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WHEN: Tuesday, May 12, 2009
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WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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## CFR PARTS AFFECTED IN THIS ISSUE

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

# Rules and Regulations

Federal Register
Vol. 74, No. 88
Friday, May 8, 2009



## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. FAA–2007–28250, SFAR No. 109]**

**RIN 2120–A161**

## Special Requirements for Private Use Transport Category Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This special federal aviation regulation (SFAR) amends the airworthiness standards for transport category airplanes by adding new cabin interior criteria for operators of private use, not for hire, not for common carriage airplanes. These standards may be used instead of the specific requirements that affect transport category airplanes operated by air carriers. These standards supplement the requirements for operation under the air traffic and general operating rules. This SFAR provides alternative criteria for transport category airplanes that are operated for private use while continuing to provide an acceptable level of safety for those operations.

**DATES:** These amendments become effective June 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this SFAR, contact Alan Sinclair, Airframe and Cabin Safety Branch (ANM–115), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2195, facsimile (425) 227–1320; e-mail: *alan.sinclair@faa.gov*. For legal questions concerning this final rule, contact Douglas Anderson, Office of Regional Council (ANM–7), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007; e-mail: *douglas.anderson@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards in the interest of aviation safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety of air commerce. This regulation is within the scope of that authority because it prescribes—

- New safety standards for the design of transport category airplanes; and
- New requirements necessary for safety for the design, production, operation and maintenance of those airplanes.

### Background

Transport category airplanes are required to comply with the standards of Title 14 Code of Federal Regulations (14 CFR) part 25 to be eligible for a type certificate (TC) in this category. To the extent considered appropriate for safety, part 25 requirements contain different provisions based on passenger capacity discriminants. These requirements do not distinguish between airplanes operated in air carrier service and airplanes operated for private use.

Aviation industry representatives have stated that the part 25 standards are written with only air carrier operation in mind, and have questioned whether the one level of airworthiness requirements for transport category airplanes is, in fact, appropriate for all types of operation. This SFAR addresses airworthiness standards related to cabin interiors for transport category airplanes in private use passenger operation. It provides new cabin interior criteria for operators of private use airplanes. These standards may be used as an alternative to specific requirements that affect transport category airplanes under the air traffic and general operating rules. This SFAR provides an acceptable level of safety for those operations.

No cost is associated with this SFAR, which is a voluntary alternative means for certificating the cabin of transport category private use airplanes. People who choose to use these alternative means may incur minor incremental costs for more fire extinguishers, cooktop design criteria, and a potential cost for a flight attendant, compared to the existing cabin certification method. The established potential benefit of this SFAR is time and cost savings for the cabin certification process.

With limited exception, the type certification (TC) requirements for transport category airplanes have historically been separate from, and independent of, operational standards. That is, the TC requirements do not consider the type of operation intended for the airplane. Title 14 CFR 91.501(b) describes operational requirements for large and turbine powered multi-engine airplanes not required to be operated under 14 CFR parts 121 and 135.

The aviation industry asked the FAA to consider differentiating between the airworthiness requirements related to cabin interiors for different types of operation. Title 49 United States Code (49 U.S.C. 44701(d)) directs the FAA to consider differences between air transportation and other air commerce. This provision does not require the FAA to adopt regulations that always provide a higher level of safety for air carriers than for other operations. It does, however, establish the principle that our regulations should set a higher level of safety for air carriers whenever appropriate.

### Summary of the NPRM

On July 13, 2007, the FAA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM), Notice No. 07–13, entitled ''Special Requirements for Private Use Transport Category Airplanes'' (72 FR 38732). That NPRM is the basis for this final rule.

In the NPRM, we proposed to amend the airworthiness standards for transport category airplanes by adding new cabin interior criteria for operators of private use airplanes. These

standards may be used instead of the specific requirements that affect transport category airplanes operated by air carriers. They would supplement the requirements for operation under the air traffic and general operating rules. The NPRM was intended to provide alternative criteria for transport category airplanes that are operated for private use, while continuing to provide an acceptable level of safety for those operations.

Amendments 25–127 and 121–341, Security Related Considerations in the Design and Operation of Transport Category Airplanes (73 FR 6386, October 28, 2008), is not applicable to airplanes operated for private use. Although we specifically sought input on this subject, we received no comments on it. We subsequently published the NPRM for this rulemaking, which proposed certain alternative requirements for private use airplanes, but did not include the security requirements. In this SFAR we determine that the requirements of § 25.795, for security considerations, are not intended to apply to airplanes operated for private use.

The NPRM contains additional background and rationale for this rulemaking and, except where we have made revisions in this SFAR, should be referred to for that information.

**Summary of Comments**

The FAA received 116 comments from 14 commenters. All of the commenters generally support the proposed changes. Comments include suggested changes, more fully described in the discussion below.

The FAA received comments on the following general areas of the proposal:

- General Operations/Part 135 Crossover Operations.
- 60 Passenger Upper Limit.
- Flight Attendant Requirement.
- Pre-flight Briefing.
- Operations Placard.
- Equipment and Design General.
- Firm Handholds.
- Occupant Protection/Side-Facing Seats Criteria.
- Direct View.
- Distance Between Exits, Exit Deactivation, and 60-Foot Rule.
- Emergency Exit Signs.
- Emergency Lighting.
- Interior Doors.
- Width of Aisle.
- Materials for Compartment Interiors.
- Fire Detection.
- Cooktop Requirements.
- Hand-Held Fire Extinguishers.
- Design for Security.
- Other Subjects.

**Discussion of the Final Rule**

*General Operations/Part 135 Crossover Operations*

This SFAR was written to address transport category airplanes operated in private use, not for hire, not for common carriage. As discussed in the NPRM, private use operations differ significantly from air carrier operations. Typically, private use operations have lower passenger capacities and different demands for passenger amenities and functionality. This is why different standards can apply to the same airplane type, depending on how it is operated.

Several commenters, including General Aviation Manufacturing Association (GAMA), Airbus, Boeing, Bombardier and the International Coordinating Council of Aerospace Industries Associations (ICCAIA), requested that airplanes approved using the SFAR be allowed to operate under part 135. These commenters cited several reasons for this request, including the ability to offset costs by allowing the airplane to generate revenue. Some commenters proposed that certain provisions of the SFAR should not be carried into part 135 operations, but others should.

