plan qualifies as a "low-effect" plan for the following reasons:

(1) Approval of the HCP would result in minor or negligible effects on the Morro shoulderband snail and California seablite and their habitat. The Service does not anticipate significant direct or cumulative effects to the Morro shoulderband snail or California seablite resulting from the proposed Project.

(2) Approval of the HCP would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

(3) Approval of the HCP would not result in any cumulative or growth-inducing impacts and would not result in significant adverse effects on public health or safety.

(4) The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or Tribal law or requirement imposed for the protection of the environment.

(5) Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

We, therefore, have made a preliminary determination that the approval of the HCP and incidental take permit application qualifies for a categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 8). Based on our review of public comments that we receive in response to this notice, we may revise this preliminary determination.

Next Steps

We will evaluate the plan and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets these requirements, we will issue the permit for incidental take of the Morro shoulderband snail. We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements are met, we will issue the permit to the applicant.

Public Comments

If you wish to comment on the permit application, plan, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. If you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must provide a rationale demonstrating and documenting that disclosure would constitute a clearly unwarranted invasion of privacy. 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: February 19, 2010.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office.

[FR Doc. 2010–3850 Filed 2–24–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–ES–2009–N244; 70120–1113–0000–C3]

Endangered and Threatened Wildlife and Plants; Request for Scoping Comments and Intent To Prepare an Environmental Assessment for the Proposed Designation of a Non-Essential Experimental Population of Wood Bison in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: We, the Fish and Wildlife Service (Service), plan to prepare a draft environmental assessment, under the National Environmental Policy Act of 1969, as amended (NEPA), in conjunction with a potential proposed rule to establish an experimental population of wood bison (*Bison bison athabascae*) in Alaska, pursuant to the Endangered Species Act of 1973, as amended. We are seeking comments or suggestions concerning the scope of our environmental analysis for this action.

DATES: To ensure consideration, please send your written comments by March 29, 2010.

ADDRESSES: Send information, comments, or questions by any one of the following methods.

U.S. Mail or hand delivery: Fisheries and Ecological Services Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

Fax: 907–786–3575.

E-mail: woodbison-ak@fws.gov.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs, (907) 786–3472.

SUPPLEMENTARY INFORMATION:

Background

A subspecies of North American bison, wood bison (*Bison bison athabascae*) are larger than plains bison (*Bison bison bison*) and well adapted to northern meadow and forest habitats. Skeletal remains and historical accounts show that wood bison persisted in a large part of their original range in Alaska and Canada during the last 10,000 years (Stephenson *et al.* 2001; Gardner and DeGange 2003). Soper (1941) estimated that 168,000 wood bison existed in North America (Alaska and western Canada) in 1800. By the end of the 19th century, however, wood bison had declined to an estimated low of 250 animals (Soper 1941). The specific causes of this precipitous decline are not known with certainty, but unregulated hunting following the fur trade, westward expansion of European settlement, and severe winters likely played a role (Fuller 1962; Gates *et al.* 1992). The extirpation of wood bison in Alaska was likely due to the combined effects of hunting by humans and changes in habitat distribution during the Holocene (Stephenson *et al.* 2001; Gardner and DeGange 2003).

Conservation efforts in Canada have substantially improved the status of wood bison. Today, there are over 10,000 free-ranging wood bison in Canada, including over 4,000 bison in 7 free-ranging, disease-free herds; over 6,000 in 4 free-ranging herds that are not disease-free but are increasing; and over 1,000 wood bison in captive conservation and research herds. (Canadian Wildlife Service, unpublished data 2009).

We have been coordinating with the State of Alaska (State) to pursue the goal of reintroducing wood bison to Alaska. The State and other conservation interests believe that wood bison reintroduction to Alaska can play an important role in ecosystem restoration and is a significant opportunity for international cooperation in improving the status of a historically important native species. The recovery of wood bison overall, however, is not dependent on restoration in Alaska.

The Alaska Department of Fish and Game (ADF&G) has worked for over 15 years to evaluate reintroducing wood bison into portions of the species' historic range in interior Alaska. Three prospective release sites with the best potential habitat include: Yukon Flats, Minto Flats, and the lower Innoko/Yukon River area (Berger *et al.* 1995; Gardner 2007). Numerous public meetings have been held over the years in communities located in these areas. All of the involved local State fish and game advisory committees and Federal regional subsistence advisory councils have discussed and supported wood bison reintroduction. In 2005, the State established a citizen's advisory group, the Wood Bison Restoration Advisory Group (WBRAG), to review information on the proposal to restore wood bison, discuss the relevant issues, and provide recommendations to ADF&G. Following 4 days of public meetings, the WBRAG recommended moving forward with wood bison restoration in Alaska. ADF&G produces a project newsletter, *Wood Bison News,* to inform the public of current developments with this project, and also maintains a web page on wood bison restoration in Alaska: *http://www.wc.adfg.state.ak.us/index.cfm?adfg=game.restoration.* In 2005 and 2007, ADF&G invited written public comment on wood bison restoration in Alaska. In both review periods, public comment strongly favored proceeding with this action.

The proposed reintroduction program would use wood bison stock imported from Canada, primarily from Elk Island National Park (EINP), Alberta, where a disease-free herd of 300–400 wood bison is maintained for the primary purpose of reestablishing additional healthy, free-ranging wood bison herds in additional parts of the species' original range. In June 2008, ADF&G imported wood bison from EINP, and is presently maintaining a captive herd at the Alaska Wildlife Conservation Center (AWCC) in Portage, Alaska. These animals and their progeny are intended to be used as founding stock for reintroductions to interior Alaska. Wood bison will be held for a minimum of 2 years at the AWCC for additional disease testing while plans for their release are finalized.

The goal of the Alaska wood bison restoration project is to reestablish 1–3 free-ranging populations, each including at least 400 adults within 12–15 years of release, at one or more of the three sites with the best potential habitat, Yukon Flats, Minto Flats, and/or the lower Innoko/Yukon River area. ADF&G will work with the Service, other agencies, landowners and other stakeholders to develop management plans for each area where they plan to reestablish the species (ADF&G 2007). Some of the key management objectives include restoring an indigenous grazing animal and habitat diversity to northern ecosystems, providing benefits to Alaska's people and economy, and reestablishing wood bison populations that can be harvested on a sustained yield basis.

Regulatory Considerations

Endangered Species Act Protections

Under the U.S. Endangered Species Act (Act; 16 U.S.C. 1531 *et seq.*), wood bison are listed as endangered, although they presently occur in the wild only in Canada. If wood bison were to be introduced to Alaska with the endangered designation, they would be subject to the protections and prohibitions of sections 7 and 9 of the Act. Section 7 requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 9 prohibits the take of endangered and threatened wildlife. "Take" is defined as: to harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or to attempt to engage in any such conduct.

Experimental Populations

In 1982, Congress amended the Act by adding section 10(j), to provide for designation of "experimental populations." Prior to 1982, local citizens often opposed reintroductions of listed species into unoccupied portions of their historical range because they were concerned about potential restrictions to Federal, State, and private activities. Under section 10(j), and our regulations at 50 CFR 17.81, the Service can designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental." Our regulations at 50 CFR 17.80(b) state that a reintroduced population can be considered a "nonessential experimental population" (NEP) if the loss of that population would not appreciably reduce the likelihood of survival of the species in the wild. Regulatory requirements of sections 7 and 9 of the Act are considerably reduced under a NEP designation. The Act further prohibits designating critical habitat for any NEP, and through section 4(d) of the Act, the Service may develop regulations and management options specific to the species' needs that are necessary to promote the species' conservation. In order to establish a NEP, we must first issue a proposed regulation pursuant to section 10(j) of the Act and consider public comments prior to publishing a final regulation. Our regulations at 50 CFR 17.81 (d) require that, to the extent practicable, a regulation issued under section 10(j) of the Act represents an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that

may be affected by the establishment of the NEP.

Wood Bison Status in Canada and ESA Petition

In 1988, the Committee on the Status of Endangered Wildlife in Canada reclassified the wood bison from "endangered" to "threatened" status under Canada's Species at Risk Act because Canadian populations of wood bison were recovering. In 2007, Canada's Wood Bison Recovery Team petitioned the Service to reclassify wood bison from endangered to threatened status under the Act. On February 3, 2009, we published a finding that the petition presented substantial information indicating that this action may be warranted and initiated a status review for wood bison (74 FR 5908). Following our review of the wood bison's status, we will issue a finding on the petition, in which we will determine whether it is appropriate to retain the species' endangered status, reclassify it as threatened, or even to remove the wood bison from listed status under the Act.

Regulatory Status of Wood Bison in Alaska

The State will not consider reintroducing wood bison to Alaska in the absence of Federal regulatory assurance to landowners and land managers that such action would not adversely affect resource development activities important to Alaska's economy. Such assurance could be accomplished through a change in the species' listing status throughout its range or through the establishment of a NEP pursuant to section 10(j) of the Act. A reclassification of the wood bison to "threatened" status, without the establishment of a NEP pursuant to ESA section 10(j), would not provide sufficient regulatory assurance.

Scoping Process

To ensure compliance with NEPA and the Act, the Service and ADF&G are cooperating to prepare a draft environmental assessment (EA) and proposed rule to establish, under section 10(j) of the Act, a non-essential experimental population of wood bison in Alaska. The purpose of this scoping process is to aid the development of the EA by collecting comments on this action as a way to support wood bison conservation. We also seek comments on the environmental effects of reintroducing wood bison to Alaska.

In addition to the "no action" alternative, our draft EA will consider:

(1) The environmental effects of issuing 10(j) and 4(d) rules for wood bison in Alaska;

(2) the environmental effects of reintroducing wood bison to one or more of the potential release sites Minto Flats, Yukon Flats, and the lower Innoko/Yukon River area;

(3) the environmental effects of reintroducing wood bison to Alaska in the absence of 10(j) and 4(d) rules.

We will incorporate the relevant public comments we receive in response to this scoping notice into our analysis of impacts of the proposed action and project alternatives in the draft EA. This document will include maps of the proposed reintroduction area or areas, based on public input and current knowledge of wood bison habitat in Alaska. We will make the draft EA available for a minimum 30-day public review period. The final environmental document, which will address the comments we receive during the draft EA public comment period, will be available on the internet.

Request for Public Comments

We wish to ensure that any 10(j) rule and associated environmental documents we issue relating to the wood bison in Alaska effectively evaluate all potential issues associated with wood bison reintroduction to Alaska. Therefore, we request comments or recommendations concerning any of the considerations we have listed above; and also concerning: The biological and habitat requirements of the species; information on the distribution and quality of habitat for the wood bison in Alaska; the overall approach to the conservation of wood bison in Canada and Alaska; reasons why any specific areas might require special management or should be excluded from, or added to, the proposed reintroduction site or sites; and any other pertinent issues of concern. We seek comments from the public; Tribal, local, State, and Federal government agencies; the scientific community; industry; or any other affected or interested party. To determine whether to prepare a Finding of No Significant Impact or an Environmental Impact Statement, we will take into consideration all comments and any additional information we receive.

References

A complete list of all references in this notice is available upon request from the Fish and Wildlife Service (see **ADDRESSES**).

Author(s)

The primary author of this package is the Fisheries and Ecological Services Office, U.S. Fish and Wildlife Service, Anchorage, AK.

Dated: February 12, 2010.

Gary Edwards,

Deputy Regional Director, Region 7, U.S. Fish and Wildlife Service.

[FR Doc. 2010–3889 Filed 2–24–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

LLNM915000L14200000.BJ0000]

Notice of Filing of Plats of Survey, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management (BLM), Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The plat representing the dependent resurvey and survey in Township 14 North, Range 10 West, of the New Mexico Principal Meridian, accepted September 4, 2009, for Group 1093 NM.

The plat, in two sheets, representing the dependent resurvey and survey, in Township 16 North, Range 19 West, of the New Mexico Principal Meridian, accepted September 30, 2009, for Group 1073 NM.

The plat representing the dependent resurvey and survey, of the Canon De San Diego Grant, accepted November 19, 2009, for Group 1100 NM.

The plat representing the dependent resurvey and survey, in Township 17 North, Range 24 East, of the New Mexico Principal Meridian, accepted December 2, 2009, for Group 1102 NM.

Indian Meridian, Oklahoma (OK)

The plat, in two sheets, representing the dependent resurvey and survey in Township 15 North, Range 11 West, of the Indian Meridian, accepted October 16, 2009, for Group 180 OK.

The plat, in four sheets, representing the dependent resurvey and survey in Township 20 North, Range 16 West, of the Indian Meridian, accepted October 14, 2009, for Group 162 OK.

The plat, in four sheets, representing the dependent resurvey and survey in Township 5 South, Range 13 West, of the Indian Meridian, accepted September 24, 2009, for Group 80 OK.

The plat, in three sheets, representing the dependent resurvey and survey, in Township 5 South, Range 15 West, of the Indian Meridian, accepted September 24, 2009, for Group 82 OK.

The plat, in two sheets, representing the dependent resurvey and survey, in Township 24 North, Range 2 East, of the Indian Meridian, accepted November 19, 2009, for Group 159 OK.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–438–7537, or *Marcella_Montoya@nm.blm.gov,* for assistance.

Stephen W. Beyerlein,

Acting, Chief, Branch of Cadastral, Survey/ GeoSciences.

[FR Doc. 2010–3828 Filed 2–24–10; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS05000 2009]

Notice of Intent To Prepare a Resource Management Plan for the Uncompahgre Field Office and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) Uncompahgre Field Office (UFO), Montrose, Colorado intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for the UFO and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The RMP will replace the existing 1985 San Juan/ San Miguel RMP and the 1989 Uncompahgre Basin RMP.

DATES: This notice initiates the public scoping process for the RMP and the associated EIS. Comments on issues and planning criteria may be submitted in writing until March 29, 2010

Scoping meetings were held recently in the following locations:
Hotchkiss, CO, January 12, 2010.
Delta, CO, January 13, 2010.
Montrose, CO, January 14, 2010.
Ridgway, CO, January 19, 2010.
Norwood, CO, January 20, 2010.
Naturita, CO, January 21, 2010.
Telluride, CO, February 3, 2010.
The dates and locations of all scoping meetings were announced 15 days in advance through local media, a newsletter and the BLM Web site at: *http://www.blm.gov/co/st/en/fo/ufo/uncompahgre_rmp.html.* Comments received during scoping meetings held in January and February, 2010 will be incorporated in the record and considered by the BLM. In order to be included in the Draft EIS, all comments must be received prior to the close of the 30-day scoping period. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues and planning criteria by any of the following methods:

- *Web site: http://www.blm.gov/co/st/en/fo/ufo/uncompahgre_rmp.html.*
- *E-mail: uformp@blm.gov.*
- *Fax:* (970) 240–5367.
- *Mail:* BLM Uncompahgre Field Office, RMP Project Manager, 2465 S. Townsend Ave., Montrose, Colorado 81401.

Documents pertinent to this proposal may be examined at the UFO during regular business hours (from 8 a.m. to 4:30 p.m. Monday through Friday, except holidays).

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Bruce Krickbaum, RMP Project Manager, telephone (970) 240–5300; address BLM Uncompahgre Field Office 2465 South Townsend Ave, Montrose, Colorado 81401; e-mail *uformp@blm.gov.*

SUPPLEMENTARY INFORMATION: This document: provides notice that the BLM UFO, Montrose, Colorado, intends to prepare an RMP with an associated EIS for the UFO; announces the beginning of the scoping process; and seeks public input on issues and planning criteria. The planning area is located in Delta, Gunnison, Mesa, Montrose, Ouray and San Miguel counties, Colorado, encompasses approximately 675,677 acres of public land, and excludes the Gunnison Gorge National Conservation Area and the Dominguez-Escalante National Conservation Area, which are managed under separate RMPs.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the planning area have been identified by BLM personnel, Federal, State, and local agencies, and other stakeholders. The issues include:

- Managing vegetative and water resources, terrestrial and aquatic habitat and special management areas, while sustaining biological diversity and native species populations;
- Managing mineral, renewable and nonrenewable energy resources;
- Managing increasing numbers and types of human activities and uses;
- Managing land tenure adjustments, withdrawals and utility/energy corridors;
- Managing and protecting cultural, historical and paleontological resources and Native American religious concerns; and
- Managing public lands and resources, including authorized and permitted land uses, for a growing population and expanding urban interface, with consideration for community values and needs.

Preliminary planning criteria include:

- Compliance with the FLPMA, the NEPA and other applicable laws and regulations.
- Incorporation of the Colorado BLM Standards for Public Land Health.
- Continued management of Wilderness Study Areas under the Interim Management Policy for Lands under Wilderness Review until Congress acts on a designation or releases lands from consideration.
- Decisions will be made that affect all BLM lands, including the subsurface mineral estate, within the planning area.
- Recognition of valid existing rights.

• Inclusion of adaptive management criteria to deal with future issues.

Public participation will be encouraged throughout the process. The BLM will collaborate and build relationships with tribes, State and local governments, Federal agencies, local stakeholders and others within the community of interest for the RMP.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments within the 30-day scoping period. 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 you personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The BLM will evaluate identified issues to be addressed in the plan and place them into one of three categories:

1. Issues to be resolved in the plan;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the Draft RMP/EIS regarding why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with the interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Wildlife; Threatened and Endangered Species; Vegetation; Riparian and Wetlands; Soils; Invasive and Noxious Weeds; Rangeland Management; Fire Ecology and Management; Cultural Resources and Native American Concerns; Hydrology; Geology and Minerals; Lands and Realty; Recreation; Visual Resource Management; Public Safety; Law Enforcement; and Geographic Information Systems.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Dave Hunsaker,

Acting State Director.

[FR Doc. 2010–3846 Filed 2–24–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

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 a cultural item in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meets the definition of "unassociated funerary object" 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.

The item is a coiled, cylindrical basket with black linear designs.

At an unknown date, this basket was collected by Grace Nicholson at an unknown locality, but likely in California. It was donated to the Peabody Museum by Lewis Farlow in 1905. Museum documentation states that this item was "rescued from pyral fire." The description of "pyral fire" indicates that this item was intended to be burned as part of a funeral rite. The Peabody Museum is not in possession of the human remains.

Museum documentation describes this item as "probably Moquelumnan stock." The term "Moquelumnan" was used to describe Miwok people. Consultation evidence indicates that present-day groups which represent Miwok people are the Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Federated Indians of Graton Rancheria, California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; United Auburn Indian Community of the Auburn Rancheria of California; and Wilton Rancheria, California.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the one cultural item 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 and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology 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 object and the Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Federated Indians of Graton Rancheria, California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; United Auburn Indian Community of the Auburn Rancheria of California; and Wilton Rancheria, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Ave., Cambridge, MA 02138, telephone (617) 496–3702, before March 29, 2010. Repatriation of the unassociated funerary object to the Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Federated Indians of Graton Rancheria, California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; United Auburn Indian Community of the Auburn Rancheria of California; and Wilton Rancheria, California may

proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Federated Indians of Graton Rancheria, California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Tule River Indian Tribe of the Tule River Reservation, California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; United Auburn Indian Community of the Auburn Rancheria of California; and Wilton Rancheria, California that this notice has been published.

Dated: January 11, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–3767 Filed 2–24–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Stephen F. Austin State University, Nacogdoches, TX

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 control of Stephen F. Austin State University, Nacogdoches, TX, 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 Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the unassociated funerary objects was made by the professional staff of Archeological & Environmental Consultants, LLC, under a sub-contract with the Historic Preservation Program of the Caddo Nation of Oklahoma, which was under contract with Stephen F. Austin State University.

In 1957, 15 cultural items were removed from a pre-contact burial when workmen were excavating a grave site in Oak Grove Cemetery in Nacogdoches, Nacogdoches County, TX. This area was later determined to be part of the Washington Square Site (41NA49). The human remains from this burial were not saved and no known individuals were identified. The objects were placed in the Stone Fort Museum on the Stephen F. Austin State University campus. The objects are considered to be unassociated funerary objects and were moved to the repository of the Stephen F. Austin State University anthropology lab after 1975. The 15 unassociated funerary objects are 1 ceramic vessel and 14 chipped stone arrow points.

The unassociated funerary objects are determined to be affiliated with the Caddo Nation of Oklahoma. The ceramic and arrow point styles were identified as Caddo, dating from approximately A.D. 1200 to 1400.

Prior to 1977, human remains and cultural items were removed from 41NA113 (no site name) in Nacogdoches County, TX, by David Tucker, a private citizen. The human remains were not documented and the current location of the human remains is unknown. Since the whereabouts of the human remains is not known, the funerary objects are considered to be unassociated. The five unassociated funerary objects are two ceramic vessels, one long *Olivella* shell bead with a longitudinal perforation, and two small round light aqua glass beads.

The unassociated funerary objects from 41NA113 (no site name) were determined to be affiliated with the Caddo Nation of Oklahoma. The ceramic styles were identified as Caddo and date from A.D. 1500 to 1800. The glass beads date the burial to the time of European contact in the area.

In 1983, a burial with four ceramic vessels but no preserved human skeletal remains was excavated at 41PN48 (no site name) in the Martin Lake Mine in Panola County, TX. The four ceramic vessels are considered to be unassociated funerary objects because no human remains were preserved in the burial. Professional archeologists from Espey, Huston & Associates, Inc. excavated the burial. The four ceramic vessels were placed in the repository of the university's anthropology lab in 1984.

The unassociated funerary objects from 41PN48 (no site name) were determined to be affiliated with the Caddo Nation of Oklahoma. The ceramic styles were all identified as Caddo and date to after A.D. 1250. The small size of the ceramic vessels may suggest the burial of a child.

Prior to 1975, an unknown number of burials were excavated in the Greasy Creek area of Camp County, TX, by unknown individuals. The human remains are not in the university's collection. The exact date of when the unassociated funerary objects vessels were placed in the repository of the university's anthropology lab is not known because they were never accessioned. The unassociated funerary objects are two ceramic vessels.

The two unassociated funerary objects recovered from the Greasy Creek area were determined to be affiliated with the Caddo Nation of Oklahoma. The ceramic styles were identified as Caddo and date to A.D. 1400–1600.