This SFAR permits design features—such as the installation of interior doors and reduced flammability standards—that would make airplanes approved under this SFAR non-compliant with part 135 requirements. The limitation on the type of operation permitted under this SFAR is consistent with the NPRM and has not been changed.

As discussed in the NPRM, Title 49 United States Code (49 U.S.C. 44701(d)) directs the FAA to consider differences between air transportation and other air commerce. This provision establishes the principle that our regulations should set a higher level of safety for air carriers whenever appropriate. The airworthiness standards for operation under part 135 are already established and, before this SFAR is adopted, were effectively the same as for private use. This SFAR creates a standard focused on private use, not for hire, not for common carriage operation which did not previously exist. Extending the provisions of the SFAR to part 135 is both beyond the scope of the proposed rule, and not in keeping with the statutory mandate. The fare-paying flying public expects the same level of safety regardless of which airplane they are flying on. Persons flying on airplanes approved using the SFAR typically have more knowledge, familiarity, and choice in doing so. Since an airplane approved under the SFAR would not meet all of the minimum requirements of parts 25 and 135, allowing operation in part 135 would additionally create an uneven playing field for those airplanes that have been certificated to meet the full requirements of parts 25 and 135. This SFAR will not allow airplanes to operate under part 135 that do not meet all applicable requirements of part 135.

However, it does not prohibit operation in part 135, provided the aircraft meets all the existing requirements of that part. Some airworthiness standards of part 25, for which this SFAR grants relief, are not required for airplanes operated under part 135 (that is, part 135 also allows operation of airplanes meeting the standards of part 23, which in some cases are less stringent than part 25).

As noted above, some commenters suggested that the provisions of the SFAR be identified as acceptable for part 135 operation, or not. These commenters also suggested that the applicant identify the modifications required in order for the airplane to be eligible for part 135 operation. We agree that the operator should be made aware of what is necessary in order to operate in part 135. In order for an operator to switch from private use to part 135 operations, limitations would be needed to identify necessary changes to meet the additional part 135 requirements (*see* Table 1). For example, doors that may be closed for private use would have to be disabled and secured open for part 135 operations. A new paragraph 2(g) has been added to clarify this issue.

If the possibility exists that the airplane may be placed in part 135 or part 121 service, we recommend that the Airplane Flight Manual (AFM) be modified to include those areas that would need to be addressed before the airplane would be permitted in part 135 operations. For example, interior doors must be deactivated and locked out such that a maintenance action will be required to reactivate the door. Following is a table identifying the alternative airworthiness standards allowed under this SFAR and whether they are acceptable for operations under part 135.

TABLE 1

| SFAR provision | Acceptable in 135? |
|---|---|
| 4(a) Firm Handhold | No. |
| 4(b) Side-facing Seats | Yes, for single place seats only. |
| 5. Direct View | No. |
| 6. Passenger Information Signs | Yes. |
| 7. Distance Between Exits | No. |
| 8. Emergency Exit Signs | Yes. |
| 9(a) Emergency Lighting | No. |
| 9(b) Floor Proximity Escape Path Markings | Yes. |
| 9(c) Transverse Separation of the Fuselage | No. |
| 10.(a)–(f) Interior Doors | No. |
| 11. Width of Aisles | No. |
| 12. Materials for Compartment Interiors | No. |
| 13. Fire Detection | Yes. |
| 14. Cooktops | Yes. |

*60-Passenger Upper Limit*

Paragraph 2(a) of the SFAR restricts the maximum passenger count to 60, as proposed in the NPRM. The majority of the commenters requested that no upper limit be placed on the maximum number of passengers allowed. As discussed in the NPRM, the FAA concluded that a passenger capacity limit was necessary, considering the number of modifications to the certification standards this SFAR permits. As the number of passengers increases, and the complexity of the interior increases as allowed by the SFAR, it is more difficult to predict safety issues that can arise and not be accounted for in standardized evacuation demonstrations. The larger airplanes operated in private use (*e.g.*, Boeing 737, Airbus A320) have an average passenger seating configuration of 25. As the passenger count increases beyond 60, the complexity of the interior takes the airplane outside the intended scope of the SFAR and more FAA oversight is required to ensure that an appropriate level of safety is maintained.

While the FAA has approved private use airplanes with passenger capacities greater than 60, these are the exception. In those cases there are generally additional safety issues regarding evacuation, fire protection and project-specific installations. Because of that, we would need to evaluate such configurations on an individual basis to determine whether exemptions or special conditions are appropriate. The 60-passenger limitation in this SFAR would not preclude certification of these larger airplanes, but it would enable us to evaluate these issues and impose additional requirements necessary for safety. Therefore, the FAA is adopting this limitation as proposed.

Bombardier commented that airplanes sometimes have more seats than passengers, and not all seats are usable for takeoff and landing. In this case, they question how the SFAR will be applied. To clarify, the 60-passenger limit in the SFAR applies to the actual passenger capacity of the specific airplane. If extra passenger seats are installed and are accessible to passengers, then design considerations must be addressed. If the seats are not appropriate for occupancy during taxi, takeoff and landing, e.g., do not meet the strength requirements of § 25.561 or, if applicable, § 25.562, then each such seat must be clearly marked that it is not to be occupied during taxi, takeoff and landing. Such marking may be in the form of a placard mounted at a suitable location easily readable by any approaching passenger. If the seats could be occupied during taxi, takeoff and landing, *i.e.*, they meet all the applicable strength and human injury criteria, then there must be a limitation in the Limitations Section of the Airplane Flight Manual to note that although there are more than 60 seats installed, no more than 60 passengers may be on the airplane. Additionally, as a continuous reminder to crew and passengers, placards must be installed at each door that can be used to board passengers, stating that the maximum passenger capacity is 60. The placards must be designed and located such that they are clearly legible to passengers entering through the door. The rule text has been revised to clarify the requirements should extra passenger seats be installed.

*Flight Attendant Requirement*

Paragraph 2(b)(2) of the SFAR requires at least one flight attendant for those airplanes that were initially type certified with 75 or more passengers and have interior doors irrespective of the seating capacity of the airplane in private use. The NPRM proposed that a flight attendant be required when interior doors are installed, for passenger seating arrangements of 10–50.[1] The majority of the commenters objected to the ten-passenger criterion and noted that none of the current FAA exemptions issued for doors between passenger compartments require a flight attendant. The commenters requested that the FAA withdraw the flight attendant requirement and simply rely on the requirements currently listed in § 91.533. The proposed requirement would have effectively lowered the threshold for a required flight attendant from 20 (as specified in § 91.533) to 10. Based on the comments received and after further consideration, we agree that this is overly stringent and not in keeping with past practice.

The intent of the proposed requirement was to address the additional complexity in monitoring interior configurations with partitioned and isolated occupant compartments. This in turn is predicated on the original capacity of the airplane and, by association, its size. We have reviewed this issue in more detail and have revised the SFAR to limit the flight attendant requirement to those airplanes originally type certificated with relatively large maximum seating capacities, *i.e.*, 75 or more passengers. For smaller airplanes, the requirements in § 91.533 are acceptable because the cabins are smaller and typically less complex than those being installed in the large transport airplanes. As a result, it is less likely that someone will become trapped or lost during an emergency evacuation, and there is less

[1] Paragraph 2(b) of the NPRM also proposed to require two flight attendants for airplanes with passenger capacities exceeding 50. We received no comments on this proposal, and paragraph 2(b)(1) contains this requirement.

need to have a flight attendant. The criterion of 75 or more passengers demarcates the large commercial jets from the small to medium regional and business jets where interior configurations are likely to be less complex. Therefore, the SFAR has been revised to restrict the additional requirement for at least one flight attendant to those airplane types whose original maximum type certificated passenger capacity is 75 or more.

*Pre-Flight Briefing*

Paragraph 2(c) of the SFAR requires that the AFM include a limitation requiring passenger briefing on the relevant airplane features specifically required to comply with the SFAR. As proposed, the requirement would have applied directly to an operator. Bombardier, Embraer and ICCAIA commented that, to be consistent, the SFAR should impose a requirement on the applicant for a TC. We agree and paragraph 2(c) is revised to require an AFM limitation. They also commented that, as proposed, the briefing requirement was open to very broad interpretation, and could be taken to require a briefing on every aspect of the SFAR. They recommend that the briefing be limited to only those features the passengers need to be aware of to maintain the intended level of safety, such as frangible features in interior doors, or moving seats to their intended position for taxi, takeoff and landing. We agree and the SFAR has been revised to reflect this intent.

*Operations Placard*

Paragraph 2(e) of the SFAR requires a placard stating: ''Operations involving the carriage of persons or property for compensation or hire are prohibited,'' to be located in the area around the airworthiness certificate holder at the entrance to the cockpit. Paragraph 2(d) of the SFAR requires the same limitation to be included in the AFM. These restrictions have not changed from the NPRM; however, the location of the placard has been revised from the proposal that it be ''located in conspicuous view of the pilot-in-command.'' Airbus, Bombardier, ICCAIA, and Fokker Services requested that the placard requirement be removed. They state that a placard installation is not directly related to airplane safety and that a competing number of placards are already installed, for which the information value is questionable. They believe an AFM limitation is sufficient, since the crew is required to follow the AFM when operating. While it is certainly true that the crew is required to follow the AFM, an AFM limitation is not conspicuous. The proposed placard requirement was intended to be a conspicuous notification regarding the limitations on the type of operations permitted for the airplane. However, we have reconsidered the location of the placard installation. Based on the input from the commenters, we agree that the instrument panel would not be an appropriate place to locate this placard. The area around the airworthiness certificate holder at the entrance to the flightdeck is deemed the most appropriate location, and we revised the SFAR to relocate the placard to this area.

*Evacuation Analysis*

Paragraph 2(f) of the SFAR requires an evacuation analysis for airplanes with a passenger capacity of 45–60, which is in keeping with current § 25.803. There were no comments on this proposal, and it is adopted as proposed.

*Equipment and Design General*

A number of commenters appeared to be confused about the applicability of the SFAR, its effect on the certification basis of the airplane, and when to follow the SFAR instead of existing rules. The specific issues are discussed with the topic they apply to below. However, as a general matter, the SFAR is intended to modify existing rules that are part of the certification basis of the airplane to facilitate operation in private use. It does not intend to address rules not already in their certification basis. Paragraph 3 of the SFAR was revised to clarify this and to specify that applicants must take into account the certification basis of their specific airplane when utilizing this SFAR.

*Firm Handholds*

Paragraph 4(a) of the SFAR grants relief from § 25.785(j), which requires a firm handhold along the aisle for people to steady themselves in moderately rough air, and the SFAR is consistent with the requirements proposed in the NPRM. It was clear from the comments submitted that there was some confusion on the intent of this requirement. Airbus, Bombardier and ICCAIA all commented that the proposal did not address open spaces, and did not offer guidance on what ''bordered by seats'' meant, or where handholds would be required and where they would not.

The SFAR is intended to limit application of the existing requirements of § 25.785(j) to those aisles along sidewalls or between seats. There is no intent to add additional requirements. In lieu of the requirement for ''firm handholds'' in § 25.785(j), the SFAR permits the applicant to show compliance if they can demonstrate that the interior features will allow people to steady themselves while occupying the airplane's aisles only. The NPRM notes that this provision has a slight reduction in safety, since only certain aisles will be required to have the equivalent of a handhold, and that the FAA has previously granted exemptions for aisles in those areas (such as bedrooms) when there is no practical design approach. The term ''bordered by seats'' refers to an aisle that has seats along one or both sides. We agree that the spacing and configuration of seats used in the affected airplanes may not satisfy the literal requirements of § 25.785(j). Therefore, we added a provision specifying that the installation be practicable. Whenever practicable, passengers must have a means to steady themselves, but only while occupying the airplane's aisles.

*Occupant Protection/Side Facing Seats Criteria*

Paragraph 4(b) of the SFAR was updated to include the current test requirements for the certification of side-facing seats. The FAA's policy for side-facing seat certification criteria was updated [2] during the NPRM process and so the NPRM reflected the out-of-date policy. Most of the policy changes provided simplified test methods, and clarifications to the earlier policy. The net effect of the policy changes was to reduce the number of tests required and simplify design considerations. A number of the commenters provided extensive comments requesting that the SFAR be revised to align criteria with current practice. As mentioned above, this difference in the NPRM and the current FAA policy was not deliberate, but a result of the differing administrative process between the two. The intent of the SFAR was always to adopt the latest FAA policy on this subject. We are revising the SFAR to reflect the current policy language specified in special conditions and exemptions.