In 1991, three ceramic vessels were removed from a single shovel test at site 41SY83 (unnamed site), in Shelby County, TX, by professional archeologists from Espey, Huston & Associates, Inc. The cultural items were recovered from 40–60 cm below ground surface; clay was encountered at 70 cm below ground surface. No human remains were observed, but the context of the three ceramic vessels was interpreted as a human burial. The ceramic vessels from 41SY83 are therefore, considered unassociated funerary objects.

The three unassociated ceramic vessels recovered from (unnamed site) 41SY83 were determined to be affiliated with the Caddo Nation of Oklahoma. The ceramic styles were all identified as Caddo and date to A.D. 1400–1600.

Sometime prior to 1975, burials were excavated near Alto in Cherokee County, TX, by unknown individuals. An unassociated funerary object from this excavation was placed in the Stone Fort Museum on the Stephen F. Austin University campus at an unknown date, and was moved to the repository of the university's anthropology lab after 1986. The unassociated funerary object is one ceramic vessel.

The unassociated funerary object recovered from Cherokee County was determined to be affiliated with the Caddo Tribe of Oklahoma. The style of the ceramic vessel is Caddo and dates to A.D. 1200–1400.

Prior to 1975, an unknown number of burials were excavated by unknown individuals in unknown counties of East Texas. The human remains are not in the possession of the university. The exact date of when these unassociated funerary objects were placed in the repository of the university's anthropology lab is not known, as these

vessels were never accessioned. The unassociated funerary objects are two ceramic vessels.

The two unassociated funerary objects were determined to be affiliated with the Caddo Nation of Oklahoma. The style of the ceramic vessels is Caddo and dates to A.D. 1400–1600.

Officials of the Stephen F. Austin State University also have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 32 objects described 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. Officials of the Stephen F. Austin State University 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 Caddo Nation of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Dr. Jerry Williams, Stephen F. Austin State University, P.O. Box 13047, SFA Station, Nacogdoches, TX 75962, telephone (936) 468–2306, before March 29, 2010. Repatriation of the unassociated funerary objects to the Caddo Nation of Oklahoma may proceed after that date if no additional claimants come forward.

Stephen F. Austin State University is responsible for notifying the Caddo Nation of Oklahoma that this notice has been published.

Dated: January 22, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–3768 Filed 2–24–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Stephen F. Austin State University, Nacogdoches, TX

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 control of Stephen F. Austin State University, Nacogdoches, TX. The human remains and associated funerary objects were removed from Nacogdoches, Smith, and Titus Counties, TX.

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 professional staff of Archeological & Environmental Consultants, LLC, under a sub-contract with the Historic Preservation Program of the Caddo Nation of Oklahoma, which was under contract with Stephen F. Austin State University.

In the early 1900s, human remains representing a minimum of one individual were recovered from Washington Square, now the Thomas Jefferson Rusk Elementary School, in Nacogdoches, Nacogdoches County, TX, by Captain H.H. Cooper, a private citizen. This area is now designated as the Washington Square Site (41NA49). In 1930, the human remains were donated to the Stone Fort Museum on the Stephen F. Austin State University campus, and moved to the repository of the anthropology lab some time after 1975. No known individual was identified. No associated funerary objects are present.

The human remains were determined to be affiliated with the Caddo Nation of Oklahoma because they were recovered from a large Caddo occupation site dating to approximately A.D. 1200–1400. The Washington Square Site (41NA49) is located on Mound Street in Nacogdoches, so named because of the numerous Caddo mounds that were at that location. In 1889, a Nacogdoches newspaper article states that, ". . . the bones of human beings are being found in almost every cart load of dirt . . ." (Star News Nacogdoches, May 31, 1889, vol. 14, no. 19).

Prior to 1990, human remains representing a minimum of one individual were removed from an airport west of Tyler in Smith County, TX, by "Red" McFarland, a private citizen. McFarland noted that two ceramic vessels were associated with the skull, however, currently the whereabouts of the two ceramic vessels is unknown. The human remains are located in the repository of the Stephen F. Austin State University anthropology lab. No known individual was identified. No associated funerary objects are present.

The human remains are determined to be affiliated with the Caddo Nation of Oklahoma based on the description of the associated ceramic vessels.

Prior to 1990, human remains representing a minimum of one individual were removed from two miles north of Troup on the south bank of the Kickapoo River, Smith County, TX, by "Red" McFarland, a private citizen. The human remains are located in the repository of the Stephen F. Austin State University anthropology lab. No known individual was identified. No associated funerary objects are present.

The human remains are determined to be affiliated with the Caddo Nation of Oklahoma based on provenience. The human remains were removed from a part of Texas that was occupied by the Caddo before and after European contact.

Prior to 1990, human remains representing a minimum of one individual were removed from an unknown location in Smith County, TX, by an unknown individual. The human remains are located in the repository of the Stephen F. Austin State University anthropology lab. No known individual was identified. No associated funerary objects are present.

The human remains are determined to be affiliated with the Caddo Nation of Oklahoma based on provenience. The human remains were removed from a part of Texas that was occupied by the Caddo before and after European contact.

In 1985, human remains representing a minimum of three individuals were removed from two burials at the Washington Square Site (41NA49), in Nacogdoches, Nacogdoches County, TX, during excavations under the direction of Dr. James Corbin, Stephen F. Austin State University archeologist. The human remains are located in the repository of the Stephen F. Austin State University anthropology lab. No known individuals were identified. The 122 associated funerary objects are 49 ceramic vessels; 47 marine shell beads and fragments; 1 fragmented marine shell pendant; 3 deer teeth; 9 pigment samples; 2 charred organic debris samples; and a cache of lithic debris with 9 chert flakes, 1 chert core, and 1 flake tool.

All human remains and associated funerary objects from the Washington Square Site (41NA49) were determined to be affiliated with the Caddo Nation of Oklahoma. The ceramic styles are identified as Caddo, which date approximately from A.D. 1200 to 1400.

In 1983, human remains representing a minimum of one individual were

excavated at 41TT135 (no site name) near Lake Monticello in Titus County, TX, during excavations by Espey Huston & Associates, Inc. In 1984, the human remains were placed in the repository of Stephen F. Austin State University anthropology lab. No known individual was identified. The one associated funerary object is a broken ceramic vessel.

The human remains and associated funerary object recovered from 41TT135 have been determined to be affiliated with the Caddo Nation of Oklahoma. The broken vessel is plain, but other artifacts from the site, which are not funerary objects, indicate a Caddo occupation which may pre-date A.D. 1200.

Officials of Stephen F. Austin State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of Stephen F. Austin State University also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 123 objects described 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 Stephen F. Austin State University 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 Caddo Nation of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Jerry Williams, Stephen F. Austin State University, P.O. Box 13047, SFA Station, Nacogdoches, TX 75962, telephone (936) 468–2306, before March 29, 2010. Repatriation of the human remains and associated funerary objects to the Caddo Nation of Oklahoma may proceed after that date if no additional claimants come forward.

Stephen F. Austin State University is responsible for notifying the Caddo Nation of Oklahoma that this notice has been published.

Dated: January 22, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–3785 Filed 2–24–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Concessions Management Advisory Board; Notice of Public Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the 21st meeting of the Concessions Management Advisory Board will be held at 1 p.m. on March 9, 2010, and 9 a.m. on March 10, 2010, at the Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

ADDRESSES: Doubletree Hotel, State Room, 1515 Rhode Island Avenue, NW., Washington, DC 20005; Phone number: 202–232–7000.

FOR FURTHER INFORMATION CONTACT: National Park Service, Commercial Services Program, 1201 Eye Street, NW., Washington, DC 20005, Telephone: 202/513–7156.

SUPPLEMENTARY INFORMATION: The Board was established by Title IV, Section 409 of the National Parks Omnibus Management Act of 1998, November 13, 1998 (Pub. L. 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System. The members of the Advisory Board are: Dr. James J. Eyster, Ms. Ramona Sakiestewa, Mr. Richard Linford, and Mr. Phil Voorhees.

Topics that will be presented during the meeting include:

- Concession Contracting Status Update.
- Regional Reports.
- Standards, Evaluations, and Rate Approval Project Update.
- Update on Professionalization of Commercial Services Program—Human Capital Strategy.
- New business.

The meeting will be open to the public, however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Efforts have been made locally to ensure that the interested public is aware of the meeting dates. An unprecedented weather-related 4-day Federal Government closure has resulted in the publication of this notice less than 15 days before the date of the meeting. Rescheduling the meeting would create an unnecessary burden for members of the public who have already arranged their schedules around that date.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will require an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. Such requests should be made to the Director, National Park Service, Attention: Chief, Commercial Services Program, at least 7 days prior to the meeting. Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, at the Commercial Services Program office located at 1201 Eye Street, NW., 11th Floor, Washington, DC.

Dated: February 19, 2010.

Daniel N. Wenk,

Deputy Director.

[FR Doc. 2010–3868 Filed 2–24–10; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC00000 L07770900 XZ0000]

Notice of Public Meeting of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held Friday, April 9, at the BLM Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA, beginning at 9 a.m. The RAC Off-Highway Vehicle Subgroup will meet briefly before the full RAC meeting to

vote on whether to present screening criteria for land acquisitions for off-highway vehicle use to the full RAC. Time for public comment is reserved from 1 p.m. to 2 p.m.

On April 10, RAC members will participate in the National Landscape Conservation System 10th Anniversary event at Carrizo Plain National Monument.

FOR FURTHER INFORMATION CONTACT: BLM Central California District Manager Kathy Hardy, (916) 978–4626; or BLM Public Affairs Officer David Christy, (916) 941–3146.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Central California. At this meeting, agenda topics will include an update on the resource management plans for the Carrizo Plain National Monument and the BLM Bakersfield Field Office. Additional ongoing business will be discussed by the council. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. The meeting and Carrizo event are open to the public, but reservations are required for the Carrizo event. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: February 18, 2010.

David Christy,

Public Affairs Officer.

[FR Doc. 2010–3858 Filed 2–24–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID933000.L14300000.FR0000; IDI–36384]

Notice of Proposed Issuance of Recordable Disclaimer of Interest; Jerome County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A request has been filed by the National Park Service on behalf of Jerome County, Idaho, for a Recordable Disclaimer of Interest involving an 8.67 acre portion of Hunt Road adjacent to the Minidoka National Historic Site. This parcel of land, known as Tract No. 2 on the Minidoka National Historical Site Proposed Boundary Map #194/80,004, is located in Jerome County approximately 17 miles northeast of Twin Falls, Idaho. The Consolidated Natural Resources Act of 2008, passed on May 8, 2008, authorizes the Secretary of the Interior to issue a Disclaimer of Interest in land to Jerome County, Idaho for the parcel identified as Tract No. 2.

DATES: Submit comments on this action on or before May 26, 2010. Only written comments will be accepted.

ADDRESSES: Address all written comments to Tom Dyer, State Director, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: Laura Summers, Realty Specialist, at the above address or by phone at (208) 373–3866.

SUPPLEMENTARY INFORMATION: Pursuant to section 313(c)(6) of the Consolidated Natural Resources Act of 2008 (Pub. L. 110–229), and in accordance with Section 315 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1745, the Secretary of the Interior may issue to Jerome County, Idaho, a document of Disclaimer of Interest in land for a portion of Hunt Road located 17 miles northeast of Twin Falls, Idaho. This parcel, identified as Tract No. 2 on the Minidoka National Historical Site Proposed Boundary Map, number 194/80,004 (December 2006) is situated in Lots 1 and 2, Section 5, Township 9 South, Range 19 East of the Boise Meridian.

Tract No. 2 is a strip of land 200 feet in width, 100 feet on each side of the following described access road center line:

Beginning at a point which is Engineer's Center Line Station 92–40 opposite and 100 feet distant from which point the southwesterly line of the said strip of land intersects the north line of said Lot 2; said point being 80.00 feet north and 190.00 feet east of the north quarter corner of said Section 5; thence southeasterly, from a tangent which bears south 50° 07′ east, on a curve to the right having a radius of 716.20 feet, a distance of 80.10 feet to Engineer's Station 93–20.1 P.T.; thence south 43° 42′ 30″ east 243.50 feet to Engineer's Station 95–63.6 P.C.; thence southeasterly on a curve to the left having a radius of 1432.39 feet a distance of 176.90 feet to Engineer's Station 97–40.5 P.T. back—97–88.5 ahead; thence south 50° 47′ east 183.80 feet to Engineer's Station 99–72.3 P.C.; thence easterly on a curve to the left having a radius of 636.62 feet a distance of 910.30 feet to Engineer's Station 108–82.6 P.T.; thence north 47° 17′ east 61.70 feet to Engineer's Station 109–44.3 P.C.; thence northeasterly on a curve to the right having a radius of 716.20 feet a distance of 240.40 feet to Engineer's Station 111–84.7 P.T.; thence North 66° 31′ east 135 feet to a point, opposite and 100 feet distant from which point the southerly line of said strip of land intersects the northerly line of Twin Falls North Side Canal. The above described strip of land contains 8.67 acres, more or less.

On May 8, 2008, the Consolidated Natural Resources Act of 2008 (Pub. L. 110–229) established the Minidoka National Historical Site in Jerome County approximately 17 miles northeast of Twin Falls, Idaho. This Historical Site was established to protect, preserve, and interpret the resources associated with the former Minidoka Relocation Center where Japanese Americans were incarcerated during World War II. Section 313 of the Act makes several adjustments to the Historical Site boundary and gives the National Park Service Administrative Jurisdiction over the land that underlies the Historical Site. In addition to the boundary adjustments, the Act authorizes the Department of the Interior to issue to Jerome County, Idaho, a document of Disclaimer of Interest in land for the parcel identified as Tract No. 2 which entails an 8.67 acre portion of Hunt Road adjacent to the west end of the Minidoka National Historical Site.

Any person may submit written comments regarding the proposed issuance of a recordable Disclaimer of Interest to Thomas H. Dyer, State Director, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, ID 83709. Comments, including names and street addresses of commentors, will be available for public review at the BLM-Idaho State Office (see address above), during regular business hours, Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If no valid objection is received, a Disclaimer of Interest may be approved

stating that the United States does not have a valid interest in this tract of land.

Jerry L. Taylor,

Chief, Branch of Lands, Minerals and Water Rights, Resource Services Division.

[FR Doc. 2010–3820 Filed 2–24–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN0600, L16100000]

Notice of Intent To Prepare a Resource Management Plan Amendment and Associated Environmental Assessment for the Designation of the Lower Clear Creek and Grass Valley Creek Areas of Critical Environmental Concern, Redding, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Redding Field Office, California intends to prepare an amendment to the Redding Resource Management Plan (RMP) with an associated Environmental Assessment (EA), and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the plan amendment and associated EA. Comments on issues may be submitted in writing until March 29, 2010. The dates and locations of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/redding/redding_rmp.html.* In order to be included in the EA, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later.

ADDRESSES: You may submit comments on issues and planning criteria related to the project by any of the following methods:

- *Web site: www.blm.gov/ca/redding.*
- *E-mail: caweb360@ca.blm.gov.*
- *Fax:* (530) 224–2172.
- *Mail:* Bureau of Land Management, Redding Field Office, 355 Hemsted Drive, Redding, California 96002.

Documents pertinent to this proposal may be examined at the Redding Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Francis Berg, telephone (530) 224–2120; address 355 Hemsted Drive, Redding, California 96002; e-mail *fberg@blm.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM's Redding Field Office intends to prepare an RMP Amendment with an associated EA to consider the designation of the Lower Clear Creek (in western Shasta County) and Grass Valley Creek (in eastern Trinity County) as Areas of Critical Environmental Concern (ACEC). This document also announces the beginning of the scoping process and seeks public input on issues and planning criteria. Designation of one or both of the ACECs would require an amendment to the Redding RMP (1993). The two areas encompass approximately 15,000 acres of public land administered by the Redding Field Office. Designation of these two areas as ACECs would provide enhanced opportunities for conservation of fisheries including special status species.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the amendment and EA, including alternatives, and guide the development of the amendment and EA. The BLM will use an interdisciplinary approach in developing the amendment and EA to ensure reasonable consideration of each issue and the impacts of the ACEC designations. Preliminary issues for the planning areas include: Botany; wildlife; fisheries; archaeology and cultural resources; minerals, geology; forestry; lands and realty; soils; hydrology; outdoor recreation; and law enforcement.

You may submit comments on issues and planning criteria in writing to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments within 30 days after publication of this notice. Native American Tribal consultations will be conducted, and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, state, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may participate as a cooperating agency.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7; 43 CFR 1610.2; 1610.5–5; and 1610.7–2.

Steven W. Anderson,

Redding Field Office Manager.

[FR Doc. 2010–3821 Filed 2–24–10; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1059 (Review)]

Expedited Review Scheduling Notice; Hand Trucks and Certain Parts Thereof From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on hand trucks and certain parts thereof from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on hand trucks and certain parts thereof from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* February 5, 2010.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 5, 2010, the Commission determined that the domestic interested party group response to its notice of institution (74 FR 56661, November 2, 2009) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on March 15, 2010, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before March 18, 2010 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by March 18, 2010. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 22, 2010.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–3878 Filed 2–24–10; 8:45 am]

BILLING CODE P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by Gleason Industrial Products, Inc., Harper Trucks, Inc., Magline, Inc., and Wesco Industrial Products, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–465 and 731–TA–1161 (Final)]

Certain Steel Grating From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–465 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation No. 731–TA–1161 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of certain steel gratings, provided for in subheading 7308.90.70 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* January 6, 2010.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or *fred.ruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) Size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as 'bar grating,' although the components may consist of steel other than bars, such as hot-rolled sheet, plate, or wire rod. The scope of this investigation excludes expanded metal grating, which is comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded, and does not involve welding or joining of multiple pieces of steel. The scope of this investigation also excludes plank type safety grating which is comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, that has been pierced and cold formed, and does not involve welding or joining of multiple pieces of steel."

in China of certain steel gratings, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed May 29, 2009, by Alabama Metal Industries, Birmingham, AL and Fisher & Ludlow, Wexford, PA.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 11, 2010, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 25, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 17, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 19, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 18, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 1, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before June 1, 2010. On June 17, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 21, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.
Issued: February 22, 2010.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–3879 Filed 2–24–10; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed Under Section 104(A) of the Code

AGENCY: Judicial Conference of the United States.

ACTION: Notice.

SUMMARY: Certain dollar amounts in title 11 and title 28, United States Code, are increased.

FOR FURTHER INFORMATION CONTACT: Francis F. Szczebak, Chief, Bankruptcy Judges Division, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1900 or by e-mail at *Bankruptcy_Judges_Division@ao.uscourts.gov.*

SUPPLEMENTARY INFORMATION: Section 104(a) of title 11, United States Code, provides the mechanism for an automatic 3-year adjustment of dollar amounts in certain sections of titles 11 and 28. Bankruptcy Reform Act of 1994, Public Law 103–394, section 108(e), (1994) as amended by Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Public Law 109–8, section 102(j), (2005) and Public Law 110–406, (2008). The provision states:

(a) On April 1, 1998, and at each 3-year interval ending April 1 thereafter, each dollar amount in effect under 101(3), 101(18), 101(19A), 101(51D), 109(e), 303(b), 507(a), 522(d), 522(f)(3) and 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1322(d), 1325(b), and 1326(b)(3) and section 1409(b) of title 28 immediately before such April 1 shall be adjusted:

(1) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(2) to round to the nearest $25 the dollar amount that represents such change.

(b) Not later than March 1, 1998, and at each 3-year interval ending on March 1, thereafter, the Judicial Conference of the United States shall publish in the **Federal Register** the dollar amounts that will become effective on such April 1 under sections 101(3), 101(18), 101(19A), 101(51D), 109(e), 303(b), 507(a), 522(d), 522(f)(3) and 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1322(d), 1325(b), and 1326(b)(3) and section 1409(b) of title 28.

(c) Adjustments made in accordance with subsection (a) shall not apply with respect to cases commenced before the date of such adjustments.

Revision of Certain Dollar Amounts in Bankruptcy Code

Notice is hereby given that the dollar amounts are increased in the sections in title 11 and title 28, United States Code, as set out in the following chart. These increases do not apply to cases commenced before the effective date of the adjustments, *i.e.,* April 1, 2010. Seven Official Bankruptcy Forms (1, 6C, 6E, 7, 10, 22A and 22C) and two Director's Forms (200 and 28.3) also will be amended to reflect these adjusted dollar amounts.

Dated: February 19, 2010.

Francis F. Szczebak,

Chief, Bankruptcy Judges Division.