Bombardier and ICCAIA also commented that side-facing seats should not be limited to private use. In this case, we agree that single-place side-facing seats are not limited to private use. The FAA has defined criteria using special conditions—and now this SFAR—that provide the same level of safety for occupants of single-place side-facing seats as that of forward- or aft-facing seats. Therefore, installation of a

[2] [Policy Statement No. ANM–03–115–30, available on the Internet at *http://rgl.faa.gov*].

single-place side-facing seat using those criteria is acceptable regardless of operation. However, we have not been able to define criteria for multiple occupant seats that provide an equivalent level of safety. These installations have been addressed through exemptions. While it is true that not all such exemptions have contained a private use limitation, these installations are generally only found in private use. As discussed above, this SFAR applies only to airplanes designed for private use. Any requests for installation of multiple occupant side-facing seats for other than private use would require a petition for exemption and must be shown to be in the public interest.

*Direct View*

Paragraph 5 of the SFAR requires that the majority of installed flight attendant seats must face the cabin area for which the flight attendant is responsible. For example, if only 1 or 2 flight attendant seats are installed, then each must face the cabin; if 4 flight attendant seats are installed, then 3 must face the cabin. The NPRM would have required that all installed flight attendant seats face the cabin. This change was based on a comment from Airbus, pointing out that previous FAA exemptions address the majority rather than all flight attendant seats. Bombardier and Gulfstream evidently interpreted this provision as requiring installation of flight attendant seats. They note the difficulty in installing flight attendant seats on small transport airplanes and question the perceived requirement. There was some confusion on the intent of this requirement. This section of the SFAR does not require the installation of flight attendant seats. The SFAR's intent is that, if there are flight attendant seats installed, then the majority must be located such that they face the cabin area, *e.g.*, flight attendant seats should not be aft facing when located at the aft most exits. To avoid future confusion, the SFAR was revised to read, ''* * * the majority of installed flight attendant seats must be located * * *''

*Distance Between Exits, Exit Deactivation, and 60-Foot Rule*

Paragraph 7 of the SFAR allows the deactivation of exits to create a distance of greater than sixty feet between exits, which would not otherwise be allowed under § 25.807(f)(4). The NPRM proposed specific criteria that provide an adequate level of passenger safety by limiting the passenger number and the distance needed to travel to an exit. These criteria are unchanged from the NPRM. Airbus and ICCAIA requested that the SFAR be revised to allow more distance between passengers and an exit, and to permit the deactivation of more exits to create more than one instance where the distance between exits was greater than 60 feet. In particular, the commenters questioned the specific criteria and how they are justified. While noting that the criteria are likely based on FAA's experience with prior installations and exemptions, Airbus stated it would like more flexibility.

The SFAR was written to be consistent with existing FAA policy and guidance. The intent of the 60-foot rule is to avoid excessive distances between passengers and their nearest exits under unpredictable accident conditions. By placing restrictions on how to create exit-to-exit distance greater than 60 feet, the SFAR maintains the spirit of the requirement. In developing the proposed criteria, we assessed many potential configurations on a variety of airplane types.

The distance criterion in paragraph 7(a) ensures that the intent of § 25.807(f)(4) is maintained: passengers should not be seated more than 30 feet from the nearest exit. Given the increased complexity of private use cabin interiors allowed under this SFAR, and the resulting increased potential for obstruction, the passenger-capacity limits specified in paragraphs 7(b) and (c) are necessary to prevent crowding that would delay evacuation. Finally, paragraph 7(d)—which limits the use of this allowance to one pair of exits on each side of the airplane—is necessary to ensure that the airplane as a whole retains an acceptable emergency exit arrangement.

While different approaches are possible, the SFAR offers relief from the 60-foot rule with reasonable limitations, considering the remaining provisions of the SFAR. No alternative proposals were provided, so there is no clear justification to change these requirements or the FAA guidance on this issue. Therefore no change was made to the SFAR.

GAMA recommended that the FAA permit reactivation of exits to enable operation in part 135. The FAA has no restriction on reactivating exits. However, the applicant would need to determine the extent of the modification necessary to restore the exit(s) to full compliance and obtain approval. This is true whether or not the SFAR is utilized.

*Emergency Exit Signs*

Paragraph 8 of the SFAR permits the use of a single exit sign to meet the requirements of § 25.811(d)(1) and (2). Bombardier and ICCAIA contended that this provision is not needed in the SFAR since the regulations do not specifically require two signs. Furthermore, they noted that the same criteria are proposed to be incorporated in a revision to Advisory Circular 25–17. Their position is that by including the provision in the SFAR, there is an implication of non-compliance, which may complicate validation by foreign airworthiness authorities. They also noted that the level of safety is not reduced with this provision.

We agree that the level of safety using this provision is not reduced. By including this provision, applicants that elect to use the SFAR can use the single sign without having to refer to a draft advisory circular. Its inclusion does not limit its use only to the SFAR.

GAMA and Embraer suggested alternative wording to make the requirement clearer with respect to legibility of the exit signs. They proposed to include consideration of not only seats, but bulkheads/dividers when assessing sign legibility, assuming that if there is a bulkhead, the exit will not be visible from a seat beyond the bulkhead. They suggested that the rule refer to the farthest seat or bulkhead/divider, whichever is closer. While we agree that this issue should be addressed, the focus of this requirement needs to be on the seat farthest from the exit that must rely on the exit sign. Therefore, we have revised paragraph 8(b) of the SFAR to read, ''The sign can be read from the aisle adjacent to the passenger seat that is farthest from the exit and that does not have an intervening bulkhead/divider or exit.'' For seats beyond such an intervening bulkhead/divider, § 25.811(d)(3), which is still fully applicable to airplanes subject to this SFAR, requires signage on the bulkhead/divider indicating exit locations.

*Emergency Lighting*

Paragraph 9 of the SFAR effectively raises the threshold for large, electrically illuminated exit signs from 10 passengers to 20 passengers. It requires that, for airplanes with 19 or fewer passengers, the emergency exit signs required by § 25.811(d)(1), (2), and (3) must have red letters at least 1-inch high on a white background at least 2 inches high. These signs may be internally electrically illuminated, or self-illuminated by non-electrical means, with an initial brightness of at least 160 microlamberts. The color may be reversed for a sign self-illuminated by non-electrical means. These are the same requirements as proposed in the NPRM. Transport Canada commented

that the reference to § 25.812(b)(2) should be to § 25.812(b)(1), since it is from this paragraph that relief is provided. We agree and the SFAR is changed. Based on the comments there was some confusion regarding whether the signs would be accepted for both parts 91 and part 135 operations. The inclusion of the exit signs in the SFAR does not prohibit applicants from seeking equivalent level of safety findings or exemptions which would permit the use of these types of exit signs in part 135 operation. Therefore no change was made to the SFAR.