	Dollar amount to be adjusted	New (adjusted) dollar amount
28 U.S.C.		
1409(b)—a trustee may commence a proceeding arising in or related to a case to recover		
(1)—money judgment of or property worth less than	$1,100	$1,175
(2)—a consumer debt less than	16,425	17,575
(2)—a non consumer debt against a non insider less than	10,950	11,725
11 U.S.C.		
101(3)—definition of assisted person	164,250	175,750
101(18)(A) & (B)(ii)—definition of family farmer	3,544,525 (each time it appears)	3,792,650 (each time it appears).
101(19A)(A)(i) & (b)(ii)(II)—definition of family fisherman	1,642,500 (each time it appears)	1,757,475 (each time it appears).
101(51D)(A) & (B)—definition of small business debtor	2,190,000 (each time it appears)	2,343,300 (each time it appears).
109(e)—allowable debt limits for individual filing bankruptcy under chapter 13.	336,900 (each time it appears)	360,475 (each time it appears).
	1,010,650 (each time it appears)	1,081,400 (each time it appears).
303(b)—minimum aggregate claims needed for the commencement of involuntary chapter 7 or chapter 11 bankruptcy		
(1)—in paragraph (1)	13,475	14,425
(2)—in paragraph (2)	13,475	14,425
507(a)—priority expenses and claims		
(1)—in paragraph (4)	10,950	11,725
(2)—in paragraph (5)	10,950	11,725
(3)—in paragraph (6)	5,400	5,775
(4)—in paragraph (7)	2,425	2,600
522(d)—value of property exemptions allowed to the debtor		
(1)—in paragraph (1)	20,200	21,625
(2)—in paragraph (2)	3,225	3,450
(3)—in paragraph (3)	525	550
	10,775	11,525
(4)—in paragraph (4)	1,350	1,450
(5)—in paragraph (5)	1,075	1,150
	10,125	10,825
(6)—in paragraph (6)	2,025	2,175
(7)—in paragraph (8)	10,775	11,525
(8)—in paragraph (11)(D)	20,200	21,625
522(f)(3)(B)—exception to lien avoidance under certain state laws	5,475	5,850
522(f)(4)(B)—items excluded from definition of household goods for lien avoidance purposes.	550 (each time it appears)	600 (each time it appears).
522(n)—maximum aggregate value of assets in individual retirement accounts exempted.	1,095,000	1,171,650
522(p)(1)—qualified homestead exemption	136,875	146,450
522(q)(1)—state homestead exemption	136,875	146,450
523(a)(2)(C)—exceptions to discharge		
in subclause (i)(I)—consumer debts, incurred ≤90 days before filing owed to a single creditor in the aggregate.	550	600
in subclause (i)(II)—cash advances incurred ≤70 days before filing in the aggregate.	825	875
541(b)—property of the estate exclusions		
(1)—in paragraph (5)(C)—education IRA funds in the aggregate	5,475	5,850
(2)—in paragraph (6)(C)—pre-purchased tuition credits in the aggregate.	5,475	5,850

	Dollar amount to be adjusted	New (adjusted) dollar amount
547(c)(9)—preferences, trustee may not avoid a transfer if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of property is less than.	5,475	5,850
707(b)—dismissal of a case or conversion to a case under chapter 11 or 13 (means test)		
(1)—in paragraph (2)(A)(i)(I)	6,575	7,025
(2)—in paragraph (2)(A)(i)(II)	10,950	11,725
(3)—in paragraph (2)(A)(ii)(IV)	1,650	1,775
(4)—in paragraph (2)(B)(iv)(I)	6,575	7,025
(5)—in paragraph (2)(B)(iv)(II)	10,950	11,725
(6)—in paragraph (5)(B)	1,100	1,175
(7)—in paragraph 6(C)	575	625
(8)—in paragraph 7(A)(iii)	575	625
1322(d)(1)(c) & (2)(c)—contents of chapter 13 plan, monthly income	575 (each time it appears)	625 (each time it appears).
1325(b)(3) & (b)(4)—chapter 13 confirmation of plan, disposable income.	575 (each time it appears)	625 (each time it appears).
1326(b)(3)(B)—payments to former chapter 7 trustee	25	25

[FR Doc. 2010–3807 Filed 2–24–10; 8:45 am]
BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Dwayne LaFrantz Wilson, M.D.; Revocation of Registration

On October 22, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Dwayne LaFrantz Wilson, M.D. (Respondent), of Providence, Rhode Island. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BW6030857, which authorizes him to dispense controlled substances as a practitioner, and the denial of any pending applications to renew or modify his registration, on the ground that his Rhode Island medical license had been suspended, and that he therefore lacks authority to handle controlled substances under the laws of Rhode Island, the State in which he is registered. Show Cause Order at 1.

On October 23, 2008, the Government initially attempted to serve the Show Cause Order on Respondent by certified mail, return receipt requested, addressed to him at his registered address. However, the mailing was returned by the Post Office, with a sticker attached which stated: "NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD."

Thereafter, a DEA Investigator (DI) contacted the Rhode Island Board of Medicine in an attempt to obtain Respondent's address. Declaration of Thomas Cook at 1. A board official indicated that he did not know Respondent's current address, but had heard that he had moved to somewhere in the Southwestern United States. *Id.* The DI also unsuccessfully searched for Respondent through various online databases but could not find any information regarding the latter's whereabouts. *Id.* The DI also tried to contact him through the e-mail address he had previously provided to DEA; Respondent did not, however, reply to the e-mail. *Id.* Finally, the DI contacted the owner of the apartment which Respondent had rented and used as his registered location. *Id.* at 2. Respondent's ex-landlord advised that Respondent had moved in April 2008 and did not leave a forwarding address. *Id.* Accordingly, the Government has been unable to provide actual notice of this proceeding to Respondent.

In *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 315 (1950), the Supreme Court held that "when notice is a person's due * * * [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." More recently, in a case in which a State attempted to serve a property owner with notice of a tax sale by certified mail which was returned as unclaimed, the Court explained that "when a letter is returned by the post office, the sender will ordinarily attempt to resend it, if it is practicable to do so." *Jones* v. *Flowers,* 547 U.S. 220, 230 (2006) (citing *Small* v. *United States,* 136 F.3d 1334, 1337 (DC Cir. 1998)).

In *Jones,* the Court reaffirmed, however, that "[d]ue process does not require that a property owner receive actual notice before the government may take his property." 547 U.S. at 226 (citing *Dusenbery* v. *United States,* 534 U.S. 161, 170 (2002)). Moreover, due process does not require "heroic efforts," *Dusenbery,* 534 U.S. at 170, but rather, only that "the government * * * provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " 547 U.S. at 226 (quoting *Mullane,* 339 U.S. at 314).

Applying these standards, I hold that the Government has satisfied the requirements of due process, notwithstanding that it has been unable to serve Respondent. In contrast to *Jones,* the Government was not required to resend the Show Cause Order by regular mail because the original certified mailing was not returned as unclaimed, but rather as undeliverable (apparently because Respondent did not leave a forwarding address with the Post Office). As the Court reasoned in *Jones,* "if there were no reasonable additional steps the government could have taken upon return of the unclaimed notice letter, it cannot be faulted for doing nothing." 547 U.S. at 234. Moreover, the Government made substantial efforts to locate Respondent. Even though its efforts were unsuccessful, they were "reasonably calculated, under all the circumstances, to apprise [Respondent] of the pendency of the action," and thus satisfy due process. *Dusenbery,* 534 U.S. at 173 (quoting *Mullane,* 339 U.S. at 314).

I further hold that this matter may proceed *in absentia.* I therefore enter this Decision and Final Order without a hearing based on the evidence contained in the record submitted by the Government. I make the following findings.

Findings

Respondent is the holder of DEA Certificate or Registration, BW6030857, which authorizes him to dispense controlled substances in schedules II through V as a practitioner. Respondent's registered location is 388 South Main St., #56, Providence, Rhode Island; his registration does not expire until May 31, 2010.

Respondent also holds both an allopathic physician's license and a controlled substance registration as an allopathic physician which have been issued by the Rhode Island Board of Medical Licensure and Discipline. On January 24, 2008, Respondent entered into a consent order with the Rhode Island Board; the order suspended Respondent's Rhode Island licenses based on the July 30, 2007 order of the New York Department of Health, State Board of Professional Medical Conduct, which had revoked his New York medical license on fourteen different grounds. The Rhode Island Board's order became effective on February 13, 2008. According to the online records of the Rhode Island Board, the suspension remains in effect as of the date of this Decision and Final Order. The Rhode Island Board's online records further indicate that Respondent's state controlled substances registration is inactive, because a prerequisite (*i.e.,* his state medical license) is inactive. I therefore find that Respondent is not currently authorized under Rhode Island law to dispense controlled substances.

Discussion

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in "the jurisdiction in which he practices" in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) ("[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice"). *See also id.* § 823(f) ("The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices."). As these provisions make plain, possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration.

Accordingly, DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. *Scott Sandarg,* 74 FR 17528, 17529 (2009); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3) (authorizing the revocation of a registration "upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances").

As found above, Respondent currently lacks authority to dispense controlled substances in Rhode Island, the State in which he holds his DEA registration. Because Respondent no longer meets the CSA's fundamental requirement for holding a registration, *see* 21 U.S.C. 823(f), his registration will be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, BW6030857, issued to Dwayne LaFrantz Wilson, M.D., be, and it hereby is, revoked. I further order that any pending application of Dwayne LaFrantz Wilson, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective March 29, 2010.

Dated: February 13, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–3766 Filed 2–24–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 19, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Annual Report for Multiple Employer Welfare Arrangements (Form M–1).

OMB Control Number: 1210–0116.

Affected Public: Private sector.

Estimated Number of Respondents: 464.

Total Estimated Annual Burden Hours: 62.

Total Estimated Annual Costs Burden (excludes hourly wage costs): $44,000.

Description: The Health Insurance Portability and Accountability Act of 1996 (HIPAA), codified as Part 7 of Title I of the Employee Retirement Security Act of 1974 (ERISA), was enacted to improve the portability and continuity of health care coverage for participants and beneficiaries of group health plans. To insure compliance with Part 7, section 101(g) of ERISA, HIPAA permits the Secretary of Labor (the Secretary) to require multiple employer welfare arrangements (MEWAs), as defined in section 3(40) of ERISA, to report to the Secretary in such form and manner as the Secretary might determine. The Department of Labor (the Department) published a final rule providing for such reporting on an annual basis, together with a form (Form M–1) to be used by

MEWAs for the annual report. *See* 29 CFR 2520.101–2.

Pursuant to section 101(g) of ERISA, the Form M–1 information is used by governmental oversight entities to determine the extent of compliance with the requirements of Part 7 of ERISA by MEWAs and ECEs under section 3(40) of ERISA and to take appropriate compliance assistance and enforcement actions. For additional information, see related notice published in the **Federal Register** on November 27, 2009 (Vol. 74, page 62350).

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: ERISA Investment Manager Electronic Registration.

OMB Control Number: 1210–0125.

Affected Public: Private sector.

Estimated Number of Respondents: 10.

Total Estimated Annual Burden Hours: 12.

Total Estimated Annual Costs Burden (excludes hourly wage costs): $730.

Description: The Department's regulation at 29 CFR 2510.3–38 provides that, in order to meet the definition of investment manager in section 3(38) of the Employee Retirement Income Security Act of 1974, State-registered investment advisers must register electronically through a centralized electronic filing system established by the Securities Exchange Commission and State investment authorities called the Investment Adviser Registration Depository rather than providing a paper copy of their State registration to the Secretary of Labor. For additional information, see related notice published in the **Federal Register** on November 27, 2009 (Vol. 74, page 62350).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–3789 Filed 2–24–10; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 29, 2010. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request

Schedules Pending

1. Department of Agriculture, Departmental Administration (N1–16–10–3, 1 item, 1 temporary item). Master

files of an electronic information system used to track service requests.

2. Department of Defense, Army and Air Force Exchange Service (N1–334–10–1, 6 items, 5 temporary items). Inspector General records, including such records as inspection reports, hotline files, and investigative files relating to cases lacking historical significance. Historically significant case files are proposed for permanent retention.

3. Department of Health and Human Services, Administration on Aging (N1–439–09–2, 14 items, 14 temporary items). Schedules of daily activities and files of the Deputy Assistant Secretary; administrative policies, procedures and reports; organizational analysis files; working files for the Office of Management Analysis and Resources; budget formulation files and financial management files; grant award files, program support files and working files; and working files for the Office of Administrative and Technology Services.

4. Department of Health and Human Services, Administration on Aging (N1–439–09–4, 9 items, 8 temporary items). Master data files containing grantee reporting data; master data files containing contact information for eldercare services; master data files used for tracking correspondence through the office of the Executive Secretary; and master data files of raw and aggregated data from the National Survey of Older Americans. Proposed as permanent are master data files for the public use version of data from the National Survey of Older Americans.

5. Department of Health and Human Services, Centers for Medicare & Medicaid Services (N1–440–09–6, 1 item, 1 temporary item). Master files of an electronic information system that contains documentation relating to the eligibility and enrollment of Medicare beneficiaries.

6. Department of Health and Human Services, Centers for Medicare & Medicaid Services (N1–440–09–16, 1 item, 1 temporary item). Master files of an electronic information system that contains information concerning Medicare contractor workload, budget administration, and provider cost reporting.

7. Department of Health and Human Services, Centers for Medicare & Medicaid Services (N1–440–10–1, 17 items, 17 temporary items). Records relating to agency oversight of Medicare Health Plan Organizations. Included are such records as compliance reports, performance measurements, loan guarantees, and correspondence files.

8. Department of Health and Human Services, Centers for Medicare & Medicaid Services (N1–440–10–3, 2 items, 2 temporary items). Master files and outputs of an electronic information system that contains information concerning personal health records pilot projects.

9. Department of Homeland Security, U.S. Secret Service (N1–87–10–1, 1 item, 1 temporary item). Master files of an electronic information system used to capture, digitize, and transmit fingerprint information to the Federal Bureau of Investigation for search against criminal fingerprint records.

10. Department of the Interior, Office of the Secretary (N1–49–08–16, 1 item, 1 temporary item). Master files of an electronic information system used to track employee training and progress.

11. Department of Justice, Antitrust Division (N1–60–05–11, 2 items, 1 temporary item). Electronic data relating to time reporting and personnel matters contained in subsystems of an electronic information system that contains data concerning the Division's operations and activities. Proposed for permanent retention is electronic data contained in subsystems that relate to substantive Division activities, such as investigations, cases, and special projects.

12. Department of Justice, Antitrust Division (N1–60–09–55, 2 items, 1 temporary item). Bank merger applications that do not result in an investigation. Master files of an electronic information system that tracks bank acquisitions are proposed for permanent retention. Applications that result in an investigation were previously approved as permanent.

13. Department of Justice, Justice Management Division (N1–60–10–4, 2 items, 2 temporary items). Files relating to the certification of agency employees in regard to education and training in contracting and acquisition. Included are case files relating to the granting of certifications as well as files relating to waivers of certification requirements.

14. Department of Justice, Executive Office for U.S. Attorneys (N1–60–09–29, 10 items, 8 temporary items). Outputs of electronic information systems used to track and manage cases and personnel resources. Master files of these systems are proposed for permanent retention.

15. Department of Justice, Executive Office for U.S. Trustees (N1–60–09–62, 3 items, 3 temporary items). Records related to the U.S. Trustee Program's internal Web site. Both Web content and Web management records are included.

16. Department of Justice, Executive Office for U.S. Trustees (N1–60–09–71, 1 item, 1 temporary item). Master files of an electronic information system that contains data concerning staff time spent on defined categories of work.

17. Department of Justice, Federal Bureau of Investigation (N1–65–09–27, 5 items, 2 temporary items). Outputs and audit logs of an electronic information system used to manage information about confidential human sources. Master files of this electronic system, hard copy case files and related electronic indexes are proposed for permanent retention.

18. Department of Justice, Federal Bureau of Investigation (N1–65–10–1, 2 items, 2 temporary items). Photograph collections maintained by the Laboratory Division, including photographs relating to bombing incidents. These photographs are duplicates of the original photographs, which are maintained in the related investigative case file.

19. Department of Justice, Federal Bureau of Investigation (N1–65–10–11, 6 items, 6 temporary items). Master files, outputs, audit logs and related records associated with an electronic information system used to support the Department of State's visa approval process.

20. Department of the Navy, Agency-wide (N1–NU–09–8, 7 items, 3 temporary items). Case files, records relating to survivor's benefits, and other files associated with the death of active duty military personnel. Proposed for permanent retention are such records as casualty reports, reports of death, death certificates, and Naval Board of Inquiry recommendations.

21. Department of Transportation, Federal Highway Administration (N1–406–09–2, 3 items, 2 temporary items). Files accumulated by field offices of the Federal Lands Highway Division. Included are administrative files relating to policies and procedures, relations with outside organizations, and planning as well as construction project files. Final construction reports are proposed for permanent retention.

22. Department of Transportation, Federal Highway Administration (N1–406–10–2, 2 items, 2 temporary items). Master files and outputs of an electronic information system used to manage the laboratory testing of construction materials, including the receipt of samples and billings.

23. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (N1–564–09–7, 1 item, 1 temporary item). Content records associated with the Bureau's internal Web site, which functions as a portal to other agency systems and also includes copies of agency records.

24. Department of the Treasury, Internal Revenue Service (N1–58–09–75, 2 items, 2 temporary items). Master files and documentation associated with an electronic information system used to maintain statistics on examinations conducted by Tax Exempt/Government Entity field offices.

25. Department of the Treasury, Internal Revenue Service (N1–58–09–77, 3 items, 3 temporary items). Master files, outputs, and documentation associated with an electronic information system used as a decision-making tool for ensuring consistent application of tax laws to innocent spouse claims.

26. Department of the Treasury, Internal Revenue Service (N1–58–09–78, 2 items, 2 temporary items). Master files and documentation associated with an electronic information system used to forward letters to otherwise un-locatable persons on behalf of other agencies, organizations, or private citizens.

27. Department of the Treasury, Internal Revenue Service (N1–58–09–79, 3 items, 3 temporary items). Master files and documentation associated with an electronic information system used to perform quarterly and annual updates of taxpayer information using the most recent bankruptcy data.

28. Department of the Treasury, Internal Revenue Service (N1–58–09–86, 2 items, 2 temporary items). Master files and documentation associated with an electronic information system used to map money follow-throughs across all agency taxpaying entities.

29. Department of the Treasury, Internal Revenue Service (N1–58–09–88, 2 items, 2 temporary items). Master files and documentation associated with an electronic information system used to track the status of claims applications for the informant award program.

30. Commodity Futures Trading Commission, Agency-wide (N1–180–09–2, 7 items, 7 temporary items). Electronic data and other records associated with an electronic information system that contains financial statements submitted for review by registrants.

31. Commodity Futures Trading Commission, Agency-wide (N1–180–09–4, 11 items, 11 temporary items). Electronic data associated with an electronic information system that is used to identify large traders whose positions may pose risk to the industry or a clearing firm.

Dated: February 19, 2010.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 2010–3877 Filed 2–24–10; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0066; Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company, Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR part 73, "Physical protection of plants and materials," for Facility Operating License Nos. DPR 71 and DPR–62, issued to Carolina Power & Light Company (CP&L, the licensee), for operation of the Brunswick Steam Electric Plant, Units 1 and 2 (BSEP), located in Brunswick County, North Carolina. In accordance with 10 CFR 51.21, "Criteria for and identification of licensing and regulatory actions requiring environmental assessments," the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Actions

The proposed actions would exempt the BSEP, Units 1 and 2 from the required implementation date of March 31, 2010, for two new requirements of 10 CFR part 73. Specifically, BSEP would be granted exemptions from being in full compliance with certain new requirements contained in 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," by the March 31, 2010, deadline. CP&L has proposed an alternate full compliance implementation date of December 20, 2010, approximately 9 months beyond the date required by 10 CFR part 73. The proposed actions, extensions of the schedule for completion of certain actions required by the revised 10 CFR part 73, do not involve any physical changes to the Units 1 and 2 reactors, fuel, plant structures, support structures, water, or land at the BSEP site.

The proposed actions are in accordance with the licensee's application dated November 30, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093370132).

The Need for the Proposed Actions

The proposed actions are needed to provide the licensee with additional time to perform the required changes to the BSEP, Units 1 and 2 security systems, which involve significant physical modifications, e.g., design and construction of a new security building to support the new physical protection program requirements, relocation of certain security equipment to the new building, the addition of uninterrupted power supply, and infrastructure upgrades. In addition, these modifications must be coordinated with the Unit 1 refueling outage in spring 2010.

Environmental Impacts of the Proposed Actions

The NRC has completed its environmental assessment of the proposed exemptions. The staff has concluded that the proposed actions to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed actions would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13967). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemptions.

The proposed actions do not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected.

There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemptions.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed actions. In addition, in promulgating its revisions to 10 CFR part 73, the Commission prepared an environmental assessment and published a finding of no significant impact (Part 73, Power Reactor Security Requirements, 74 FR 13926, 13967 (March 27, 2009)).

The licensee currently maintains a security system acceptable to the NRC and will continue to provide acceptable physical protection of BSEP. Therefore, the extension of the implementation date for certain new requirements of 10 CFR part 73 to December 20, 2010, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemptions that will be issued as part of the letter to the licensee approving the exemptions to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Actions

As an alternative to the proposed actions, the NRC staff considered denial of the proposed actions (i.e., the "no action" alternative). Denial of the exemption requests would result in no change in current environmental impacts. If the proposed actions were denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemptions and the "no action" alternative are similar.

Alternative Use of Resources

The actions do not involve the use of any different resources than those considered in the Final Environmental Statement for the BSEP dated January 1976, and the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG–1437, Supplement 25, dated March 2006 (ADAMS Accession No. ML060900480).

Agencies and Persons Consulted

In accordance with its stated policy, on January 19, 2010, the NRC staff consulted with the North Carolina State official, Mr. Dale Dusenbury of the North Carolina Department of Environment and Natural Resources regarding the environmental impact of the proposed actions. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed actions will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed actions.

For further details with respect to the proposed actions, see the licensee's letter dated November 30, 2009. Attachment 1 of the November 30, 2009, submittal contains security-related information and, accordingly, is not available to the public. Other parts of this document may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 18th day of February 2010.

For the Nuclear Regulatory Commission.

Farideh E. Saba,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–3849 Filed 2–24–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34325; NRC–2010–0068]

Notice of Environmental Assessment Related to the Issuance of a License Amendment to Masters Materials License 03–23853–01VA, for Unrestricted Release of a Department of Veterans Affairs Facility in Gainesville, FL

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Katie Streit, Health Physicist, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; Telephone: (630) 829–9621; fax number: (630) 515–1259; or by e-mail at *Katherine.Streit@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend a materials permit held under Master Byproduct Materials License No. 03–23853–01VA. The permit is held by the Department of Veterans Affairs (the Licensee), for its Veteran Affairs (VA) North Florida/South Georgia Veterans Health System located in Gainesville, Florida. Issuance of the amendment would authorize release of Building 26 (the Facility) for unrestricted use. The Licensee will continue its operation of other facilities under this permit and its master materials license. The Licensee requested this action in a letter dated October 29, 2009 (ML093060270). The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's October 29, 2009, materials permit amendment request, resulting in release of the Facility for unrestricted use. License No. 03–23853–01VA was issued on March 17, 2003, pursuant to 10 CFR Parts 30 and 35, and has been amended periodically since that time. This master license authorizes the Licensee to use byproduct materials at several Licensee facilities around the country, as authorized on a site-specific basis by permits issued by the Licensee's National Radiation Safety Committee. Under the license, the permits authorize the use of by-product materials for various medical and veterinary purposes, and for portable gauges.

Under the master material license permit, building 26 was used as a radioactive waste storage facility located

at the VA North Florida/South Georgia Veterans Health System in Gainesville, Florida. The Facility is a storage shed of approximately 20x10x8 feet of space. Radioactive materials with long lived half-lives of greater than 120 days stored in the Facility were H–3, C–14, Na–22, Cl–36, and Ca–45. The licensee removed all licensed material from the Facility and completed final status surveys and decontamination of the Facility in October 2009.

Based on the licensee's historical knowledge of the site and the conditions of the Facility, the licensee determined that only routine decontamination activities, in accordance with their NRC approved, operating radiation safety procedures, were required. The licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that Building 26 meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted use.

Need for the Proposed Action

The licensee has ceased conducting license activities at the Facility, and seeks the unrestricted use of Building 26.

Environmental Impacts of the Proposed Actions

The historical review showed that the following radioactive materials with half-lives greater than 120 days were used: Hydrogen-3, Carbon-14, Sodium-22, Chlorine-36, and Calcium-45. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of Building 26 affected by these radionuclides.

The licensee conducted final status surveys in August 2009 and October 2009 (ADAMS Accession No. ML093060270). The final status survey report was attached to the Licensee's amendment request dated October 29, 2009. The licensee elected to demonstrate compliance with the radiological criteria for unrestricted use as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, "Consolidated Decommissioning Guidance, Decommissioning Process for Material Licensees" Volume 1 (ML063000243). The licensee used the radionuclide-specific derived concentration guideline levels (DCGLs) developed by the NRC, which conservatively comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials that will satisfy the NRC requirement in Subpart E of 10 CFR Part 20 for unrestricted use. The licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities" (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material within Building 26. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the buildings. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of Building 26 for unrestricted use is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity from Building 26 and concluded that the proposed action will not have a significant effect on the quality of the environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d) requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the licensee's final status survey data confirmed that Building 26 meet the requirements of 10 CFR 20.1402 for unrestricted use. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted use criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

On January 11, 2010 the NRC provided a draft of this EA to the State of Florida, Department of Health, Bureau of Radiation Control. The State provided no comments or questions.

The NRC staff has determined that the proposed action is of a procedural nature and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's 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 Public Document Room (PDR)

Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* The documents related to

this action are listed below, along with their ADAMS accession numbers.

1. National Health Physics Program Request for Decommissioning for Unrestricted Release of Building 26 at the VA North Florida/South Georgia Veterans Health System, Gainesville, Florida, dated October 29, 2009 (ADAMS Accession No. ML093060270).

2. Additional Information for Closeout of Building 26 North Florida/South Georgia Veterans Health System, Gainesville, Florida (ADAMS Accession No. ML100110095).

3. Title 10 Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination."

4. Title 10 Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Function."

5. NUREG–1556, Consolidated Guidance about Material Licenses, Volume 9.

6. NUREG–1757, Consolidated Decommissioning Guidance.

7. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 17th day of February 2010.

For the Nuclear Regulatory Commission.

Christine A. Lipa,

Chief, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. 2010–3862 Filed 2–24–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395; NRC–2010–0067]

South Carolina Electric and Gas Company, Virgil C. Summer Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) section 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR part 73, "Physical protection of plants and materials," for Renewed Facility Operating License No. NPF–12, issued to South Carolina Electric & Gas Company (SCE&G, the licensee), for operation of the Virgil C. Summer Nuclear Station, Unit 1 (VCSNS), located in Fairfield County, South Carolina. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed action will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt VCSNS from the required implementation date of March 31, 2010, for two new requirements of 10 CFR part 73. Specifically, VCSNS would be granted an exemption from being in full compliance with two new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. SCE&G has proposed an alternate full compliance implementation date of September 30, 2010, approximately 6 months beyond the date required by 10 CFR part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the VCSNS, Unit 1 site.

The proposed action is in accordance with the licensee's application contained in two letters dated December 11, 2009, SCE&G designation RC–09–0154 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093490316) and RC–09–0148 (NRC ADAMS ML093480496 and ML093480497). SCE&G's letter RC–09–0148 contains security-related information and, accordingly, is not available to the public. SCE&G's letter RC–09–0154 is a redacted version of RC–09–0148 that does not contain security related information.

The Need for the Proposed Action

The proposed action is needed to provide the licensee with additional time to complete the design, planning, procurement, construction, testing and project closeout activities for the required upgrades to the SCE&G security system, while simultaneously maintaining the current security defensive strategy.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73, as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13967). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926, 13967 (March 27, 2009)].

The licensee currently maintains a security system acceptable to the NRC and will continue to provide acceptable physical protection of the VCSNS. Therefore, the extension of the implementation date for certain new requirement of 10 CFR part 73 to September 30, 2010, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial

of the proposed action (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the Virgil C. Summer Nuclear Station, Unit No. 1, NUREG–0719, dated May 1981 (ADAMS Accession No. ML072750234) and the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG–1437, Supplement 15, dated February 2004 (ADAMS Accession No. ML040540718).

Agencies and Persons Consulted

In accordance with its stated policy, on December 17, 2009, the NRC staff consulted with the South Carolina State official, Ms. Susan Jenkins of the South Carolina Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 11, 2009 (RC–09–0154). The licensee's letter RC–09–0148, dated December 11, 2009 contains security-related information and, accordingly, is not available to the public pursuant to 10 CFR 2.390. The licensee's letter RC–09–0154 may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC: *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 18th day of February 2010.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Sr. Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–3852 Filed 2–24–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298; NRC–2008–0617]

Nebraska Public Power District, Cooper Nuclear Station, Unit 1; Notice of Availability of the Draft Supplement 41 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, and Public Meetings for The License Renewal of Cooper Nuclear Station, Unit 1

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, regarding the renewal of operating license DPR–46 for an additional 20 years of operation for Cooper Nuclear Station, Unit 1 (CNS–1). CNS–1 is located near Brownville, Nebraska, on the Missouri River in Nemaha County. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be considered, comments on the draft supplement to the GEIS and the proposed action must be received by May 5, 2010; the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2008–0617 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–2008–0617. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

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

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 O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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.* The Accession Number for the draft Supplement 41 to the GEIS is available electronically under ADAMS Accession Number ML100331921.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2008–0617.

In addition, a copy of the draft supplement to the GEIS is available to local residents near the site at the Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

Comments received after the due date will be considered only if it is practical to do so.

Also, electronic comments may be submitted to the NRC by e-mail at *CooperEIS@nrc.gov.* All comments received by the Commission, including those made by Federal, State, local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and through ADAMS.

The NRC staff will hold public meetings prior to the close of the public comment period to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. Two meetings will be held at the Auburn City Council Chambers, 1101 J. Street, Auburn, NE 68305, on Wednesday, April 7, 2010. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. and will continue until 10 p.m., as necessary. The meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may pre-register to attend or present oral comments at the meeting by contacting Ms. Bennett Brady, the NRC Environmental Project Manager, at 1–800–368–5642, extension 2981, or by e-mail at *Bennett.Brady@nrc.gov,* no later than Monday, March 29, 2010. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Brady's attention no later than March 24, 2010, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Ms. Bennett Brady, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Ms. Brady may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 18th day of February 2010.

For the Nuclear Regulatory Commission.

Bo M. Pham,

Chief, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–3864 Filed 2–24–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2010–24; Order No. 410]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a Global Expedited Package Services 2 (GEPS 2) contract to the Competitive Product List. This notice addresses procedural steps associated with this filing.

DATES: Comments are due: March 1, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in "FOR FURTHER INFORMATION CONTACT" by telephone for advice on alternatives to electronic filing.

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

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

Table of Contents

I. Introduction

On February 18, 2010, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 2 (GEPS 2) contract.[1] The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS 2 contracts, and is supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 2. The Notice also explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1. In Order No. 290, the Commission approved the GEPS 2 product.[2]

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. The Postal Service submitted the contract and supporting materials under seal along with an application for non-public treatment as Attachment 1, and attached a redacted copy of the contract and a certified statement required by 39 CFR 3015.5(c)(2) to the Notice as Attachments 3 and 4, respectively. *Id.* at 1–2. The term of the contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.

The Notice advances reasons why the instant GEPS 2 contract fits within the Mail Classification Schedule language for GEPS 2. The Postal Service contends that the instant contract is functionally equivalent to the GEPS 2 contracts filed previously, despite minor differences in both the general language and for customer-specific information, all of which are highlighted in the Notice. *Id.* at 3–7.

The Postal Service contends that several factors demonstrate the contract's functional equivalence with previous GEPS 2 contracts, including the general terms of the contract, the market to which it is being offered, and its cost characteristics. *Id.* at 3. The Postal Service concludes that because the "GEPS agreements incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same..." despite any incidental differences. *Id.* at 6.

The Postal Service contends that its filings demonstrate that this new GEPS 2 contract is established in compliance with the requirements of 39 U.S.C. 3633, is functionally equivalent to previous GEPS 2 contracts, and requests that this contract be included within the GEPS 2 product. *Id.* at 7.

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, February 18, 2010 (Notice).

[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

II. Notice of Filing

The Commission establishes Docket No. CP2010–24 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than March 1, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2010–24 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than March 1, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

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

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. 2010–3788 Filed 2–24–10; 8:45 am]

BILLING CODE 7710–FW–S

SECURITIES AND EXCHANGE COMMISSION

[Rule 17Ad–16; SEC File No. 270–363; OMB Control No. 3235–0413]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for Rule 17Ad–16 (17 CFR 240.17Ad–16) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act").

Rule 17Ad–16 requires a registered transfer agent to provide written notice to the appropriate qualified registered securities depository when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address. In addition, transfer agents that provide such notice shall maintain such notice for a period of at least two years in an easily accessible place. This rule addresses the problem of certificate transfer delays caused by transfer requests that are directed to the wrong transfer agent or the wrong address.

We estimate that the transfer agent industry submits approximately 3,000 Rule 17Ad–16 notices to appropriate qualified registered securities depositories. The staff estimates that the average amount of time necessary to create and submit each notice is approximately 15 minutes per notice. Accordingly, the estimated total industry burden is 750 hours per year (15 minutes multiplied by 3,000 notices filed annually).

Because the information needed by transfer agents to properly notify the appropriate registered securities depository is readily available to them and the report is simple and straightforward, the cost is relatively minimal. The average cost to prepare and send a notice is approximately $7.50 (15 minutes at $30 per hour). This yields an industry-wide cost estimate of $22,500 (3,000 notices multiplied by $7.50 per notice).

Please note that 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 control number. Comments should be directed to: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: (i) *Shagufta_Ahmed@comb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 25, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3753 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rule 17a–5; SEC File No. 270–155; OMB Control No. 3235–0123]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below. 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 control number.

Rule 17a–5 (17 CFR 240.17a–5) is the basic financial reporting rule for brokers and dealers.[1] The Rule requires the filing of Form X–17A–5 (17 CFR 249.617), the Financial and Operational Combined Uniform Single Report ("FOCUS Report"), which was the result of years of study and comments by representatives of the securities industry through advisory committees and through the normal rule proposal methods. The FOCUS Report was designed to eliminate the overlapping regulatory reports required by various self-regulatory organizations and the Commission and to reduce reporting burdens as much as possible. The Rule also requires the filing of an annual audited report of financial statements.

The FOCUS Report consists of: (1) Part I, which is a monthly report that must be filed by brokers or dealers that clear transactions or carry customer securities; (2) one of three alternative quarterly reports: Part II, which must be filed by brokers or dealers that clear transactions or carry customer securities; Part IIA, which must be filed by brokers or dealers that do not clear transactions or carry customer securities; and Part IIB, which must be filed by specialized broker-dealers registered with the Commission as OTC derivatives dealers; [2] (3) supplemental

[1] Rule 17a–5(c) requires a broker or dealer to furnish certain of its financial information to customers and is subject to a separate PRA filing (OMB Control Number 3235–0199).

[2] Part IIB of Form X–17A–5 must be filed by OTC derivatives dealers under Exchange Act Rule 17a–12 and is subject to a separate PRA filing (OMB Control Number 3235–0498).

schedules, which must be filed annually; and (4) a facing page, which must be filed with the annual audited report of financial statements. Under the Rule, a broker or dealer that computes certain of its capital charges in accordance with Appendix E to Exchange Act Rule 15c3–1 (17 CFR 240.15c3–1) must file additional monthly, quarterly, and annual reports with the Commission.

The variation in the size and complexity of brokers and dealers subject to Rule 17a–5 and the differences in the FOCUS Report forms that must be filed under the Rule make it difficult to calculate the cost of compliance. However, we estimate that, on average, each report will require approximately 12 hours. At year-end 2008, the Commission estimates that there were approximately 5,190 brokers or dealers, and that of those firms there were approximately 530 brokers or dealers that clear transactions or carry customer securities. In addition, approximately 220 firms filed annual reports. The Commission therefore estimates that approximately 530 firms filed monthly reports, approximately 4,400 firms filed quarterly reports, and approximately 220 firms filed annual reports. In addition, approximately 5,190 firms filed annual audited reports. As a result, there were approximately 29,530 total annual responses ((530 × 12) + (4,400 × 4) + 220 + 5,190 = 29,370). This results in an estimated annual burden of 354,360 hours (29,530 annual responses × 12 hours = 354,360).

In addition, we estimate that approximately 11 brokers or dealers will elect to use Appendix E to Rule 15c3–1 to compute certain of their capital charges (as of October 2009, seven brokers or dealers have elected to use Appendix E). We estimate that the average amount of time necessary to prepare and file the additional monthly reports that must be filed by these firms is about 4 hours per month, or approximately 48 hours per year; the average amount of time necessary to prepare and file the additional quarterly reports is about 8 hours per quarter, or approximately 32 hours per year; and the average amount of time necessary to prepare and file the additional supplemental reports with the annual audit required is approximately 40 hours per year. Consequently, we estimate that the total additional annual burden for these 11 brokers or dealers is approximately 1,320 hours ((48 + 32 + 40) × 11 = 1,320).

The Commission therefore estimates that the total annual burden under Rule 17a–5 is approximately 353,800 hours (352,440 + 1,320 = 353,760, rounded to 353,800).

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: (i) *Shagufta_Ahmed@comb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 17, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3769 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Schedule 14D–9F; OMB Control No. 3235–0382; SEC File No. 270–339.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Schedule 14D–9F is used (17 CFR 240.14d–103) by any foreign private issuer incorporated or organized under the laws of Canada or any Canadian province or territory or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of securities filed on Schedule 14D–1F. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. Schedule 14D–9F takes approximately 2 hours per response to prepare and is filed by approximately 6 respondents annually for a total reporting burden of 12 hours.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov.;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 18, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3770 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61534]

Order Granting Application for Exemption Pursuant to Section 36(a) of the Exchange Act by BATS Exchange, Inc. From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

February 18, 2010.

BATS Exchange, Inc. (“BATS Exchange”) has filed with the Securities and Exchange Commission (“Commission”) an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) [1] from the rule filing requirements of Section 19(b) of the Exchange Act [2] with respect to certain rules of another self-regulatory organization (“SRO”) that BATS Exchange seeks to incorporate by reference. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or

[1] 15 U.S.C. 78mm(a)(1).

[2] 15 U.S.C. 78s(b).

rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

On January 26, 2010, the Commission approved new rules governing the trading of options on the BATS Exchange Options Market ("Options Rules").[3] Certain of the Options Rules incorporate by reference existing rules of the Chicago Board Options Exchange, Incorporated ("CBOE"), Financial Industry Regulatory Authority, Inc. ("FINRA"), formerly known as the National Association of Securities Dealers, Inc. ("NASD"),[4] and NYSE. Thus, for certain Options Rules, BATS Exchange members will comply with a BATS Exchange rule by complying with the CBOE, FINRA, or NYSE rule referenced therein.

BATS Exchange has requested, pursuant to Rule 0–12 under the Exchange Act,[5] that the Commission grant it an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Options Rules that are effected solely by virtue of a change to a cross-referenced CBOE, FINRA, or NYSE rule. Specifically, BATS Exchange requests that it be permitted to incorporate by reference changes made to each CBOE, FINRA, or NYSE rule (or series of rules) that is cross-referenced in BATS Exchange Rules 2.12, 18.7, 18.9, 26.16, 28.3, 29.5, and 29.7 without the need for BATS Exchange to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act.[6] BATS Exchange proposes to incorporate by reference (1) CBOE rules governing position and exercise limits for equity and index options; (2) the margin rules of CBOE and the NYSE; (3) FINRA's rules governing communications with the public; and (4) FINRA's rule governing fidelity bonds, for members for which BATS Exchange is the Designated Examining Authority. BATS Exchange represents that the rules it has incorporated by reference into the Options Rules are categories of CBOE, FINRA, or NYSE rules (rather than individual rules within a category) that are not trading rules. The Exchange has agreed to provide written notice to its members whenever CBOE, FINRA, or NYSE proposes a change to a cross-referenced CBOE, FINRA, or NYSE rule.[7]

The Commission has issued exemptions to other exchanges similar to BATS Exchange's request.[8] The Commission stated in 2004, when granting one such exemption, that it would consider similar future exemption requests from other SROs, provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act; [9]
- An incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (*e.g.,* the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.[10]

The Commission believes that BATS Exchange has satisfied each of these conditions.

The Commission also believes that granting BATS Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of Commission and BATS Exchange resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.[11] The Commission therefore finds that it is necessary and appropriate in the public interest and consistent with the protection of investors to exempt BATS Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the rules it has incorporated by reference. This exemption is conditioned upon BATS Exchange providing written notice to its members whenever CBOE, FINRA, or NYSE proposes to change a rule that BATS Exchange has incorporated by reference.

Accordingly, *it is ordered,* pursuant to Section 36 of the Exchange Act,[12] that BATS Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in its request that incorporate by reference certain rules of CBOE, FINRA, and NYSE,[13] provided that BATS Exchange provides written notice to its members whenever CBOE, FINRA, or NYSE proposes to change a rule that BATS Exchange has incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3772 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031).

[4] Although NASD is now known as FINRA, some rules in the FINRA rule book are still referred to as "NASD rules." FINRA is in the process of consolidating the member rules of the New York Stock Exchange, LLC ("NYSE") and NASD rules into a single rule book. For purposes of the FINRA rule book, harmonized rules are referred to as FINRA rules, while rules that originally were NASD rules, but have yet to be harmonized, are referred to as NASD rules.

[5] 17 CFR 240.0–12.

[6] *See* Letter from Eric Swanson, SVP, General Counsel, BATS Exchange, to Elizabeth M. Murphy, Secretary, Commission, dated January 20, 2010 ("BATS Exemptive Request").

[7] *Id.* BATS Exchange states that it will provide this notice on its Web site where it posts its own proposed rule change filings within the same time frame required of its own filings pursuant to Rule 19b–4(l), 17 CFR 240.19b–4(l). *Id.* at note 8. In addition, BATS Exchange states that the posting will include a link to the location on CBOE, FINRA, or NYSE's Web site where the proposed rule change is posted. *Id.*

[8] For example, NYSE Amex LLC (formerly NYSE Alternext U.S., LLC), the International Securities Exchange, LLC ("ISE"), the Municipal Securities Rulemaking Board, and NASDAQ OMX PHLX, Inc. (formerly the Philadelphia Stock Exchange, Inc.) incorporate the FINRA Code of Arbitration Procedure, while the ISE, NYSE Arca, Inc., and the Boston Options Exchange, a facility of NASDAQ OMX BX, Inc. (formerly Boston Stock Exchange, Inc.), incorporate by reference the margin rules of NYSE and CBOE. *See* Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004). *See also* Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521, 14539–40 (March 18, 2008) (order approving SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) and 53128 (January 13, 2006), 71 FR 3550, 3565–66 (January 23, 2006) (File No. 10–131) (approving The NASDAQ Stock Market LLC's exchange application).

[9] *See* 17 CFR 240.0–12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule).

[10] *See* Securities Exchange Act Release No. 49260, *supra* note 8.

[11] *See id.,* 69 FR at 8502.

[12] 15 U.S.C. 78mm.

[13] *See* BATS Exemptive Request, *supra* note 6.

[14] 17 CFR 200.30–3(a)(76).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61546; File No. 4–546]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Order Protection and Locked/Crossed Market Plan To Add the BATS Exchange, Inc. as a Participant

February 19, 2010.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 608 thereunder,[2] notice is hereby given that on February 4, 2010, BATS Exchange, Inc. ("BATS" or "Exchange") filed with the Securities and Exchange Commission ("Commission") an amendment to the Options Order Protection and Locked/Crossed Market Plan ("Plan").[3] The amendment proposes to add BATS as a Participant[4] to the Plan. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Description and Purpose of the Amendment

The current Participants in the Linkage Plan are CBOE, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca. The proposed amendment to the Plan would add BATS as a Participant in the Plan. BATS has submitted a signed copy of the Plan to the Commission in accordance with the procedures set forth in the Plan regarding new Participants. Section 3(c) of the Plan provides for the entry of new Participants to the Plan. Specifically an Eligible Exchange[5] may become a Participant in the Plan by: (i) Executing a copy of the Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Plan; (iii) effecting an amendment to the Plan, as specified in Section 4(b) of the Plan.