*Interior Doors*

Paragraph 10 of the SFAR allows installation of otherwise prohibited interior doors, provided a number of conditions are met that will prevent these doors from impeding emergency evacuations. Amendment 25–116, Miscellaneous Cabin Safety Changes (69 FR 62778, October 27, 2004), effective November 26, 2004, changed the requirement for interior doors in § 25.813(e), such that no interior door can be installed between any passenger seat (occupiable for taxi takeoff or landing) and any exit on part 25 airplanes. This replaced a less stringent requirement that no door could be installed between passenger compartments and was adopted in recognition of the risk that passengers may become trapped behind such doors in an emergency evacuation. This was noted by Transport Canada and ICCAIA, and they requested that the latest rule be addressed by the SFAR.

We agree and paragraph 10 of the SFAR has been updated accordingly. The relief granted is the same as in the NPRM (that is, the SFAR allows the installation of doors that would otherwise be prohibited). However, it applies to doors between any passenger seat and any emergency exit, rather than just to doors between passenger compartments. Without this revision, current § 25.813(e) would prohibit installation of these doors.

Fokker Services questioned the need for laterally translating doors across longitudinal aisles. They suggest that hinged doors can be acceptable if the direction of hinging does not impede egress. The FAA originally established the requirement for laterally translating doors as a condition of exemptions. Hinged doors, in addition to having their direction of motion aligned with the most likely impact vectors, also have the potential to intrude into the cabin to a greater degree than doors that translate. Since the regulations do not permit doors at all, this allowance is a change in the level of safety, regardless of the door type. Hinged doors would further affect the level of safety, such that we cannot find it acceptable. There is no change to the SFAR on this point.

We have added a new paragraph 10(f) to be consistent with the requirements of § 25.820, which requires that: ''All lavatory doors must be designed to preclude anyone from becoming trapped inside the lavatory. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools.'' This requirement is also consistent with all the exemptions related to interior doors issued to date. This does not create any new requirements.

*Width of Aisle*

Paragraph 11 of the SFAR has been revised to allow aisle width to go to 0-inch width during in-flight operations, provided that it can be demonstrated that all areas of the airplane's cabin are easily accessible by a crewmember during emergency. The NPRM proposed to require a minimum aisle of 9-inches in-flight. Several commenters, including GAMA and ICCAIA, objected to this provision, especially as it pertains to airplanes that are only required to have a 9-inch aisle for taxi, takeoff and landing. They noted that this is contrary to current practice and would result in significant design changes or loss of passenger capacity. Aero Consulting Services suggested, instead of a minimum aisle width, a requirement for access along the length of the cabin would be more appropriate. Commenters cited specific interior arrangements that would no longer be approvable using the proposed criteria and indicated that the utility of the SFAR would be greatly reduced if these criteria are maintained.

Based on the strong feedback from the commenters, the FAA has reconsidered the 9-inch in-flight aisle requirement. We agree that a requirement focused on access along the length of the cabin is more appropriate in this SFAR, and is consistent with current industry practice for features such as footrests that protrude into the aisle. The FAA will only permit the 0-inch aisle width during periods other than taxi, takeoff and landing, providing the applicant can demonstrate the ability to access all parts of the cabin during an emergency. The SFAR was revised accordingly.

*Materials for Compartment Interiors*

Paragraph 12 of the SFAR requires compliance with § 25.853, except that compliance with appendix F, parts IV and V, to part 25 (if applicable to the airplane) need not be demonstrated, if it can be shown that the maximum evacuation time for all occupants does not exceed 45 seconds under the conditions specified in appendix J to part 25. This paragraph has been revised to clarify that only the provisions of § 25.853 contained in the airplane's certification basis must be complied with.

Gulfstream, Fokker Services and Airbus commented on this provision. The commenters were confused about how the SFAR applied to specific airplanes and to what degree this superseded existing rules. Gulfstream interpreted the requirement as applying to airplanes with a seating capacity of 10 or more, and that these airplanes would now need to show compliance with evacuation requirements they did not previously have to meet. In fact, the heat release and smoke emissions requirements only apply to airplanes with more than 19 seats that have the requirements of § 25.853(d), at Amendment 116 or equivalent, in their certification basis. If the airplane's certification basis does not include heat release and smoke emissions requirements (§ 25.853 at Amendment 25–61), then this paragraph of the SFAR is not applicable. However, it is correct that airplanes with more than 19 seats that are otherwise required to comply with heat release and smoke emissions requirements would have to show a 45-second evacuation time under the terms of the SFAR. Fokker Services proposed language to explicitly state that the provision apply only to airplanes with heat release and smoke emissions requirements. We agree with the intent, and the SFAR now refers to ''the applicable provisions of § 25.853.''

Airbus proposed that the evacuation requirement might be met by analysis only, rather than both analysis and testing. This may be a matter of semantics, because any evacuation analysis must be based on tests. However, the test data may be previously generated data, assuming the airplane has already demonstrated compliance in accordance with appendix J to part 25; so an analysis that utilizes prior test data could be acceptable. However, we do not anticipate that an analysis without any substantiating test data would be acceptable.

Bombardier also requested that the fire penetration requirements of § 25.856(b) be excluded from the SFAR for reasons similar to those granting relief from heat release and smoke emissions requirements. This is beyond the scope of the NPRM and would require a new public comment period. In addition, the thermal/acoustic

insulation used to provide fire penetration resistance is less a customization feature and more inherent in the design of the airplane. At this time, we do not anticipate granting relief from this requirement for those airplanes already required to comply.

*Fire Detection*

Paragraph 13 of the SFAR requires that, for airplanes with a type certificated passenger capacity of 20 or more, there must be means that meet the requirements of § 25.858(a) through (d) to signal the flightcrew in the event of a fire in any isolated room not occupiable for taxi, takeoff and landing, which can be closed off from the rest of the cabin by a door. This requirement is unchanged from the NPRM except that we have added the passenger capacity discriminant.

Aero Consulting Services, Bombardier, Gulfstream, Transport Canada and ICCAIA all interpreted this provision as requiring fire detectors in lavatories. The commenters requested that the SFAR be revised to remove the requirement. The SFAR does not require the addition of smoke detectors in lavatories for airplanes if this is not already a requirement of their certification basis. Section 25.854, which applies to airplanes with a passenger capacity of 20 or more, already adequately defines the certification requirements for lavatories and smoke detectors. The SFAR was intended to address those areas on these same airplanes that are not accounted for in part 25 (e.g., staterooms, offices, conference rooms) and only if they are not occupied during taxi, takeoff and landing. This paragraph requires that fire detectors be installed in those areas. Paragraph 13 was also revised to include a statement regarding the applicability of § 25.854 to lavatories.

*Cooktop Requirements*

Paragraph 14 of the SFAR requires that each cooktop must be designed and installed to minimize any potential threat to the airplane, passengers, and crew as outlined in the criteria. This paragraph is unchanged from the NPRM, except for the format. In the NPRM the criteria were shown in an appendix to the SFAR. In this SFAR it appears as part of the rule text. Airbus and ICCAIA requested that the criteria be simplified. However, they did not propose alternative criteria that would justify changing these requirements. The cooktop requirements listed in the SFAR are consistent with the numerous existing special conditions.

*Hand-Held Fire Extinguishers*

In addition to the requirements of § 25.851 for hand-held fire extinguishers, paragraph 15 of the NPRM would have required a fire extinguisher be installed for every pair of exits originally type certificated in the passenger cabin, regardless of whether the exits are deactivated for the proposed configuration. As a result of the comments received, as discussed below, only airplanes originally type certificated with more than 60 passengers need to comply with this requirement. The NPRM also proposed that a fire extinguisher be installed at every pair of exits originally type certified in the passenger cabin, but did not include the 60 passenger discriminator.

Gulfstream requested removal of this section because it would add cost and weight, based on the number of exit pairs on Gulfstream airplanes. Airbus, Fokker, Bombardier and ICCAIA proposed alternative wording to reflect their understanding of this provision. All commented that the language of the SFAR implied that these provisions were added to the requirements already contained in § 25.851. They also suggested that the installation requirements should not specify the location of the extinguishers at exits, but should be general, based on the number of exits originally certificated. The commenters requested that the SFAR be revised to clarify the quantity required and the placement locations.

We agree that the SFAR as proposed could have unintended consequences, and be burdensome to operators and manufacturers of transport airplanes. The intent of the SFAR was to ensure that there would be an adequate number of fire extinguishers installed on board ''large'' transport airplanes and that the fire extinguishers would be evenly distributed throughout the cabin. The current certification requirements are based on passenger capacity, so the larger airplanes with greatly reduced passenger counts are not adequately addressed in part 25. Thus, there is a need for additional criteria for installation of fire extinguishers.

Based on the comments, we have revised the SFAR to limit by size the airplanes affected and to be more flexible, both in terms of installation location, and the way the total number of extinguishers is determined. This addresses the concerns expressed by Gulfstream regarding the effect on transport airplanes, as well as other comments suggesting revised wording to be more general. We have made it clear that the number of extinguishers is the greater of those required by § 25.851, or the number of originally certificated exit pairs. In addition, this requirement is now based on an originally certificated passenger count of greater than 60, since this is a significant break point in § 25.851 in terms of the number of extinguishers required. Other provisions of § 25.851 continue to apply.

*Design for Security*

Since publication of Notice No. 07–13, the FAA has issued Amendment 25–127, which addresses security considerations in the design of transport category airplanes. This amendment is intended to mitigate through design measures some of the security risks faced in aviation. As discussed in Amendment 25–127, and the NPRM that preceded it, these requirements do not provide the same benefits for airplanes in private use. In Amendment 25–127 we noted that this SFAR would exclude the ''design for security'' requirements for that reason. Therefore, a new paragraph 16 is added to the SFAR, that excludes newly adopted § 25.795 for airplanes approved in accordance with this SFAR.

*Other Subjects*

Gulfstream expressed their desire that this rulemaking be harmonized with the European Aviation Safety Agency (EASA) rulemaking initiatives, and suggests that a harmonization effort be started. They noted that such harmonization helps minimize certification costs. We have kept EASA apprised of this rulemaking and will continue to do so. We agree that, whenever possible, harmonized requirements benefit all parties. At this time, however, there are no formal harmonization initiatives on this subject. We will work with EASA and other authorities to assist with any rulemaking they choose to promulgate.

Boeing proposed that part 91 be amended to prohibit operations for hire, rather than requiring a limitation in the AFM. An amendment to part 91 is beyond the scope of the NPRM, and is more far-reaching than the limitation included in this SFAR. The AFM limitation is consistent with other limitations on operation and addresses the specific regulatory provisions modified by this SFAR.

Boeing and ICCAIA suggested that a new section be written to address the use of glass in the cabin, for features such as partitions panels. This use of glass is uncommon and not a longstanding practice. In any case, criteria for approval of glass panels in the cabin is beyond the scope of the NPRM, and would require a separate

notice and comment to establish criteria.

**Paperwork Reduction Act**

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register,** after Office of Management and Budget approval.

**International Compatibility**

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

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

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

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

This SFAR establishes FAA rulemaking requirements for certifying cabin interiors for transport category private use airplanes. These requirements are voluntary and may be used instead of the existing requirements that are primarily designed for airplanes used in scheduled airline service. The purpose of the rule is to reduce time and costs for people certifying cabins for transport category private use airplanes. The regulatory evaluation prepared for the NPRM indicated that a typical certification under this SFAR might save the airplane purchaser four months and $725,000 per exemption, compared to existing certification procedures. The completion center would accrue savings of approximately $100,000 per airplane per exemption, and the FAA would accrue savings of approximately $6,000 per airplane per exemption. This results in approximately $725,000 plus $100,000 plus $6,000 in savings, for a total of $831,000 per airplane per exemption.

No comments were received on the NPRM regulatory summary statement. However, changes were made to the proposed rule as a result of comments received on the NPRM that affected the regulatory summary statement. These changes provided even more cost relief than those identified for the proposed rule.

From an economic standpoint, the most important changes were:

1. Flight Attendant Requirement. This SFAR requires a flight attendant only for those airplanes with interior doors that were initially type certificated with 75 or more passengers. The NPRM proposed that a flight attendant be required when interior doors are installed for passenger seating arrangements of 10 or more.

2. Operation of an airplane certified in accordance with this SFAR in part 135 service is not prohibited by this SFAR, provided that the airplane meets all part 135 requirements when operated under part 135.