Section 4(b) of the Plan puts forth the process by which an Eligible Exchange may effect an amendment to the Plan. Specifically, an Eligible Exchange must: (a) execute a copy of the Plan with the only change being the addition of the new participant's name in Section 3(a) of the Plan; and (b) submit the executed Plan to the Commission. The Plan then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing proposed Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) of the Act[6] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608,[7] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment 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 4–546 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 4–546. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–546 and should be submitted on or before March 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3823 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

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[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On July 30, 2009, the Commission approved a national market system plan relating to Options Order Protection and Locked/Crossed Markets proposed by Chicago Board Options Exchange, Incorporated ("CBOE"), International Securities Exchange, LLC ("ISE"), The NASDAQ Stock Market LLC ("Nasdaq"), NASDAQ OMX BX, Inc. ("BOX"), NASDAQ OMX PHLX, Inc. ("Phlx"), NYSE Amex, LLC ("NYSE Amex"), and NYSE Arca, Inc. ("NYSE Arca"). *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

[4] The term "Participant" is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

[5] Section 2(6) of the Plan defines an "Eligible Exchange" as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that: (a) is a "Participant Exchange" in the Options Clearing Corporation ("OCC") (as defined in OCC By-laws, Section VII); (b) is a party to the Options Price Reporting Authority ("OPRA") Plan (as defined in the OPRA Plan, Section 1); and (c) if the national securities exchange chooses not to become party to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. BATS has represented that it has met the requirements for being considered an Eligible Exchange. *See* letter from Eric Swanson, SVP and General Counsel, BATS, to David Liu, Assistant Director, Division of Trading and Markets, Commission, dated February 12, 2010.

[6] 17 CFR 242.608(b)(3)(iii).

[7] 17 CFR 242.608(b)(1).

[8] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[File Nos. SR–Phlx–2009–104, SR–Phlx–2009–116, & SR–Phlx–2010–14; [Release No. 61547]

NASDAQ OMX PHLX, Inc.; Order of Summary Abrogation

February 19, 2010.

Notice is hereby given that the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(3)(C) of the Securities Exchange

Act of 1934 ("Act"),[1] is summarily abrogating three proposed rule changes of NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange").

On December 22, 2009, on December 31, 2009, and on January 26, 2010, Phlx filed proposed rule changes to amend its fee schedule. In SR–Phlx–2009–104, Phlx proposed to amend its fee schedule, to among other things, assess a transaction fee of $0.05 per contract on Phlx specialists, Streaming Quote Traders ("SQTs") and Remote Streaming Quote Traders ("RSQTs")[2] for equity option orders directed to them by an order flow provider and executed electronically. A Phlx specialist, SQT, or RSQT would be assessed a transaction fee of $0.21 per contract when it trades with an order not directed to it. In SR–Phlx–2009–116, Phlx proposed to amend its fee schedule to adopt, for a two-month pilot period expiring March 2, 2010, a per contract transaction fee on market participants who remove liquidity from the Exchange in options on Standard & Poor's Depositary Receipts/SPDRs ("SPY") and a per contract rebate or transaction fee for market participants who add liquidity in SPY options.[3] The amount of such transaction fees and rebates vary depending on the type of market participant. In SR–Phlx–2010–14, Phlx proposed to amend its fee schedule to apply, for a pilot period expiring March 2, 2010, the same per contract transaction fees and rebates Phlx adopted in SR–Phlx–2009–116 for transactions in options on SPY to transactions in options overlying the PowerShares QQQ Trust ("QQQQ") ®, Ishares Russell 2000 ("IWM"), and Citigroup Inc. ("C").

The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] Pursuant to Section 19(b)(3)(C) of the Act,[5] at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,[6] the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Act[7] and reviewed in accordance with Section 19(b)(2) of the Act,[8] 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.

The Commission is concerned about whether the proposals are consistent with the statutory requirements applicable to a national securities exchange under the Act, including, among other provisions, Section 6(b)(4) of the Act,[9] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities; Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,[11] which requires that the rules of a national securities exchange do not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Accordingly, the Commission believes that the procedures provided by Section 19(b)(2) of the Act[12] will provide a more appropriate mechanism for determining whether the proposed rule changes are consistent with the Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule changes.

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[13] that File Nos. SR–Phlx–2009–104, SR–Phlx–2009–116, as modified by Amendment No. 1, and SR–Phlx–2010–14, be and hereby are, summarily abrogated. If Phlx chooses to re-file the proposed rule changes, it must do so pursuant to Sections 19(b)(1)[14] and 19(b)(2) of the Act.[15]

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–3791 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(3)(C).

[2] Streaming Quote Traders, or "SQTs," and Remote Streaming Quote Traders, or "RSQTs," are Phlx market makers who may generate and submit option quotations electronically on the Phlx. RSQTs may only submit quotations from off the floor.

[3] Phlx filed Amendment No. 1 to SR–Phlx–2009–116 on January 5, 2010 to correct a typographical error in the purpose section to make it consistent with the fee schedule provided in Exhibit 5 thereto.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78s(b)(1).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(2).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(3)(C).

[14] 15 U.S.C. 78s(b)(1).

[15] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61536; File No. SR–BX–2010–014]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Order Routing on the Boston Options Exchange Facility

February 18, 2010.

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 February 8, 2010, NASDAQ OMX BX, Inc. (the "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 self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ OMX BX, Inc. (the "Exchange") proposes to amend Chapter XII, Section 5 (Order Routing to Away Exchanges) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to make the Order Routing Pilot Permanent. The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov* and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

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 the proposed rule change is to remove Supplementary Material .03 to Chapter XII, Section 5, to make the rules governing the outbound order routing process permanent. On October 16, 2009 the Commission approved [5] the Exchange's proposal to amend Chapter XII of the BOX Rules to provide for the use by BOX of certain non-affiliated third party routing broker/dealers ("Routing Broker(s)") to route options orders to one or more Away Exchange(s) when such Away Exchange(s) display the Best Bid or Best Offer in accordance with the Options Order Protection and Locked/Crossed Market Plan ("Decentralized Plan").[6]

The Exchange requested that the proposal be approved on a pilot basis for three (3) months starting from the date of the approval of submission of filing. The Commission approved the Exchange's proposal on an accelerated basis [7] for a pilot period to expire on January 15, 2010.[8] On January 15, 2010, the effective date of the Order Routing Pilot was extended until March 15, 2010.[9] The Exchange believes permanent approval is appropriate. There have been no comments, or complaints pertaining to the Order Routing Pilot. The routing process is operating as intended. Moreover, as previously noted, Chapter XII, Section 5 is consistent with rules approved for other national securities exchanges.[10]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed 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 for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that permanent approval of the Order Routing Pilot will result in an ongoing benefit to investors by affording BOX Options Participants the choice, on a voluntary basis, to have their orders routed to one or more Away Exchange(s) when such Away Exchange(s) display the Best Bid or Best Offer, in accordance with the Decentralized Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act [13] and Rule 19b–4(f)(6) thereunder.[14] This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange believes that this proposed rule change, which is essential for competitive purposes and to promote a free and open market for the benefit of investors, does not raise any new, unique or substantive issues from those raised in the Exchanges initial proposal to implement the Order Routing Pilot or the recent extension tothe Pilot,[15] and the rules are consistent with those of other exchanges.[16] The Exchange believes permanent approval is appropriate. There have been no comments, or complaints pertaining to the Order Routing Pilot. The routing process is operating as intended.

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–BX–2010–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–014. 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

[5] *See* Securities Exchange Act Release No. 60832 (October 16, 2009), 74 FR 54607 (October 22, 2009) (SR–BX–2009–066)(Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Chapter XII of the BOX Rules) ("Approval Order"). *See also* Chapter XII, Section 5 of the BOX Rules. Chapter XII, Section 5 is consistent with rules approved for other national securities exchanges. *See e.g.* Approval Order at 54609, note 24. Terms not otherwise defined herein shall have the meaning proscribed in the BOX Rules.

[6] *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Market Plan).

[7] The Exchange requested accelerated approval to allow BOX to establish and implement mechanisms to remain fully compliant with the Decentralized Plan and BOX Rules and to no longer rely upon a Commission-granted exemption from Rule 608(c) of Regulations NMS. The pilot period also allowed interested parties an opportunity to comment on the proposal before it was permanently approved.

[8] *See Supra* note 5.

[9] *See* Securities Exchange Act Release No. 61399 (January 22, 2010), 75 FR 4603 (January 28, 2010) (SR–BX–2010–007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Order Routing Pilot on the Boston Options Exchange Facility).

[10] *See Supra* note 5.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, as required under Rule 19b–4(f)(6)(iii), the Exchange has submitted to the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] *See Supra* note 5 and note 9.

[16] *See Supra* note 5.

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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–014 and should be submitted on or before March 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3774 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61539; File No. SR–Phlx–2010–20]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change To Expand the Number of Components in the PHLX Semiconductor Sector℠ Known as SOX℠, on Which Options Are Listed and Traded

February 18, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on February 2, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 proposal to expand the number of components in the PHLX Semiconductor Sector℠ known as SOX℠, on which options are listed and traded.[3] No other changes are made to the index or options on the index.

A copy of the filing is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 the proposal is to expand the number of components in the PHLX Semiconductor Sector℠ known as SOX℠ ("SOX" or the "Index"), on which options are listed and traded.

SOX options subsequent to this proposal will be identical to SOX options that are currently listed and trading except for the number of components in the underlying Index, and will trade pursuant to the same (unchanged) contract specifications.[4] The singular post-proposal difference in SOX options is that they will overlie an Index with thirty components where the current Index has twenty-one components.

Background

The Exchange currently has initial listing and maintenance listing standards for options on indexes in Rule 1009A that are designed to allow the Exchange to list options on narrow-based indexes[5] and broad-based indexes[6] pursuant to generic listing standards (the "Index Listing Standards").[7] SOX is a narrow-based index and SOX options overlying the Index are listed and traded pursuant to Rule 1009A(b). SOX options were originally listed and began trading in 1994 pursuant to Exchange approval.[8]

SOX is a modified market capitalization-weighted index composed of twenty-one companies primarily involved in the design, distribution, manufacture, and sale of semiconductors, and is one of several narrow-based sector indexes on which options are listed and traded on the Exchange.[9] SOX provides exposure to the fast-growing (yet extremely volatile) semiconductor industry. When investors want information and investment opportunities specific to semiconductors, they look most often to the SOX index.[10] Indeed, the popularity of SOX is reflected in the trading volumes of options on the Index.[11] It

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PHLX Semiconductor Sector℠ may also be known as PHLX Semiconductor Index or PHLX Semiconductor Sector℠ Index.

[4] The contract specifications for SOX options are available at *http://www.nasdaqtrader.com/micro.aspx?id=phlxsectorscontractspecs#SOX*.

[5] A narrow-based index or industry index is defined as: An index designed to be representative of a particular industry or a group of related industries. The term "narrow-based index" includes indices the constituents of which are all headquartered within a single country. *See* Rule 1000A(b)(12).

[6] A broad-based index or market index is defined as: An index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries. *See* Rule 1000A(b)(11).

[7] Rule 1009A establishes generic listing standards for options on narrow-based and broad-based indexes pursuant to Rule 19b–4(e) of the Act. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998). The listing standards in Rule 1009A are similar to those of other options exchanges such as, for example, Chicago Board Options Exchange, Incorporated; International Stock Exchange LLC; and The NASDAQ Stock Market LLC.

[8] *See* Securities Exchange Act Release No. 34546 (August 18, 1994), 59 FR 43881 (August 25, 1994) (SR–Phlx–94–02) (order approving proposal to list and trade the SOX index).

[9] Other sector indexes on which options are listed and traded on the Exchange include: KBW Bank Index℠ (BKX℠); PHLX Gold/Silver Sector℠ (XAU℠); PHLX Housing Sector℠ (HGX℠); PHLX Oil Service Sector℠ (OSX℠); PHLX Utility Sector℠ (UTY℠); NASDAQ OMX China Index℠ (CNZ℠); SIG Energy MLP Index℠ (SVO™); and SIG Oil Exploration & Production Index™ (EPX℠).

[10] Other currently available investment products that evaluate the semiconductor market, albeit differently from SOX, include Semiconductor HOLDRs (SMH) and iShares S&P North American Technology-Semiconductors Index Fund (IGW).

[11] During 2009, SOX has traded an average of 29,127 contracts per month and has traded as much as 23,339 contracts in a day (June 16, 2009). As of December 31, 2009, there were 11,976 contracts of open interest in SOX.

has been observed that a rise or decline in the SOX usually precedes a similar move in the broader technology market. As such, SOX has served as a leading indicator for technology stocks. Recognizing the market-leading aspects of the Index, the Exchange is proposing a rule change to increase to thirty the number of components in SOX so that this narrow-based index may even more effectively represent the dynamic semiconductor market.[12]

The Exchange submits that in the proposed expanded form SOX would continue to meet the generic Index Listing Standards of Rule 1009A. Specifically, all the index maintenance requirements in subsection (c) of Rule 1009A applicable to options on narrow-based indexes would be met with one exception.[13] The singular exception is the number of components. In particular, subsection (c)(2) of Rule 1009 indicates that the total number of component securities in the index may not increase or decrease by more than 33⅓% from the total number of securities in the index at the time of its initial listing; adding components to equal thirty is outside the (c)(2) parameter, and is the reason why the Exchange is making the current filing.

Index Design and Index Composition

The Index is calculated using a modified market capitalization-weighted methodology. The value of the Index equals the total capitalization of modified shares, divided by the divisor. The divisor serves the purpose of scaling aggregate value to a lower order of magnitude which is more desirable for Index reporting and trading purposes. To maintain continuity for the Index's value, the divisor is adjusted periodically to reflect events such as changes in the number of shares outstanding for component stocks, company additions or deletions, corporate restructurings, or other capitalization changes.

If trading in an Index security is halted while the market is open, the most recent last sale price for that security ("Last Sale Price")[14] is used for all index computations until trading resumes. If trading is halted before the market is open, the most recent Last Sale Price is used. Additionally, the Index ordinarily is calculated without regard to dividends on component securities. The modified capitalization-weighted methodology is expected to retain, in general, the economic attributes of capitalization weighting, while providing enhanced diversification. To accomplish this, NASDAQ OMX, which maintains the Index, rebalances the Index at least twice annually and adjusts the weighting of Index components.

Index eligibility is limited to specific security types only. The security types eligible for the Index include foreign or domestic common stocks, ordinary shares, American Depository Receipts ("ADRs"), shares of beneficial interest or limited partnership interests, and tracking stocks. Security types not included in the Index are closed-end funds, convertible debentures, exchange traded funds, preferred stocks, rights, warrants, units and other derivative securities.

As of December 31, 2009, the following were characteristics of the Index:

—The total weighted capitalization of all components of the Index was $276.43 billion;
—Regarding component capitalization, (a) the highest weighted capitalization of a component was $112.65 billion (Intel Corp.), (b) the lowest weighted capitalization of a component was $0.79 billion (STMicroelectronics N.V.), (c) the mean capitalization of the components was $13.16 billion, and (d) the median capitalization of the components was $6.62 billion;
—Regarding component price per share, (a) the highest price per share of a component was $56.37 (Cree, Inc.), (b) the lowest price per share of a component was $9.27 (STMicroelectronics N.V.), (c) the mean price per share of the components was $23.32, and (d) the median price per share of the components was $22.63;
—Regarding component weightings, (a) the highest weighting of a component was 7.83% (Applied Materials, Inc.), (b) the lowest weighting of a component was 1.36% (STMicroelectronics N.V.), (c) the mean weighting of the components was 4.76%, (d) the median weighting of the components was 4.00%, and (e) the total weighting of the top five highest weighted components was 37.37% (Applied Materials, Inc., Taiwan Semiconductor Manufacturing Co., Broadcom Corporation, Intel Corp., and Texas Instruments, Inc.);
—Regarding component shares, (a) the most available shares of a component was 5.52 billion shares (Intel Corp.), (b) the least available shares of a component was 0.06 billion shares (Atheros Communications, Inc.), (c) the mean available shares of the components was 0.67 billion shares, and (d) the median available shares of the components was 0.24 billion shares;
—Regarding the six-month average daily volumes ("ADVs") of the components, (a) the highest six-month ADV of a component was 61.35 million shares (Intel Corp.), (b) the lowest six-month ADV of a component was 1.71 million shares (STMicroelectronics N.V.), (c) the mean six-month ADV of the components was 11.77 million shares, (d) the median six-month ADVs of the components was 7.07 million shares, (e) the average of six-month ADVs of the five most heavily traded components was 30.21 million shares (Intel Corp., Advanced Micro Devices, Inc., Micron Technology, Applied Materials, Inc., and Taiwan Semiconductor Manufacturing Co.), and (f) 100% of the components had a six-month ADV of at least 200,000; and
—Regarding option eligibility, (a) 100.00% of the components were options eligible, as measured by weighting, and (b) 100.00% of the components were options eligible, as measured by number.

[12] A listing of the component securities in SOX is available at *https://indexes.nasdaqomx.com/weighting.aspx?IndexSymbol=SOX&menuIndex=0*.

[13] The maintenance provisions in subsection (c) of Rule 1009A state, in part, as applicable to SOX:

(1) The conditions stated in subparagraphs (b)(1), (3), (6), (7), (8), (9), (10), (11) and (12) [regarding A.M. settlement; market capitalization; component weighting; components being NMS stock; non-U.S. components, reporting at least every fifteen seconds; and rebalancing], must continue to be satisfied, provided that the conditions stated in subparagraph (b)(6) [regarding component weighting] must be satisfied only as to the first day of January and July in each year; (2) The total number of component securities in the index may not increase or decrease by more than 33⅓% from the number of component securities in the index at the time of its initial listing, and in no event may be less than nine component securities; (3) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; (4) In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months.

Moreover, the Index in its current and proposed expanded form would substantially meet the initial option listing provisions in subsection (b) of Rule 1009A.

[14] For purposes of the Index, Last Sale Price refers to the following: For a security listed on NASDAQ, it is the last sale price on NASDAQ which normally would be the official closing, known as the Nasdaq Official Closing Price (NOCP), when NASDAQ is closed. For any NYSE-listed or NYSE AMEX-listed security, it is the last regular way trade reported on such security's primary U.S. listing market. If a security does not trade on its primary listing market on a given day, the most recent last sale price from the primary listing market (adjusted for corporate actions, if any) is used.

Index Calculation and Index Maintenance

The Index is maintained by NASDAQ OMX and index levels are calculated continuously, using the last sale price for each component stock in the Index. Index values are publicly disseminated at least every fifteen seconds throughout the trading day through a major market data vendor, namely NASDAQ OMX's index dissemination service. The Exchange expects that such dissemination will continue through one or more (NASDAQ OMX-owned or unrelated) major market data vendors.[15]

Appurtenant to review of the Index for purposes of rebalancing, component securities are evaluated by NASDAQ OMX. In the event that an Index component security no longer meets the requirements for continued security eligibility, it will be replaced with a security that meets all of the initial security eligibility criteria and additional criteria which follows. Securities eligible for inclusion will be ranked descending by market value, current price and greatest percentage price change over the previous six months. The security with the highest overall ranking will be added to the Index provided that the Index then meets the following criteria: No single Index security is greater than 30% of the weight of the Index and the top five Index securities are not greater than 50% of the weight of the Index; and non-U.S. component securities that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the Index.[16] In the event that the highest-ranking security does not permit the Index to meet the above criteria, the next highest-ranking security will be selected and the Index criteria will again be applied to determine eligibility. The process will continue until a qualifying replacement security is selected.

The list of annual additions and deletions to the Index will be publicly announced in early June, and changes to the Index will be made effective after the close of trading on the third Friday in June. If at any time during the year, a component security is determined to become ineligible for continued inclusion in the Index based on the continued eligibility criteria, that component security will be replaced with a component not currently in the Index that met the appropriate eligibility criteria.[17]

In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Act.[18]

The Exchange represents that, if the Index ceases to be maintained or calculated, or if the Index values are not disseminated at least every fifteen seconds by a widely available source, the Exchange will promptly notify the Division of Trading and Markets of the Commission, and the Exchange will not list any additional series for trading and will limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

Contract Specifications

The contract specifications for the proposed expanded Index options are, as previously noted, identical to the current narrow-based Index options that are currently listed and traded on the Exchange.[19] Options on the Index are American-style and A.M. cash-settled. The Exchange's trading hours for index options (9:30 a.m. to 4 p.m. ET), will apply to options on SOX.[20] Exchange rules that are applicable to the trading of options on indexes will continue to apply to the trading of options on SOX.[21]

The strike price intervals for SOX options contracts will remain the same as those currently in use: $2.50 and $1 if the strike price is below $200.[22] The minimum increment size for series trading below $3 will remain $0.05, and for series trading at or above $3 will remain $0.10.[23] The Exchange's margin rules will be applicable.[24] The Exchange will continue to list options on SOX in up to three months from the March, June, September, December cycle plus two additional near-term months (that is, as many as five months at all times).[25] The trading of SOX options will continue to be subject to the same rules that govern the trading of all of the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options traded on the Index and intends to apply those same program procedures that it applies to the Exchange's current SOX options and other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement, dated June 20, 1994.[26] ISG members generally work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange represents that it has the necessary systems capacity to continue to support listing and trading SOX options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[27] in general, and furthers the objectives of Section 6(b)(5) of the Act[28] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposal to

[15] Rule 1009A(b)(12) states that should an underlying index be maintained by a broker-dealer, however, the index must be calculated by a third party who is not a broker-dealer, and the broker-dealer will have to erect a "Chinese Wall" around its personnel who have access to information concerning changes in and adjustments to the index.

[16] *See* Rule 1009A(b).

[17] Moreover, changes in the price of an Index component security driven by corporate events such as stock dividends, stock splits, certain spin-offs, and rights issuances will be adjusted on the ex-date. In the case of a special cash dividend, a determination will be made on an individual basis whether to make a change to the price of an Index security in accordance with its Index dividend policy. If it is determined that a change will be made, it will become effective on the ex-date and advance notification will be made. Ordinarily, whenever there is a change in the price of an Index security due to stock dividends, stock splits, spin-off, rights issuances, or special cash dividends, the divisor is adjusted to ensure that there is no discontinuity in the value of the Index, which might otherwise be caused by any such change.

[18] 15 U.S.C. 78s(b)(2).

[19] *See* supra note 5.

[20] *See* Rule 101.

[21] For trading rules applicable to trading index options, *see* Rules 1000A et seq. For trading rules applicable to trading options generally, *see* Rules 1000 *et seq.*

[22] *See* Phlx Rule 1101A(a).

[23] *See* Phlx Rule 1034(a).