The expected outcome of this SFAR will be a minimal economic impact with positive net benefits. Therefore, a full regulatory evaluation was not prepared.

FAA has, therefore, determined that this SFAR is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

**Regulatory Flexibility Determination**

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

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

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

The NPRM concluded that the proposal would have no adverse impact on small business entities. As in the case of the NPRM, this SFAR provides a voluntary alternate means of certifying the cabin interior for private use transport category airplanes. No comments were received on the Regulatory Flexibility Analysis in the NPRM. Therefore, as the acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

**International Trade Impact Assessment**

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign

commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this SFAR and notes the rule is voluntary and cost-relieving, thus is not considered an unnecessary obstacle to trade.

**Unfunded Mandates Assessment**

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This SFAR does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

**Executive Order 13132, Federalism**

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

**Regulations Affecting Intrastate Aviation in Alaska**

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinction. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We did not receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

**Environmental Analysis**

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

**Regulations That Significantly Affect Energy Supply, Distribution, or Use**

The FAA has analyzed this SFAR under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**Availability of Rulemaking Documents**

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

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

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

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

**Small Business Regulatory Enforcement Fairness Act**

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

**List of Subjects in 14 CFR Part 25**

Air transportation, Aircraft, Aviation safety, Safety.

**The Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

## PART 25—AIRWORTHINESS STANDARDS—TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

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

■ 2. In part 25, add SFAR No.109 to read as follows:

**Special Federal Aviation Regulation No. 109**

1. *Applicability.* Contrary provisions of 14 CFR parts 21, 25, and 119 of this chapter notwithstanding, an applicant is entitled to an amended type certificate or supplemental type certificate in the transport category, if the applicant complies with all applicable provisions of this SFAR.

*Operations*

2. *General.*

(a) The passenger capacity may not exceed 60. If more than 60 passenger seats are installed, then:

(1) If the extra seats are not suitable for occupancy during taxi, takeoff and landing, each extra seat must be clearly marked (e.g., a placard on the top of an armrest, or a placard sewn into the top of the back cushion) that the seat is not to be occupied during taxi, takeoff and landing.

(2) If the extra seats are suitable for occupancy during taxi, takeoff and landing (*i.e.,* meet all the strength and passenger injury criteria in part 25), then a note must be included in the Limitations Section of the Airplane Flight Manual that there are extra seats installed but that the number of passengers on the airplane must not exceed 60. Additionally, there must be a placard installed adjacent to each door

that can be used as a passenger boarding door that states that the maximum passenger capacity is 60. The placard must be clearly legible to passengers entering the airplane.

(b) For airplanes outfitted with interior doors under paragraph 10 of this SFAR, the airplane flight manual (AFM) must include an appropriate limitation that the airplane must be staffed with at least the following number of flight attendants who meet the requirements of 14 CFR 91.533(b):

(1) The number of flight attendants required by § 91.533(a)(1) and (2) of this chapter, and

(2) At least one flight attendant if the airplane model was originally certified for 75 passengers or more.

(c) The AFM must include appropriate limitation(s) to require a preflight passenger briefing describing the appropriate functions to be performed by the passengers and the relevant features of the airplane to ensure the safety of the passengers and crew.

(d) The airplane may not be offered for common carriage or operated for hire. The operating limitations section of the AFM must be revised to prohibit any operations involving the carriage of persons or property for compensation or hire. The operators may receive remuneration to the extent consistent with parts 125 and 91, subpart F, of this chapter.

(e) A placard stating that ''Operations involving the carriage of persons or property for compensation or hire are prohibited,'' must be located in the area of the Airworthiness Certificate holder at the entrance to the flightdeck.

(f) For passenger capacities of 45 to 60 passengers, analysis must be submitted that demonstrates that the airplane can be evacuated in less than 90 seconds under the conditions specified in § 25.803 and appendix J to part 25.

(g) In order for any airplane certified under this SFAR to be placed in part 135 or part 121 operations, the airplane must be brought back into full compliance with the applicable operational part.

*Equipment and Design*

3. *General.* Unless otherwise noted, compliance is required with the applicable certification basis for the airplane. Some provisions of this SFAR impose alternative requirements to certain airworthiness standards that do not apply to airplanes certificated to earlier standards. Those airplanes with an earlier certification basis are not required to comply with those alternative requirements.

4. *Occupant Protection.*

(a) Firm Handhold. In lieu of the requirements of § 25.785(j), there must be means provided to enable persons to steady themselves in moderately rough air while occupying aisles that are along the cabin sidewall, or where practicable, bordered by seats (seat backs providing a 25-pound minimum breakaway force are an acceptable means of compliance).

(b) Injury criteria for multiple occupancy side-facing seats. The following requirements are only applicable to airplanes that are subject to § 25.562.

(1) *Existing Criteria.* All injury protection criteria of § 25.562(c)(1) through (c)(6) apply to the occupants of side-facing seating. The Head Injury Criterion (HIC) assessments are only required for head contact with the seat and/or adjacent structures.

(2) *Body-to-Body Contact.* Contact between the head, pelvis, torso or shoulder area of one Anthropomorphic Test Dummy (ATD) with the head, pelvis, torso or shoulder area of the ATD in the adjacent seat is not allowed during the tests conducted in accordance with § 25.562(b)(1) and (b)(2). Contact during rebound is allowed.

(3) *Thoracic Trauma.* If the torso of an ATD at the forward-most seat place impacts the seat and/or adjacent structure during testing, compliance with the Thoracic Trauma Index (TTI) injury criterion must be substantiated by dynamic test or by rational analysis based on previous test(s) of a similar seat installation. TTI data must be acquired with a Side Impact Dummy (SID), as defined by 49 CFR part 572, subpart F, or an equivalent ATD or a more appropriate ATD and must be processed as defined in Federal Motor Vehicle Safety Standards (FMVSS) part 571.214, section S6.13.5 (49 CFR 571.214). The TTI must be less than 85, as defined in 49 CFR part 572, subpart F. Torso contact during rebound is acceptable and need not be measured.

(4) *Pelvis.* If the pelvis of an ATD at any seat place impacts seat and/or adjacent structure during testing, pelvic lateral acceleration injury criteria must be substantiated by dynamic test or by rational analysis based on previous test(s) of a similar seat installation. Pelvic lateral acceleration may not exceed 130g. Pelvic acceleration data must be processed as defined in FMVSS part 571.214, section S6.13.5 (49 CFR 571.214).