[24] *See* Phlx Rule 721 *et seq.*

[25] *See* Phlx Rule 1101A(b).

[26] A list of the current members and affiliate members of ISG can be found at *http://www.isgportal.com.*

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

expand the SOX index will allow the Exchange to seamlessly continue listing this premiere index in a manner that even more effectively reflects the semiconductor sector.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx-2010–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–Phlx-2010–20.* 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–Phlx-2010–20* and should be submitted on or before March 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3777 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61542; File No. SR–FINRA–2009–093]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Repeal NASD Rule 2450 (Installment or Partial Sales), NASD Interpretive Material 2830–2 ("IM–2830–2") (Maintaining the Public Offering Price) and Incorporated NYSE Rule 413 (Uniform Forms) as Part of the Process of Developing a Consolidated FINRA Rulebook

February 18, 2010.

On December 23, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to repeal NASD Rule 2450 (Installment or Partial Sales), NASD Interpretive Material 2830–2 ("IM–2830–2") (Maintaining the Public Offering Price), and Incorporated NYSE Rule 413 (Uniform Forms), as part of the process of developing a consolidated FINRA rulebook. The proposed rule change was published for comment in the **Federal Register** on January 19, 2010.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is appropriate to eliminate confusion and reduce regulatory overlap by eliminating rules that are outdated, duplicative of other FINRA rules, or addressed by the Federal rules or regulations. As further described in the Notice, FINRA stated that NASD Rule 2450 should be repealed in light of the explicit provisions in Regulation T requiring the deposit of sufficient funds within the specified payment period. FINRA also stated that the hypothecation prohibition in NASD Rule 2450 should be repealed because it would no longer be relevant as it is predicated on a partial or installment payment under the rule. In addition, FINRA noted that, since the adoption of NASD IM–2830–2, the laws governing broker-dealers have changed, and today virtually all broker-dealers doing business with the public are FINRA members. FINRA also noted that NASD IM–2830–2 largely duplicates the requirement in Section 22(d) of the Investment Company Act to sell mutual fund shares to investors at the current public offering price. As a

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61319 (January 8, 2010), 75 FR 2897 ("Notice").

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(6).

result, FINRA stated that NASD IM–2830–2 no longer serves any useful purpose, and proposed not to incorporate its content into the consolidated FINRA rulebook. Furthermore, FINRA proposed to repeal Incorporated NYSE Rule 413, which requires members to adopt such uniform forms as the NYSE may prescribe to facilitate the orderly flow of transactions within the financial community. FINRA stated that its By-Laws contain several provisions by which FINRA may prescribe processes for members' activities, including the use of uniform forms. Thus, FINRA stated that Incorporated NYSE Rule 413 is duplicative of these provisions and should be repealed. In approving this proposed rule change, the Commission notes that FINRA members and their associated persons are required to comply with all applicable Federal securities laws and that FINRA, as a self-regulatory organization, has the obligation to have the capacity to enforce compliance by its members and their associated persons with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–FINRA–2009–093) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3779 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61545; File No. SR–BATS–2009–032]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend BATS Fee Schedule To Impose Fees for Physical Ports Used To Connect to BATS Exchange

February 19, 2010.

On December 18, 2009, BATS Exchange, Inc. ("BATS" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the fee schedule applicable to Members[3] and non-members of the Exchange to begin charging for certain physical ports used to connect to the Exchange's systems. The proposed rule change was published for comment in the **Federal Register** on January 8, 2010.[4] The Commission received no comments regarding the proposal. On February 9, 2010, the Exchange filed Amendment No. 1 to the proposed rule change.[5] This order grants approval of the proposed rule change, as modified by Amendment No. 1.

BATS proposes to begin charging a monthly fee for certain physical ports[6] used to connect to the Exchange's system for order entry and receipt of data from the Exchange.[7] BATS states that under its current policy all physical ports are provided free of charge but Members and non-members are only permitted to establish up to four such physical port pairs.[8] Under the proposal, BATS will continue to provide four pairs of physical ports without charge to any Member or non-member that has been approved to connect to the Exchange. In addition, the Exchange will permit Members and non-members to establish additional physical ports at a charge of $2,000 for each additional single physical port provided by the Exchange to any Member or non-member in any data center. The proposal applies to all Exchange constituents with physical connections, including Members that obtain ports for direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, Sponsored Participants, and market data recipients.

The Exchange states that very few Members or non-members require four physical ports for their operations related to the Exchange or would utilize more than four physical ports, and thus, the Exchange believes that the proposal should not affect many of the Exchange's constituents. However, the Exchange believes that Members and non-members that wish to pay for additional physical ports outside of those provided for free should have the ability to do so.

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[10] which requires the equitable allocation of reasonable dues, fees, and other charges among Exchange Members and other persons using the Exchange's facilities, and Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[12] which requires that the rules of an exchange not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[13] which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and not unreasonably discriminatory.

The Commission believes that the proposed physical port fees are equitably allocated among Members and

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange. *See* BATS Rule 1.5(n).

[4] Securities Exchange Act Release No. 61260 (December 30, 2009), 75 FR 1109 ("Notice").

[5] In Amendment No. 1, the Exchange replaced the bracketed "[September 1, 2009]" with "[February 1, 2010]" in the proposed rule text to reflect the fact that the current fee schedule is dated February 1, 2010. Because the change in Amendment No. 1 is technical in nature, it is not subject to notice and comment.

[6] The Exchange states that a physical port is used by a Member or non-member to literally plug into the Exchange at the data centers where the Exchange's servers are located (*i.e.,* either a cross-connection or a private line Ethernet connection to the Exchange's network within the data center).

[7] The Commission notes that BATS will implement the proposed physical port fees commencing on the first day of the month immediately following Commission approval of this proposed rule change (or on the date of approval, if on the first business day of a month). *See* Notice, *supra* note 4.

[8] A "pair" of ports refers to one port at the site of the Exchange's primary data center (including the expansion space located adjacent to such data center) and one port at the site of the Exchange's secondary data center.

[9] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(8).

[13] 17 CFR 242.603(a).

non-members and do not unfairly or unreasonably discriminate between customers, issuers, brokers, or dealers because the proposed physical port fees do not distinguish among the type of participant but rather are the same for all Members and non-members. The Commission also believes that BATS was subject to significant competitive pressure to act equitably, fairly, and reasonably in setting the physical port fees, in light of the highly competitive nature of the market for execution and routing services.[14]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–BATS–2009–032), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3822 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61543; File No. SR–FINRA–2010–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Repeal Incorporated NYSE Rule 405(4) (Common Sales Accounts)

February 18, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to repeal Incorporated NYSE Rule 405(4) (Common Sales Accounts) as part of the process to develop the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[3] FINRA is proposing to repeal NYSE Rule 405(4) (Common Sales Accounts).[4]

NYSE Rule 405(4) (Common Sales Accounts) requires proper supervision of registered representatives handling common sales accounts. The rule provides that a member may facilitate the isolated liquidation of securities valued at $1,000 or less registered in the name of an individual who does not have an account, and which are not part of any distribution, through a common sales account set up for the specific purpose of handling such sales. The rule further provides that such sales may be effected on behalf of the customer without requiring the member to send a periodic customer account statement to the individual as otherwise generally required, provided the following conditions are satisfied: (1) The customer is identified as the individual in whose name the securities are registered; (2) the securities are received by the member, at or prior to the time of the entry of the order, in the exact amount to be sold in good delivery form; (3) a confirmation is sent to the customer; (4) all proceeds of such sales are paid out on or immediately following settlement date; and (5) a record is made in the common sales account that includes certain customer-specific information.

FINRA believes that the rule as written may raise potential investor protection concerns. The term "isolated" is not defined.[5] Further, NYSE Rule 405(4) permits a member to effect sales of securities for customers without expressly requiring prior customer consent and without the need to send periodic account statements to the customer. For these reasons, FINRA proposes to eliminate NYSE Rule 405(4) and not adopt its content into the Consolidated FINRA Rulebook.[6]

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval. The implementation date will be no later than 180 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions

[14] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from the New York Stock Exchange ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

[5] NYSE Rule 405(4) was adopted by the NYSE in the late 1960's. In 1977, the NYSE proposed amendments to Rule 405(4) to define the term "isolated" to mean "not exceeding five $2,000 transactions during any twelve-month period unless otherwise approved by the NYSE," and to allow unsolicited purchases as well as sales of securities. In late 1977, the SEC instituted proceedings to determine whether to disapprove the proposed rule change and identified the potential grounds for disapproval. *See* Securities Exchange Act Release No. 14143 (November 7, 1977) (Order Instituting Proceedings to Determine Whether Proposed Changes to Rule 405 Should be Disapproved; File No. SR–NYSE–76–34). The SEC expressed concern that "execution of such transactions, and in particular of purchases [as proposed], in the common purchase and sale account may permit opportunities for fraudulent and manipulative acts or practices[.]" In February 1978, the NYSE withdrew the filing. *See* Securities Exchange Act Release No. 14630 (April 3, 1978) (Order Approving Withdrawal of NYSE's Proposed Changes to Rule 405; File No. SR–NYSE–76–34).

[6] FINRA notes that in the event a member may seek permission not to send customer account statements under certain limited circumstances, proposed FINRA Rule 2231 which relates to customer account statements, would authorize FINRA to exempt members from the provisions of such rule, including the requirement to deliver periodic account statements, pursuant to the Rule 9600 Series. *See* Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009) (Notice of Filing; File No. SR–FINRA–2009–028).

of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will streamline and improve FINRA's rulebook by eliminating a rule that contains terms that are not clearly defined and may raise potential investor protection concerns.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2010–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–005. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–005 and should be submitted on or before March 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3780 Filed 2–24–10; 8:45 am]

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[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61540; File No. SR–FINRA–2009–081]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 2261 (Disclosure of Financial Condition) in the Consolidated FINRA Rulebook

February 18, 2010.

On November 18, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt FINRA Rule 2261 (Disclosure of Financial Condition) in the Consolidated FINRA Rulebook. The proposed rule change was published for comment in the **Federal Register** on January 5, 2010.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[4] FINRA proposed adopting NASD Rule 2270 (Disclosure of Financial Condition to Customers) and NASD Rule 2910 (Disclosure of Financial Condition to Other Members), subject to certain amendments, as FINRA Rule 2261 in the Consolidated FINRA Rulebook.

NASD Rule 2270 requires members to make available for inspection, upon the request of any bona fide regular customer,[5] the information relative to such member's financial condition as disclosed in its most recent balance sheet prepared either in accordance

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act of 1934 Release No. 61253 (December 29, 2009), 75 FR 0475.

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] For purposes of the rule, "customer" means any person who, in the regular course of such member's business, has cash or securities in the possession of such member.

with such member's usual practice or as required by any State or Federal securities laws, or any rule or regulation thereunder.

FINRA proposed amending the requirements of NASD Rule 2270 to provide an alternative means of satisfying the requirement that members make balance sheet information available to bona fide regular customers. Currently, the rule requires that members "make available to inspection by any bona fide regular customer, upon request, the information relative to such member's financial condition as disclosed in its most recent balance sheet * * *." FINRA proposed providing members with the option of delivering their balance sheet, in paper or electronic form, to customers who request it. With respect to electronic delivery, the requesting customer must consent to receive the balance sheet in electronic form to ensure that such information is accessible to the customer. FINRA did not propose requiring members to deliver their balance sheet to all customers (instead of making them available to inspection or delivering them upon request) because Rule 17a–5(c) under the Act[6] generally requires a broker-dealer that carries customer accounts to send its full balance sheet and certain other financial information to each of its customers twice a year.[7] NASD Rule 2270 provides customers with additional access to their broker's balance sheet information by requiring that members permit customers to inspect or obtain a copy of a member's most recent balance sheet at any time upon request.

NASD Rule 2910 requires any member that is a party to an open transaction or who has on deposit cash or securities of another member to furnish, upon the written request of the other member, a statement of its financial condition as disclosed in its most recently prepared balance sheet. FINRA proposed amending the provisions of NASD Rule 2910 to require, consistent with NASD Rule 2270, that members provide to other members the balance sheet that was "prepared either in accordance with such member's usual practice or as required by any State or Federal securities laws, or any rule or regulation thereunder." In addition, FINRA proposed that members be permitted to provide their balance sheet to other members in paper or electronic form. However, unlike the proposed amendments to NASD Rule 2270, FINRA did not propose requiring members to obtain the consent of other members to electronically deliver the balance sheet. FINRA believes that other members, unlike all customers, will be equipped to receive electronic delivery.

FINRA believes that the requirements of NASD Rule 2270 and NASD Rule 2910 continue to provide access to important information by allowing customers and other members to have access to a copy of a member's most recent balance sheet at any time upon request and should be transferred, as amended, to the Consolidated FINRA Rulebook as FINRA Rule 2261.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[8] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will further the purposes of the Act by, among other things, ensuring that basic, current information regarding the financial condition of members with which customers and other members conduct business is available upon request. The Commission therefore believes that it is appropriate and consistent with the Act for FINRA to Adopt FINRA Rule 2261 (Disclosure of Financial Condition) in the Consolidated FINRA Rulebook.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–FINRA–2009–081) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3778 Filed 2–24–10; 8:45 am]

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[6] 17 CFR 240.17a–5(c).

[7] SEC Rule 17a–5(c)(5) contains a conditional exemption from the requirement that broker-dealers semi-annually send customers a full balance sheet. Under the exemption, a broker-dealer can semi-annually send its customers summary information regarding its net capital, as long as it also provides customers with a toll-free number to call for a free copy of its full balance sheet, makes its full balance sheet available to customers on its Web site, and meets other specified requirements. *See* Securities Exchange Act Release No. 48272 (August 1, 2003), 68 FR 46446 (August 6, 2003).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61537; File No. SR–FINRA–2009–095]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 3240 (Borrowing From or Lending to Customers) in the Consolidated FINRA Rulebook

February 18, 2010.

I. Introduction

On December 31, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD Rule 2370 (Borrowing From or Lending to Customers) as FINRA Rule 3240 (Borrowing From or Lending to Customers) in the Consolidated FINRA Rulebook[3] with certain changes and to delete Incorporated NYSE Rules 352(e) (Limitations on Borrowing From or Lending to Customers), (f) (Loan Procedures) and (g). The proposed rule change would also add a Supplementary Material section regarding record retention requirements to proposed FINRA Rule 3240. The proposed rule change was published for comment in the **Federal Register** on January 12, 2010.[4] The Commission received no

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] *See* Securities Exchange Act Release No. 61302 (January 6, 2010), 75 FR 1672 (January 12, 2010).

comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

FINRA proposed adopting NASD Rule 2370 as FINRA Rule 3240 in the Consolidated FINRA Rulebook with certain changes as described below. FINRA also proposed deleting Incorporated NYSE Rules 352(e) through (g)[5] from the Transitional Rulebook.[6] Further, the proposed rule change would also add a Supplementary Material section regarding record retention requirements to proposed FINRA Rule 3240.

A. Background

The purpose of NASD Rule 2370 is to give FINRA member broker-dealers the opportunity to evaluate the appropriateness of particular lending arrangements between their registered persons and customers, to the extent permitted by the member, and the potential for conflicts of interests between both the registered person and his or her customer and the registered person and the member with which he or she is associated.

To that end, NASD Rule 2370 prohibits registered persons from borrowing money from or lending money to their customers (collectively referred to as "lending arrangements") unless certain conditions are met. Specifically, under Rule 2370, no registered person may borrow money from or lend money to his or her customer unless the firm has written procedures allowing such lending arrangements and (1) the customer is a member of the registered person's immediate family;[7] (2) the customer is in the business of lending money; (3) the customer and the registered person are both registered persons of the same firm; (4) the lending arrangement is based on a personal relationship outside of the broker-customer relationship; or (5) the lending arrangement is based on a business relationship outside of the broker-customer relationship. In addition, with the exception of lending arrangements between immediate family members and lending arrangements between registered persons and customers in the business of lending money, FINRA members are required to pre-approve in writing the other lending arrangements described above.

With respect to lending arrangements between immediate family members, a FINRA member's written procedures may indicate that the member permits such lending arrangements and that registered persons need not notify the member or receive member approval for such lending arrangements.

For lending arrangements between registered persons and customers in the business of lending money, a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval for such lending arrangements, provided that such lending arrangements have been made on commercial terms that the customer generally makes available to members of the general public who are similarly situated as to need, purpose and creditworthiness.[8] Further, the member need not investigate such lending arrangements, but may rely on the registered person's representation that the terms of the loan meet these standards.

It is important to note that members can choose to permit registered persons to borrow money from or lend money to their customers consistent with the requirements of the rule or prohibit the practice in whole or in part.

NYSE Rules 352(e) through (g) also govern lending arrangements between registered persons and their customers. These provisions are substantially similar to the provisions of NASD Rule 2370, with one exception. NYSE Rule 352(f) provides an exception from the pre-approval requirements of the rule for loans totaling $100 or less between registered persons of the same firm.

B. Proposal

FINRA proposed adopting NASD Rule 2370 as FINRA Rule 3240 in the Consolidated FINRA Rulebook, subject to the following changes. FINRA proposed amending paragraph (a) (Permissible Lending Arrangements; Conditions) of the rule to indicate more explicitly that such arrangements are subject to the procedural requirements set forth in paragraph (b) (Notification and Approval) of the rule. FINRA also proposed amending paragraph (a)(2)(B) of the rule regarding permissible lending arrangements between registered persons and customers in the business of lending money to indicate more explicitly that such customers must be acting in the course of such business.

Further, FINRA proposed amending paragraph (b)(1) of the rule to require expressly that registered persons notify their member firms of the lending arrangements that require member pre-approval (FINRA proposed this change for purposes of consistency with paragraphs (b)(2) and (3) of the rule, which provide that a registered person is not required either to notify the member or receive member approval for certain specified lending arrangements) and to clarify that any modifications to such lending arrangements (including any extension of the duration of such arrangements) are also subject to notification and member pre-approval.

In addition, FINRA proposed amending the definition of "immediate family" in paragraph (c) (Definition of Immediate Family) of the rule to replace the reference that the term "includes" the enumerated persons to reflect that the term "means" such persons. Finally, FINRA proposed adding Supplementary Material .01 (Record Retention) requiring that members preserve the written pre-approval required by the rule for at least three years after the date that the lending arrangement has terminated or for at least three years after the registered person's association with the member has terminated. FINRA proposed deleting NYSE Rules 352(e) through (g) as the provisions of the NYSE rules are substantially similar to NASD Rule 2370.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 180 days following Commission approval.

III. Discussion and Findings

After a careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to FINRA.[9] In particular, the Commission finds that the proposed rule change is consistent with Section

[5] For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[6] NYSE Rules 352(a) through (d) were deleted as part of a prior rule change. *See* Securities Exchange Act Release No. 60701 (September 21, 2009), 74 FR 49425 (September 28, 2009) (Order Approving File No. SR–FINRA–2009–014).

[7] NASD Rule 2370 defines the term "immediate family" to include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person whom the registered person supports, directly or indirectly, to a material extent.

[8] The fact that a registered person can negotiate a better rate or terms for a loan that is not the product of the broker-customer relationship would not vitiate the idea that the loan occurred on terms generally offered to the public. *See Notice to Members* 04–14 (March 2004).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

15A(b)(6) of the Exchange Act,[10] which requires, among other things, that FINRA's rules be designed to prevent fraud and manipulative practices and to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is reasonably designed to achieve these ends by providing FINRA member broker-dealers the opportunity to evaluate the appropriateness of certain lending arrangements between their registered persons and others, to the extent permitted by a FINRA member broker-dealer, and the potential that these lending arrangements could create certain conflicts of interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[11] that the proposed rule change (SR–FINRA–2009–095) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3775 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61535; File No. SR–NYSEAmex–2010–14]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending Position Limits for Certain Exchange Traded Funds

February 18, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 2010, NYSE Amex LLC ("NYSE Amex" 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 Exchange proposes to (a) amend the Position Limits for certain highly liquid Exchange Traded Funds ("ETFs"); (b) memorialize a previously approved provision that was never inserted in the Exchange's Rules, as well as clarify its applicable scope, and (c) amend certain rules to define certain contract terms. The text of the proposed rule change is available on NYSE Amex's Web site at (*http://www.nyse.com*), on the Commission's Web site at *http://www.sec.gov*, at NYSE Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to (a) eliminate Position Limits in certain highly active ETFs, (b) memorialize a previously approved provision that was never inserted in the Exchange's Rules, as well as clarify its applicable scope, and (c) amend certain rules to define certain contract terms. The provision at issue—allowing for option contracts on ETFs that overly 1,000 shares ("Jumbo options")—was approved in 1998, but did not include changes to Rule Text at that time.[3] In order to resume listing these products, the Exchange is proposing to restrict the listing of Jumbo options to four specific ETFs that have no Position Limit (as proposed below), and also define how strike prices and premiums will be expressed for Jumbo contracts by amending Rule 903 and Rule 959NY.[4]

Position Limits

Four ETFs have been approved under NYSE Amex Rule 904 to have exceptional Position Limits. These are NASDAQ 100 Tracking Stock (QQQQ); SPDR S&P 500 ETF (SPY); iShares Russell 2000 Index Fund (IWM); and DIAMONDS Trust (DIA). NYSE Amex proposes that these four ETFs have no Position Limit.

Position and Exercise limits were introduced as a means of forestalling the potential manipulation of an equity's price by someone that established a large option position. This concern was mitigated with cash settled index options since the contract settled for cash as opposed to physical shares of stock. Additionally, those index options whose position limits have been eliminated are based on a broad based index comprised of many equities further mitigating concerns about manipulation through the establishment and subsequent exercise of a large options position. This resulted in a repeal of position and exercise limits for the options on the aforementioned broad based indexes.[5]

While ETF options are physically settled, NYSE Amex feels that there are specific aspects related to an ETF's structure that serve to mitigate any concerns about manipulation and allow eliminating position limits on a narrow subset of the ETF option universe. First, ETF's are structured as open-ended trusts or mutual funds that can continually issue new shares as required to satisfy demand. This is in sharp contrast to an equity that has a float that is only increased by corporate action and is not a function of investor demand. Second, the ETF itself is comprised of a basket of stocks, specifically those that comprise a benchmark broad based index.

Additionally, in approving the elimination of position and exercise limits for RUT, NDX, DJX, and SPX options, the Commission considered the capitalization of the components of each of these indexes and the deep and liquid markets for the securities underlying each index significantly reduced concerns of market manipulation or disruption in the underlying markets.

Shares in these four underlying ETFs have exceptionally high trading volume, demonstrating extraordinary liquidity. The volume for each of these ETFs for

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 40157, File No. SR–Amex–96–44 (July 1, 1998) 63 FR 37426 (July 10, 1998).

[4] SR–Amex–96–44 was also silent on the manner of expressing strike prices and premium bids and offers, thus it is necessary to define them in this filing.

[5] *See* Securities Exchange Act Release No. 56351 (September 4, 2007); *see also* Securities Exchange Act Release No. 52649 (October 21, 2005), 70 FR 62146 (October 28, 2005) (SR–Amex–2005–063) ("NDX Approval Order"); *see also* Securities Exchange Act Release No. 46393 (August 21, 2002), 67 FR 55289 (August 28, 2002) (SR–Amex–2002–31) ("XMI/XII Permanent Approval Order").

the last six months of 2009 was at least a full order of magnitude greater than the standard for the highest current position limit tier (250,000 contracts on 100 million shares traded):

ETF	Jul–Dec 2009 total share vol.	Jul–Dec 2009 avg. daily share vol.
SPY	22,828,864,134	198,511,862
IWM	6,480,281,641	54,002,347
DIA	1,409,445,977	11,745,383
QQQQ	12,562,364,006	104,686,367

Additionally, the options trading volume in these issues is comparable to index option trading in similar products (including their counterpart indexes) which have no Position Limit:

Nat'l rank	Symbol	Company name	ADV	Current position limit
1	SPY	SPDR Trust Series 1	1,383,317	300,000
3	SPX	S&P 500 Index	651,303	Unlimited.
4	QQQQ	Powershares QQQ Trust	613,406	900,000
6	IWM	iShares Russell 2000 Index Fund	323,983	500,000
20	RUT	Russell 2000 Index	97,046	Unlimited.
24	DIA	DIAMONDS Trust Series I	80,622	300,000
49	OEX	S&P 100 Index	46,766	Unlimited.
57	NDX	Nasdaq 100 Stock Index	40,470	Unlimited.
147	DJX	Dow Jones Industrial Average Index	15,696	Unlimited.

Jumbo Options Contracts

SR–Amex–96–44 ("96–44") provided that the Exchange could list contracts overlying 1000 shares of an ETF, 100 shares of an ETF, or both. To eliminate confusion, NYSE Amex is proposing to add a Commentary to Rule 901—Option Contracts to Be Traded.

At the time that 96–44 was approved, the number of ETFs was limited, and the Exchange contemplated listing options on only the most active ETFs. Since that time, the universe of ETFs has grown substantially, with some becoming very actively traded, and others with relatively low volume. The Exchange proposes to designate four very active ETFs as eligible for 1,000 share contracts, and also restrict Jumbo contracts to only those ETFs that have been approved to have no Position Limit. Pursuant to this filing, the Exchange proposes to designate the following four ETFs as eligible to trade as Jumbo options: NASDAQ 100 Tracking Stock (QQQQ); SPDR S&P 500 ETF (SPY); iShares Russell 2000 Index Fund (IWM); and DIAMONDS Trust (DIA).

Contract Terms

To avoid investor confusion with contracts in the same ETF that overly 100 shares, NYSE Amex is further proposing to amend Rules 903 and 959NY to define how strike prices will be set and premiums defined for contracts overlying 1,000 shares. Because a standard option contract is identified in terms of 100 shares and related values on a per-share basis, the option strike prices result in being equal to 1/100th of the deliverable value, and premiums are equal to 1/100th of the total cost of the contract.

NYSE Amex proposes to maintain this ratio for Jumbo contracts in such a way as to avoid confusion between standard contracts and Jumbo contracts.

Commentary .10 to Rule 903 proposes that strike prices be set at 1/100th of the total contract deliverable value. Thus, a Jumbo contract to deliver an ETF at $45 per share would carry a total deliverable value of $45,000, and the strike price would be set at 450.

Similarly, proposed sub-paragraph (c) to Rule 959NY would maintain that bids and offers in Jumbo contracts would be set at 1/100th of the total value of the contract. Thus if an ETF with a Jumbo contract strike price of 450 was trading at $46 per share, the intrinsic $1 per share value of the Jumbo contract would be expressed as "10", and denote a total contract value of $1,000.

The table below demonstrates the difference between a Jumbo contract and a standard contract for options to call or put shares at $45 per share, with a bid or offer of $3.20 per share:

JUMBO CONTRACTS VS. STANDARD CONTRACTS

	Standard	Jumbo
Share Deliverable Upon Exercise	100 shares	1,000 shares.
Strike Price of $45/per share	45	450.
Bid or Offer of $3.20 per share	3.20	32.00.
Total Value of Deliverable	$4,500	$45,000.
Total Value of Contract	$320	$3,200.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by providing additional methods to trade highly liquid options, and provide greater ability to mitigate risk in managing large portfolios by removing unnecessary position limits.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEAmex–2010–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–14. 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 Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–14 and should be submitted on or before March 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3773 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61533; File No. SR–CBOE–2010–011]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Reduction of the Customer Transaction Fee for OEX and XEO Weeklys Options

February 18, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 29, 2010, Chicago Board Options Exchange, Incorported ("CBOE" or the "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 CBOE. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule to reduce the transaction fee for short term options series ("Weeklys") in options on the S&P 100 Index American-style options (OEX) and S&P 100 Index European-style options (XEO). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE 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

(a) Purpose

Weeklys are listed index and equity options that match all other terms of

standard options except they are listed for trading for only one week and expire on Fridays other than the third Friday of a month.[1] Currently, the Exchange charges public customers ("C" origin code) a transaction fee of $.40 per contract in standard and Weeklys options in OEX and XEO. To attract additional customer order flow in OEX and XEO Weeklys options, the Exchange proposes to reduce the transaction fee applicable to these products from $.40 per contract to $.30 per contract effective February 1, 2010.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[2] in general, and furthers the objectives of Section 6(b)(4)[3] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed reduction in the customer transaction fee for OEX and XEO Weeklys options should attract additional order flow to the Exchange in these products.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (f)(2) of Rule 19b–4[5] 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 Number SR–CBOE–2010–011 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.

All submissions should refer to File Number SR–CBOE–2010–011. 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 Web site viewing and printing 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–011 and should be submitted on or before March 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3771 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (permanent approval of Short Term Options Series Pilot Program). CBOE currently offers four Weeklys classes: OEX, XEO, S&P 500 Index (SPX) and Mini-S&P 500 Index (XSP).

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6905]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Ambassadors Program With North America, Central America, and the Caribbean

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–10–29.

Catalog of Federal Domestic Assistance Number: 19.415.

Application Deadline: April 22, 2010.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the Youth Ambassadors Program with North America, Central America and the Caribbean. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select youth and adult participants, to provide them with three-week exchanges focused on civic education, community service, and leadership, and to support follow-on projects in their home communities. It is anticipated that exchange delegations will travel from select countries to the United States, and that U.S. exchange delegations will travel to select countries.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic

and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Overview

The Youth Ambassadors Program is a three-week exchange for high school youth (ages 15–18) and adult educators focused on civic education, community service, and leadership. Subthemes through which to explore those overarching themes may be added, such as the environment or business and entrepreneurship. Participants engage in a variety of activities, such as workshops on leadership and service, community site visits related to the program themes, interactive training, presentations, visits to high schools, local cultural activities, civic education programming, and other activities designed to achieve the program's stated goals. Multiple opportunities for participants to interact with peers while they are in the host country must be included. Follow-on activities with the participants are an integral part of the program, as the students apply the knowledge and skills they have acquired by planning service projects in their home communities.

The FY 2010 Youth Ambassadors Program will focus on countries in North America, Central America, and the Caribbean, and may include: Antigua and Barbuda, Bahamas, Barbados, Belize, Canada, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago, and the United States. It is anticipated that the majority of participants will be foreign students traveling from these countries to the United States, and that a smaller number of American participants will travel to select countries. ECA reserves the right to adjust the participating countries should conditions change in the host country or if other countries are identified as Department priorities.

The goals of the program are to:

(1) Promote mutual understanding between the people of the United States and the people of the Americas;

(2) Prepare youth leaders to become responsible citizens and contributing members of their communities;

(3) Influence the attitudes of the leaders of a new generation; and

(4) Foster relationships among youth from different ethnic, religious, and national groups and create hemispheric networks of youth leaders, both within the participating countries and internationally.

For each project, applicant organizations must focus on the primary themes of civic education (grassroots democracy and rule of law), community service, and leadership development. Secondary themes, such as the environment or business and entrepreneurship, will be used as a tool to illustrate the more abstract concepts of the primary themes. For example, the secondary theme of the environment can be used to examine the interactions between federal, state, and local governments. Using these goals and themes, applicant organizations should identify their own specific objectives and measurable outcomes based on these program goals and the project specifications provided in this solicitation.

ECA plans to award multiple grants for the management of the Youth Ambassadors Program with North America, Central America and the Caribbean. The Bureau reserves the right to reduce, revise, or increase proposal project configurations, budgets, and participant numbers in accordance with the needs of the program and the availability of funds. In one proposal, organizations may apply for one, two, three, or all four of the options outlined below, but must submit only one proposal under this competition. These options will allow applicants the flexibility to propose working with the countries in which they have the best infrastructure. The Bureau strongly urges organizations to limit their applications to the option(s) where they have the strongest institutional capacity in each country; this capacity must be thoroughly described in the proposal. Please note the approximate funding for each option.

Option 1: North America (Approximately $500,000)

A trilateral program for 75–90 participants from Canada, Mexico, and the United States, that promotes the concept of North American integration. An equal number of American high school students will participate in a U.S.-based program alongside their Canadian and Mexican peers. The program will include a reciprocal component, where a small delegation of American participants will travel to Mexico.

Option 2: Central America (Approximately $1,500,000)

A regional program for 120–150 participants from Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. Applicants should include participants from all countries in the U.S. program. In addition to the Central American participants, 35–50 American teenagers will travel to at least three of the participating countries; applicants should propose the countries where they can provide the most comprehensive programming for the Americans. Please note that this project will be conducted in Spanish; participants will not need to have English skills to participate. The American participants should have Spanish skills.

Option 3: Caribbean (Approximately $650,000)

A regional program for 75–100 participants from the Bahamas, Barbados, Belize, Guyana, Jamaica, Suriname, Trinidad and Tobago. Applicants are strongly encouraged to include participants from the majority of these countries in the U.S. program. Applicants may also include participants from Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines (where diplomatic representation is handled from the U.S. Embassy in Barbados). In addition to the Caribbean participants, 25–30 American teenagers will travel to at least two of the participating countries; applicants should propose the countries where they can provide the most comprehensive programming for the Americans. All participants will have good English skills.

Option 4: Haiti (Approximately $350,000)

A single-country program for 35–50 participants from Haiti. Please note that this project will be conducted in French; participants will not need to have English skills to participate. Given the current situation in Haiti, please see sections below for additional Haiti-specific guidance.

Participants

The youth participants must be competitively selected high school students, 15 to 18 years old, who have demonstrated leadership aptitude and a commitment to their communities. Participants should be recruited from underserved or disadvantaged populations of youth in these countries, including public high schools in order to reach beyond the elite. Geographic, socio-economic, and ethnic diversity is important, including outreach to indigenous, Afro-descendents, and rural populations. The exchange participants will also include adults who are teachers, school administrators, and/or

community leaders who work with youth; they will have the dual role of both exchange participant and chaperone. The ratio of youth to adults should be between 5:1 and 10:1, depending on the size of the exchange delegation.

For the North American and the Caribbean projects that will be conducted in English, the participants must have sufficient English language proficiency to participate fully in interactions with their host families and their peers and in educational activities. The Central America projects will be conducted in Spanish and the Haiti project in French; therefore English will not be a requirement for those participants. The grantee organization will provide interpretation for the program and place participants with suitable host families. Spanish language ability is required for the American participants traveling to Spanish-speaking countries.

Organizational Capacity

Applicant organizations must demonstrate their capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of programs that address the goals and themes outlined in this document; (2) age-appropriate programming for youth; and (3) previous experience working on programs in the region. Organizations must convincingly demonstrate their capacity to manage a complex, multi-phase program with several separate exchange projects.

Applicants must have the organizational capacity in the relevant countries necessary to implement the in-country activities, or they must partner with an organization or institution with the requisite capacity to recruit and select participants for the program, to provide follow-on activities, and to organize a program for the U.S. participants, if specified. The importance of a viable, experienced in-country partner cannot be over-emphasized. For the Caribbean regional project only, a partner could manage the program in multiple countries, provided they have the ability to work effectively in each country from which participants will be drawn. Applicants should consult with their partners in the preparation of the proposal. For suggested partner organizations, applicants may consult with the Public Affairs Section of the U.S. Embassies. For Haiti only, applicants should not consult with the U.S. Embassy and are not expected to have a firm commitment from their in-country partner. To the extent feasible, proposals should demonstrate organizational capacity and present a plan to implement the in-country activities.

U.S. Embassy Involvement

Before submitting a proposal, applicants may consult with the Public Affairs Section at the U.S. Embassy in the relevant countries. Please e-mail ECA Program Officer Jennifer Phillips (*PhillipsJA@state.gov*) for contact information. It is important that the proposal narrative clearly state the applicant's commitment to consult closely with the U.S. Embassy in the relevant countries, once a grant is awarded, on a regular basis to develop plans for project implementation, including recruitment, selection and orientation of participants, publicity events, and follow-on activities. For Haiti only, applicants should route all communication through ECA and should not communicate with the U.S. Embassy directly until further notice.

Guidelines

The grant will begin on or about July 1, 2010. The grant period will span two or more years, and will cover all aspects of the programming in Latin America and the United States—the recruitment, selection, and orientation of the participants, the three weeks of exchange activities, and support of follow-on activities. Planning and preparation will start in 2010, and the exchanges will take place at various points throughout 2011 and 2012. Applicants should propose the period of the exchange(s) in their proposals, but the exact timing of the project may be altered through the mutual agreement of the Department of State and the grant recipient.

Each project should include participants from all countries in their program, but in the case of Central America and the Caribbean, they need not travel to the United States at the same time. It is suitable to break them down into smaller sub-regional groups. Each project will have at least two delegations of exchange participants to the United States over those two years that range between 20–30 participants each. In cases where sub-regional projects are proposed, there will likely be more delegations each year. Applicants must propose a plan to break a large delegation into smaller cohorts for most of the exchange activities. Exchange delegations of American participants should be smaller, ranging from 7–15 participants, and may alternate between specified countries each year. For example, the Central America reciprocal component may send Americans to Guatemala and El Salvador the first year, and Panama and the Dominican Republic the following year. Applicants are encouraged to be creative and flexible in their arrangements that will help meet our program goals.

The grant recipient will be responsible for the following:

Recruitment and Selection: Manage the recruitment and merit-based selection of youth and adult participants in cooperation with the Public Affairs Sections of the U.S. Embassies in the participating countries. Once a grant is awarded, the recipient must consult with the Public Affairs Section at the U.S. Embassy to review a participant recruitment and selection plan and to determine the degree of Embassy involvement in the process. Organizers must strive for regional, socio-economic, and ethnic diversity, as well as gender balance. For those implementing projects that involve sending American participants to a partner country, the grant recipients must also manage the recruitment and open, merit-based selection of those U.S. participants. The Department of State and/or its overseas representatives will have final approval of all selected delegations.

Orientations: Provide orientations for exchange participants and for those participating from the host communities, including host families.

Logistics: Manage all logistical arrangements, including passport and visa applications, international and domestic travel, accommodations, group meals, and disbursement of stipends. For the Central America and Haiti component, this includes provision of effective interpretation and translation.

Exchange Program: High school students and educators will spend three weeks on an intensive program that is designed to develop the participants' knowledge and skill base in civic education, community service, and youth leadership development. The exchange will take place in one or two geographic locations, and include activities in the capital city (Washington, DC or that of the host country). The exchanges will focus primarily on interactive activities, practical experiences, and other hands-on opportunities that provide a substantive project on the specified program themes. Some activities should be school and/or community-based, and the projects will involve as much sustained interaction with peers of the host country as possible (for both the youth and adult participants). Cultural, social, and recreational activities will balance the schedule.

Accommodations: In the United States, participants will live with host families in home stays with properly

screened and briefed American families for the majority of the exchange period. In the partner countries, home stays are strongly desired whenever feasible.

Monitoring: Develop and implement a plan to monitor the participants' safety and well-being while on the exchange and to resolve any issues promptly.

Follow-on Activities and In-Country Programming: Plan and implement activities in the participants' home countries that will reinforce the ideas, values and skills imparted during the exchange. Exchange participants should go home from the exchange prepared to conduct projects that serve a need in their schools or communities. Alumni will be encouraged to make presentations to share their experience with their peers.

Evaluation: Design and implement an evaluation plan that assesses the impact of the program.

Other Notes

Grant recipients will retain the name "Youth Ambassadors Program" to identify their program. Materials produced for grant activities need to acknowledge the U.S. Department of State as the sponsor and reflect the State Department's goals for the program. The organization must also inform the ECA program officer of their progress at each stage of the project's implementation in a timely fashion. All materials and correspondence related to the program will acknowledge this as a program of the Bureau of Educational and Cultural Affairs of the U.S. Department of State. The Bureau will retain copyright use of and be allowed to distribute materials related to this program as it sees fit.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major program activities, and applicants should explain and justify their programmatic choices. Programs must comply with J–1 visa regulations for the International Visitor category. Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2010.

Approximate Total Funding: 3,000,000.

Approximate Number of Awards: Three or four.

Approximate Average Award: 1,000,000.

Floor of Award Range: 300,000.

Ceiling of Award Range: 3,000,000.

Anticipated Award Date: July 1, 2010.

Anticipated Project Completion Date: 24–34 months after start date, to be specified by applicant based on project plan.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements:

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount exceeding $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition.

(b) Proposed sub-award recipients are also limited to grant funding of $60,000 or less if they do not have four years of experience in conducting international exchanges.

(c) The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(d) Organizations may submit only one proposal (total) under this competition. If multiple proposals are received from the same applicant, all submissions will be declared technically ineligible and will be given no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package:

Please contact the Youth Programs Division, ECA/PE/C/PY, SA–5, 3rd Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20522–0503, by telephone: 202–632–6079, fax: 202–632–9355, or e-mail: *YLP@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–10–29 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Jennifer Phillips and refer to the Funding Opportunity Number ECA/PE/C/PY–10–29 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet:

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government.

This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 et seq.

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a

description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the POGI and PSI for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: April 22, 2010.

Reference Number: ECA/PE/C/PY–10–29.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and six (6) copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/PY–10–29, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

Applicants submitting hard-copy applications must also submit the Executive Summary, Proposal Narrative, Budget sections of the proposal, as well as any attachments essential to understanding the program, in Microsoft Word and/or Excel format on CD–ROM. As appropriate, the Bureau will provide these files electronically to Public Affairs Section(s) at the U.S. embassies for their review.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will

vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov._ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. Quality of the program idea: Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan. The proposed program should be creative, age-appropriate, respond to the design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should also include a plan to support participants' community activities upon their return home.

2. Program planning: A detailed agenda and work plan should clearly demonstrate how project objectives would be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail.

3. Support of diversity: The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in participant recruitment and selection and in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

4. Institutional capacity and track record: Proposed personnel and institutional resources in both the United States and in the partner countries should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. Program evaluation: The proposal should include a plan to evaluate the program's success in meeting its goals, both as the activities unfold and after they have been completed. The proposal should include a draft survey questionnaire or other technique, plus a description of a methodology to link outcomes to original project objectives. The grant recipient will be expected to submit intermediate reports after each project component is concluded.

6. Cost-effectiveness and cost sharing: The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions, which demonstrates institutional and community commitment.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://fa.statebuy.state.gov.

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) Interim reports, as required in the Bureau grant agreement.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Jennifer Phillips, Youth Programs Division, ECA/PE/C/PY, SA–5, 3rd Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20522–0503, by telephone 202–632–9352, fax 202–632–9355, or e-mail *PhillipsJA@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and reference number ECA/PE/C/PY–10–29.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: *February 17, 2010.*

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–3894 Filed 2–24–10; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of public hearing and commission meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 8:30 a.m. on March 18, 2010, in State College, Pa. At the public hearing, the Commission will consider: (1) Action on certain water resources projects; (2) action on one project involving a diversion; (3) compliance matters involving three projects; and (4) the rescission of a previous docket approval. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATES: March 18, 2010, at 8:30 a.m.

ADDRESSES: Toftrees Golf Resort & Conference Center, One Country Club Lane, State College, PA 16803.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the following items: (1) A presentation by the Pennsylvania Department of Conservation and Natural Resources Deputy Secretary James Grace on natural gas exploration on state forest and park lands; (2) a presentation on hydrologic conditions of the basin with emphasis on National Flood Safety Week; (3) an update on the recently authorized SRBC Remote Water Quality Monitoring Network; (4) ratification/approval of grants/contracts; and (5) revision of the FY–2011 budget. The Commission will also hear a Legal Counsel's report.

Public Hearing—Compliance Matters:

1. Project Sponsor: Chesapeake Energy Corporation—Eastern Division. Pad ID: Ward (ABR–20090519), Burlington Township, and Sullivan 1 (ABR–20080715), Athens Township, Bradford County, Pa.

2. Project Sponsor: Novus Operating, LLC. Pad ID: Sylvester 1H and North Fork 1H, Brookfield Township, Tioga County, Pa.

3. Project Sponsor: Southwestern Energy Production Company. Pad ID: Ferguson, Wyalusing Township, Bradford County, Pa.

Public Hearing—Projects Scheduled for Action:

1. Project Sponsor and Facility: Carrizo Oil & Gas, Inc. (Mosquito Creek—Hoffman), Karthaus Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.720 mgd.

2. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and

Caernarvon Townships, Lancaster County, Pa. Application for groundwater withdrawal of 0.190 mgd (30-day average) from two wells and three collection sumps.

3. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and Caernarvon Townships, Lancaster County, Pa. Application for consumptive water use of up to 0.075 mgd.

4. Project Sponsor and Facility: EQT Production Company (West Branch Susquehanna River—Kuntz), Greenwood Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.900 mgd.

5. Project Sponsor and Facility: EXCO–North Coast Energy, Inc. (West Branch Susquehanna River—Johnson), Clinton Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

6. Project Sponsor and Facility: Fortuna Energy Inc. (Fall Brook—Bense), Troy Township, Bradford County, Pa. Application for surface water withdrawal of up to 1.000 mgd.

7. Project Sponsor and Facility: Fortuna Energy Inc. (Unnamed Tributary to North Branch Sugar Creek—Besley), Columbia Township, Bradford County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

8. Project Sponsor and Facility: Fortuna Energy Inc. (South Branch Sugar Creek—Shedden), Troy Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.900 mgd.

9. Project Sponsor and Facility: Fortuna Energy Inc. (Sugar Creek—Hoffman), West Burlington Township, Bradford County, Pa. Modification to increase the surface water withdrawal from 0.250 mgd up to 2.000 mgd (Docket No. 20090327).

10. Project Sponsor: Graymont (PA), Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, Pa. Application for groundwater withdrawal of 0.099 mgd (30-day average) from the Plant Make-up Well.

11. Project Sponsor and Facility: Harley-Davidson Motor Company Operations, Inc., Springettsbury Township, York County, Pa. Modification to add a groundwater withdrawal of 0.144 mgd (30-day average) from Well CW–20 to the remediation system, without any increase to total system withdrawal quantity (Docket No. 19980901).

12. Project Sponsor and Facility: Harley-Davidson Motor Company Operations, Inc., Springettsbury Township, York County, Pa. Modification to project features of the withdrawal approval (Docket No. 19900715).

13. Project Sponsor and Facility: Healthy Properties, Inc. (Sugar Creek—owner), North Towanda Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.450 mgd.

14. Project Sponsor and Facility: Mountain Energy Services, Inc. (Tunkhannock Creek—Deer Park Lumber, Inc.), Tunkhannock Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

15. Project Sponsor and Facility: Randy M. Wiernusz (Bowman Creek—owner), Eaton Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

16. Project Sponsor and Facility: Sunnyside Ethanol, LLC (West Branch Susquehanna River—1—owner), Curwensville Borough, Clearfield County, Pa. Application for surface water withdrawal of up to 1.270 mgd.

17. Project Sponsor and Facility: Sunnyside Ethanol, LLC (West Branch Susquehanna River—2—owner), Curwensville Borough, Clearfield County, Pa. Application for surface water withdrawal of up to 0.710 mgd.

18. Project Sponsor and Facility: Sunnyside Ethanol, LLC, Curwensville Borough, Clearfield County, Pa. Application for consumptive water use of up to 1.980 mgd.

19. Project Sponsor and Facility: TerrAqua Resource Management (Tioga River—Larson Design Group), Lawrenceville Borough, Tioga County, Pa. Application for surface water withdrawal of up to 0.543 mgd.

20. Project Sponsor and Facility: TerrAqua Resource Management, Lawrenceville Borough, Tioga County, Pa. Application for consumptive water use of up to 0.543 mgd.

21. Project Sponsor and Facility: Walker Township Water Association, Walker Township, Centre County, Pa. Modification to increase the total groundwater system withdrawal limit (30-day average) from 0.523 mgd to 0.962 mgd (Docket No. 20070905).

22. Project Sponsor and Facility: XTO Energy, Inc. (Lick Run—Dincher), Shrewsbury Borough, Lycoming County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

23. Project Sponsor and Facility: XTO Energy, Inc. (Little Muncy Creek—Temple), Moreland Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

Public Hearing—Project Scheduled for Action Involving a Diversion:

1. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and Caernarvon Townships, Lancaster County, Pa. Application for an existing into-basin diversion of up to 0.050 mgd from the Delaware River Basin.

Public Hearing—Project Scheduled for Rescission Action:

1. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080907), Oakland Township, Susquehanna County, Pa.

Opportunity to Appear and Comment: Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102–2391, or submitted electronically to Richard A. Cairo, General Counsel, e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, e-mail: *srichardson@srbc.net.* Comments mailed or electronically submitted must be received prior to March 12, 2010, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR Parts 806, 807, and 808.

Dated: February 16, 2010.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. 2010–3808 Filed 2–24–10; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0005–N–3]

Agency Request for Emergency Processing of Collection of Information Associated With FRA's Positive Train Control Grant Program After Publication of Second Agency Federal Register Notice Concerning Solicitation of Applications for Positive Train Control Grant Funding

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Railroad Administration (FRA) hereby gives notice that it has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for Emergency Processing under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501 *et seq.*). FRA requests that OMB authorize the collection of information identified below on or before March 15, 2010, for 180 days after the date of approval by OMB. A copy of this ICR, with applicable supporting documentation, may be obtained by calling FRA's Clearance Officers, Mr. Robert Brogan (tel. (202) 493–6292) or Ms. Kimberly Toone (tel. (202) 493–6132). These numbers are not toll-free. A copy of this ICR may also be obtained electronically by contacting Mr. Brogan at *Robert.Brogan@dot.gov* or by contacting Ms. Toone at *Kimberly.Toone@dot.gov*. Comments and questions about the ICR identified below should be directed to the Office of Information and Regulatory Affairs (OIRA), Attn: FRA OMB Desk Officer, 725 17th St., NW., Washington, DC 20503. Comments and questions about the ICR identified below may also be transmitted electronically to OIRA at *oira_submissions@omb.eop.gov*.

DATES: Comments should be submitted as soon as possible upon publication of this notice in the **Federal Register**.

Title: Notice of Funding Availability and Solicitation of Applications for the Positive Train Control (PTC) Grant Program.

OMB Control Number: 2130–New.

Frequency: One-time.

Affected Public: 50 Railroads.

Form(s): SF–269, SF–270, SF–271.

Estimated Total Annual Number of Responses: 250 (Grant Applications and Other Supporting Documents (Paper/Electronic)).

Estimated Total Annual Burden Hours: 13,923 hours.

Abstract: The Rail Safety Technology Program is a newly authorized program under the Rail Safety Improvement Act of 2008 (RSIA) (Pub. L. 110–432; October 16, 2008). The program was directed by Congress and passed into law in the aftermath of a series of major rail accidents that culminated in an accident at Chatsworth, California, in 2008. Twenty-five people were killed and 135 people were injured in the Chatsworth accident. This event turned the Nation's attention to rail safety and the possibility that new technologies, such as PTC, could prevent such accidents in the future. The RSIA ordered installation of PTC by all Class I railroads on any of their mainlines carrying poisonous inhalation hazard (PIH) materials and by all passenger and commuter railroads on their main lines not later than December 31, 2015.

As part of the RSIA, Congress provided $50 million to FRA to award, in one or more grants, to eligible projects by passenger and freight rail carriers, railroad suppliers, and State and local Governments. Funds will be awarded to projects that have a public benefit of improved railroad safety and efficiency, with priority given to projects that make PTC technologies interoperable between railroad systems; projects that accelerate the deployment of PTC technology on high-risk corridors, such as those that have high volumes of hazardous material shipments; and for projects over which commuter or passenger trains operate, or that benefit both passenger and freight safety and efficiency.

Funds provided under this grant program may constitute no more than 80 percent of the total cost of a selected project, with the remaining costs funded from other sources. The funding provided under these grants will be made available to grantees on a reimbursement basis. FRA anticipates awarding grants to multiple eligible participants. FRA may choose to award a grant or grants within the available funds in any amount. Funding made available through grants provided under this program, together with funding from other sources that is committed by a grantee as part of a grant agreement, must be sufficient to complete the funded project and achieve the anticipated technology development. FRA will begin accepting grant applications 10 days after publication of the separate agency notice published in the **Federal Register** detailing the terms of the PTC Grant Program Funds Availability. Applications may be submitted until the earlier of December 31, 2010, or the date on which all available funds will have been committed under this program.

FRA is applying to OMB for Emergency Clearance of this proposed information collection because of the highly complex technology involved. Reviewing railroad applications and awarding this funding as quickly as possible is essential to meeting FRA's mission and the RSIA PTC implementation deadline of December 15, 2015. FRA cannot reasonably comply with the normal OMB PRA Clearance procedures because of the time needed by FRA to review PTC grant fund applications and resolve technology issues, and because any delay in PTC implementation will cause FRA to miss the congressional statutory deadline. Also, normal OMB PRA Clearance procedures cannot be complied with because any delay of PTC implementation is likely to cause considerable public harm in terms of higher numbers of accidents/incidents and corresponding injuries/fatalities on train lines across the country that did not have the enhanced safety provided by PTC technologies on them as intended by Congress. Upon receiving the requested 6-month Emergency Clearance by OMB, FRA will follow the normal PRA procedures to obtain extended approval for this proposed information collection for the customary 3-year period.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on February 22, 2010.

Margaret B. Reid,

Associate Administrator, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2010–3865 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI.

SUMMARY: This notice announces actions taken by the FHWA and the USFWS that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project for a 25.73-mile segment of I–69, in the Counties of Daviess and Greene, State of Indiana and grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public that the FHWA and the USFWS have made decisions that are subject to 23 U.S.C. 139(l)(1) and are final within the meaning of that law. A claim seeking judicial review of those Federal agency decisions on the proposed highway project will be barred unless the claim is filed on or before *August 24, 2010.* If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then the shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Ms. Janice Osadczuk, Federal Highway Administration, Indiana Division, 575 North Pennsylvania Street, Room 254,

Indianapolis, IN 46204–1576; telephone: (317) 226–7486; e-mail: *Janice.Osadczuk@dot.gov.* The FHWA Indiana Division Office's normal business hours are 7:30 a.m. to 4 p.m., e.t. For the USFWS: Mr. Scott Pruitt, Field Supervisor, Bloomington Field Office, USFWS, 620 South Walker Street, Bloomington, IN 47403–2121; telephone: 812–334–4261; e-mail: *Scott_Pruitt@fws.gov.* Normal business hours for the USFWS Bloomington Field Office are: 8 a.m. to 4:30 p.m., e.t. You may also contact Mr. Thomas Seeman, Project Manager, Indiana Department of Transportation (INDOT), 100 North Senate Avenue, Indianapolis, IN 46204; telephone: (317) 232–5336; e-mail: *TSeeman@indot.IN.gov.* Normal business hours for the Indiana Department of Transportation are: 8 a.m. to 4:30 p.m., e.t.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has approved a Tier 2 Final Environmental Impact Statement (FEIS) for section 3 of the I–69 highway project from Evansville to Indianapolis and issued a Record of Decision (ROD) for section 3 on January 28, 2010. Section 3 of the I–69 project extends from U.S. 50 east of the city of Washington, Indiana to U.S. 231 near the Crane NSWC. Section 3 is a new alignment, fully access-controlled highway. As approved in the Tier 1 ROD, the corridor is generally 2000-feet wide. The corridor width varies at two locations within Section 3. It narrows to 1200-feet wide near First Creek and expands to 6400-feet wide near the Thousand Acre Woods. The ROD selected Refined Preferred Alternative 1 for section 3, as described in the I–69 *Evansville to Indianapolis, Indiana, Tier 2 Final Environmental Impact Statement, Washington to Crane NSWC, Indiana* (FEIS), available at *http://www.i69indyevn.org/section3_FEIS.html.* The ROD also approved the locations of the interchanges, grade separations, and access roads (which include new roads, road relocations, and realignments). The FHWA had previously issued a Tier 1 FEIS and ROD for the entire I–69 project from Evansville to Indianapolis, Indiana. A Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI, was published in the **Federal Register** on April 17, 2007. A claim seeking judicial review of the Tier 1 decisions must have been filed by October 15, 2007, to avoid being barred under 23 U.S.C. 139(l). Decisions in the FHWA Tier 1 ROD that were cited in that **Federal Register** notice included, but were not limited to, the following:

1. Purpose and need for the project.
2. Range of alternatives for analysis.
3. Selection of the Interstate highway build alternative and highway corridor for the project, as Alternative 3C.
4. Elimination of other alternatives from consideration in Tier 2 NEPA proceedings.
5. Process for completing the Tier 2 alternatives analysis and studies for the project, including the designation of six Tier 2 sections and a decision to prepare a separate environmental impact statement for each Tier 2 section.

The Tier 1 ROD and Notice specifically noted that the ultimate alignment of the highway within the corridor, and the location and number of interchanges and rest areas would be evaluated in the Tier 2 NEPA proceedings. Those proceedings for section 3 of the I–69 project from Evansville to Indianapolis have culminated in the January 28, 2010, ROD and this Notice. Interested parties may consult the Tier 2, section 3 ROD and FEIS for details about each of the decisions described above and for information on other issues decided. The Tier 2, section 3 ROD can be viewed and downloaded from the project Web site at *http://www.i69indyevn.org/.* People unable to access the Web site may contact FHWA or INDOT at the addresses listed above. Decisions in the section 3, Tier 2 ROD that have final approval include, but are not limited to, the following: 1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]. 2. Endangered Species Act [16 U.S.C. 1531–1544]. 3. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]. 4. Clean Air Act, 42 U.S.C. 7401–7671(q). 5. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]. 6. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]. 7. Bald and Golden Eagle Protection Act [16 U.S.C. 688–688d]. Previous actions taken by the USFWS for the Tier 1, I–69 project, pursuant to the Endangered Species Act, 16 U.S.C. 1531–1544, included its concurrence with the FHWA's determination that the I–69 project was not likely to adversely affect the eastern fanshell mussel (*Cyprogenia stegaria*) and that the project was likely to adversely affect, but not jeopardize, the bald eagle. The USFWS also concluded that the project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat's designated Critical Habitat. These USFWS decisions were described in the Programmatic Biological Opinion issued on December 3, 2003, the Revised Programmatic Biological Opinion issued on August 24, 2006, and other documents in the Tier 1 project records. A Notice of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, was published in the **Federal Register** on April 17, 2007. For the Tier 2, section 3, 25.73-mile I–69 project in Daviess and Greene Counties, an individual Biological Opinion was issued on October 21, 2009, that concluded that the Section 3 project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat's designated Critical Habitat. In addition, the USFWS issued an Incidental Take Statement subject to specified terms and conditions. In addition, the USFWS issued a Bald Eagle Take Exempted Under ESA permit (No. MB218918–0) for the incidental take of the bald eagles for all sections of the I–69 project. The permit was effective as of June 25, 2009, and is subject to the terms and conditions of the Endangered Species Act section 7 incidental take statement and the August 24, 2006, Revised Programmatic Biological Opinion. The biological opinions, Bald Eagle permit no. MB218918–0, and other project records relating to the USFWS actions, taken pursuant to the Endangered Species Act, 16 U.S.C. 1531–1544, are available by contacting the FHWA, INDOT, or USFWS at the addresses provided above. The Tier 2, section 3, Biological Opinion can be viewed and downloaded from the project Web site at *http://www.deis.i69indyevn.org/FEIS_Sec3/Sec3_Appendix_Y2.pdf.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Robert F. Tally, Jr.,

Division Administrator, Indianapolis, Indiana.

[FR Doc. 2010–3560 Filed 2–24–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 60]

Railroad Safety Advisory Committee; Notice of Meeting

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

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Meeting.

SUMMARY: FRA announces the forty-first meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. This meeting has been rescheduled from the weather-postponed February 11, 2010, meeting (75 FR 3959). The RSAC meeting topics will include opening remarks from the FRA Associate Administrator for Railroad Safety, and status reports will be provided by representatives from the following Working Groups: Conductor Certification, Passenger Safety, Track Safety Standards, and Medical Standards Working Groups. Status updates will be provided on the following tasks arising out of the Rail Safety Improvement Act of 2008 (RSIA): Positive Train Control, Passenger Hours of Service, and Railroad Bridge Safety Management. A new task regarding minimum training standards may be offered to the Committee for consideration. FRA may request the Committee's agreement to consider one or more items of business by mail ballot, including proposed requirements for passenger system safety programs. This agenda is subject to change, including the possible addition of further proposed tasks under the RSIA.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. on Thursday, March 18, 2010, and will adjourn by 4:30 p.m.

ADDRESSES: The RSAC meeting will be held at the Marriott Washington, Wardman Park Hotel, located at 2660 Woodley Road, NW., Washington, DC. The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The RSAC was established to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 31 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the National Transportation Safety Board, the Federal Transit Administration, and from the agencies with railroad safety regulatory responsibility in Canada and Mexico. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on pending tasks at: *http://rsac.fra.dot.gov*. Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for additional information about the RSAC.

Issued in Washington, DC on February 22, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–3863 Filed 2–24–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 22, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before March 29, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0135.

Type of Review: Extension without change of a currently approved collection.

Title: Extension of Time for Payment of Taxes by a Corporation Expecting a New Operating Loss Carryback.

Form: 1138.

Description: Form 1138 is filed by corporations to request an extension of time to pay their income taxes, including estimated taxes. Corporations may only file for an extension when they expect a net operating loss carryback in the tax year and want to delay the payment of taxes from a prior tax year.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 9,800 hours.

OMB Number: 1545–2151

Type of Review: Extension without change of a currently approved collection.

Title: Qualifying Advanced Energy Project Credit.

Notice Number: 2009–72.

Description: This notice establishes the qualifying advanced energy project program ("advanced energy program") under § 48C(d) of the Internal Revenue Code and announces an initial allocation round of the qualifying advanced energy project credit ("advanced energy credit") to qualifying advanced energy projects under the advanced energy program. A qualifying advanced energy project re-equips, expands, or establishes a manufacturing facility for the production of certain energy related property. A taxpayer must submit, for each qualifying advanced energy project: (1) An application for certification by the DOE ("application for DOE certification"), and (2) an application for certification under § 48C(d)(2) by the Service ("application for § 48C certification"). Both applications may be submitted only during the 2-year period beginning on August 14, 2009. Certifications will be issued and credits will be allocated to projects in annual allocation rounds. The initial allocation round will be conducted in 2009–10, and If necessary, additional allocation round in 2010–11.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 110,000 hours.

OMB Number: 1545–2152.

Type of Review: Extension without change of a currently approved collection.

Title: Health Coverage Tax Credit (HCTC) Reimbursement Request Form.

Description: This form will be used by HCTC participants to request reimbursement for health plan premiums paid prior to the commencement of advance payments.

Respondents: Individuals or households.

Estimated Total Burden Hours: 2,039 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–3880 Filed 2–24–10; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Rural Health Advisory Committee will hold a meeting on March 2–3, 2010, in the Robert Taylor Room at the Carnegie Hotel, 1216 West State of Franklin Road, Johnson City, Tennessee. The sessions will begin at 8 a.m. each day and end at 4 p.m. on March 2 and at 2:30 p.m. on March 3.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on health care issues affecting enrolled Veterans residing in rural areas. The Committee examines programs and policies that impact the provision of VA health care to enrolled Veterans residing in rural areas, and discusses ways to improve and enhance VA services for these Veterans.

On March 2, the Committee will meet in open session from 8 a.m. until 2 p.m. The Committee will hear from its chairman, the acting director of the VA Office of Rural Health, and the directors of the three Veterans Rural Health Resource Centers. The Committee will hold a panel discussion on the opportunities and challenges of VA collaboration with rural community partners, and discuss its 2010 work plan and priorities. The Committee will convene a closed session from 2 p.m. to 4 p.m. in order to protect patient privacy as the Committee tours patient treatment areas at the Mountain Home VA Medical Center. Closing this portion of the meeting is in accordance with 5 U.S.C. 552b(c)(6).

On March 3, the Committee will receive a summary of the tour of the Mountain Home VA Medical Center, presentations on service delivery models for primary care and their application in the rural context from VA and Indian Health Service and discuss Committee priorities and action plans for fiscal year 2010.

Time will be allocated for receiving public comments at 1:45 p.m. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. For additional information, please contact Christina White, Designated Federal Officer, at *rural.health.inquiry@va.gov* or (202) 461–7100.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–3752 Filed 2–24–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on March 1–2, 2010, in room 230 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The meeting will be open to the public and it will start at 8 a.m. each day and will adjourn at 5 p.m. on March 1 and at 1:15 p.m. on March 2.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. Additionally, there will be presentations and discussion of background information on the Gulf War and Gulf War Veterans' illnesses, chronic pain, potential health effects of exposure to sarin, chronic fatigue syndrome, a planned survey of the health status of Norwegian Gulf War Veterans, and updates on a number of ongoing research at the University of Texas Southwestern Medical Center and the VA War Related Illness and Injury Centers. There will also be discussion of Committee business and activities.

The meeting will include time reserved for public comments. A sign-up sheet for five-minute comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Roberta White, Chair, Department of Environmental Health, Boston University School of Public Health, 715 Albany St., T2E, Boston, MA 02118.

Any member of the public seeking additional information should contact Dr. White, Scientific Director, at (617) 638–4620 or Dr. William Goldberg, Designated Federal Officer, at (202) 461–1667.

Dated: February 22, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–3874 Filed 2–22–10; 8:45 am]

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Federal Register

Thursday,
February 25, 2010

Part II

The President

Notice of February 23, 2010—Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

Federal Register
Vol. 75, No. 37
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Presidential Documents

Title 3—

The President

Notice of February 23, 2010

Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, a national emergency was declared to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Cuban government of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. On February 26, 2004, by Proclamation 7757, the national emergency was extended and its scope was expanded to deny monetary and material support to the Cuban government. The Cuban government has not demonstrated that it will refrain from the use of excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. And the unauthorized entry of any U.S.-registered vessel into Cuban territorial waters continues to be detrimental to the foreign policy of the United States. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867 as amended by Proclamation 7757.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
February 23, 2010.

[FR Doc. 2010–4107
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