(5) *Body-to-Wall/Furnishing Contact.* If the seat is installed aft of a structure—such as an interior wall or furnishing that may contact the pelvis, upper arm, chest, or head of an occupant seated next to the structure—the structure or a conservative representation of the structure and its stiffness must be included in the tests. It is recommended, but not required, that the contact surface of the actual structure be covered with at least two inches of energy absorbing protective padding (foam or equivalent) such as Ensolite.

(6) *Shoulder Strap Loads.* Where upper torso straps (shoulder straps) are used for sofa occupants, the tension loads in individual straps may not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads may not exceed 2,000 pounds.

(7) *Occupant Retention.* All side-facing seats require end closures or other means to prevent the ATD's pelvis from translating beyond the end of the seat at any time during testing.

(8) *Test Parameters.*

(i) All seat positions need to be occupied by ATDs for the longitudinal tests.

(ii) A minimum of one longitudinal test, conducted in accordance with the conditions specified in § 25.562(b)(2), is required to assess the injury criteria as follows. Note that if a seat is installed aft of structure (such as an interior wall or furnishing) that does not have a homogeneous surface, an additional test or tests may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example, different yaw angles could result in different injury considerations and may require separate tests to evaluate.

(A) For configurations without structure (such as a wall or bulkhead) installed directly forward of the forward seat place, Hybrid II ATDs or equivalent must be in all seat places.

(B) For configurations with structure (such as a wall or bulkhead) installed directly forward of the forward seat place, a side impact dummy or equivalent ATD or more appropriate ATD must be in the forward seat place and a Hybrid II ATD or equivalent must be in all other seat places.

(C) The test may be conducted with or without deformed floor.

(D) The test must be conducted with either no yaw or 10 degrees yaw for evaluating occupant injury. Deviating from the no yaw condition may not result in the critical area of contact not being evaluated. The upper torso restraint straps, where installed, must remain on the occupant's shoulder during the impact condition of § 25.562(b)(2).

(c) For the vertical test, conducted in accordance with the conditions specified in § 25.562(b)(1), Hybrid II

ATDs or equivalent must be used in all seat positions.

5. *Direct View.* In lieu of the requirements of § 25.785(h)(2), to the extent practical without compromising proximity to a required floor level emergency exit, the majority of installed flight attendant seats must be located to face the cabin area for which the flight attendant is responsible.

6. *Passenger Information Signs.* Compliance with § 25.791 is required except that for § 25.791(a), when smoking is to be prohibited, notification to the passengers may be provided by a single placard so stating, to be conspicuously located inside the passenger compartment, easily visible to all persons entering the cabin in the immediate vicinity of each passenger entry door.

7. *Distance Between Exits.* For an airplane that is required to comply with § 25.807(f)(4), in effect as of July 24, 1989, which has more than one passenger emergency exit on each side of the fuselage, no passenger emergency exit may be more than 60 feet from any adjacent passenger emergency exit on the same side of the same deck of the fuselage, as measured parallel to the airplane's longitudinal axis between the nearest exit edges, unless the following conditions are met:

(a) Each passenger seat must be located within 30 feet from the nearest exit on each side of the fuselage, as measured parallel to the airplane's longitudinal axis, between the nearest exit edge and the front of the seat bottom cushion.

(b) The number of passenger seats located between two adjacent pairs of emergency exits (commonly referred to as a passenger zone) or between a pair of exits and a bulkhead or a compartment door (commonly referred to as a ''dead-end zone''), may not exceed the following:

(1) For zones between two pairs of exits, 50 percent of the combined rated capacity of the two pairs of emergency exits.

(2) For zones between one pair of exits and a bulkhead, 40 percent of the rated capacity of the pair of emergency exits.

(c) The total number of passenger seats in the airplane may not exceed 33 percent of the maximum seating capacity for the airplane model using the exit ratings listed in § 25.807(g) for the original certified exits or the maximum allowable after modification when exits are deactivated, whichever is less.

(d) A distance of more than 60 feet between adjacent passenger emergency exits on the same side of the same deck of the fuselage, as measured parallel to the airplane's longitudinal axis between the nearest exit edges, is allowed only once on each side of the fuselage.

8. *Emergency Exit Signs.* In lieu of the requirements of § 25.811(d)(1) and (2) a single sign at each exit may be installed provided:

(a) The sign can be read from the aisle while directly facing the exit, and

(b) The sign can be read from the aisle adjacent to the passenger seat that is farthest from the exit and that does not have an intervening bulkhead/divider or exit.

9. *Emergency Lighting.*

(a) *Exit Signs.* In lieu of the requirements of § 25.812(b)(1), for airplanes that have a passenger seating configuration, excluding pilot seats, of 19 seats or less, the emergency exit signs required by § 25.811(d)(1), (2), and (3) must have red letters at least 1-inch high on a white background at least 2 inches high. These signs may be internally electrically illuminated, or self illuminated by other than electrical means, with an initial brightness of at least 160 microlamberts. The color may be reversed in the case of a sign that is self-illuminated by other than electrical means.

(b) *Floor Proximity Escape Path Marking.* In lieu of the requirements of § 25.812(e)(1), for cabin seating compartments that do not have the main cabin aisle entering and exiting the compartment, the following are applicable:

(1) After a passenger leaves any passenger seat in the compartment, he/she must be able to exit the compartment to the main cabin aisle using only markings and visual features not more that 4 feet above the cabin floor, and

(2) Proceed to the exits using the marking system necessary to accomplish the actions in § 25.812(e)(1) and (e)(2).

(c) *Transverse Separation of the Fuselage.* In the event of a transverse separation of the fuselage, compliance must be shown with § 25.812(l) except as follows:

(1) For each airplane type originally type certificated with a maximum passenger seating capacity of 9 or less, not more than 50 percent of all electrically illuminated emergency lights required by § 25.812 may be rendered inoperative in addition to the lights that are directly damaged by the separation.

(2) For each airplane type originally type certificated with a maximum passenger seating capacity of 10 to 19, not more than 33 percent of all electrically illuminated emergency lights required by § 25.812 may be rendered inoperative in addition to the lights that are directly damaged by the separation.

10. *Interior doors.* In lieu of the requirements of § 25.813(e), interior doors may be installed between passenger seats and exits, provided the following requirements are met.

(a) Each door between any passenger seat, occupiable for taxi, takeoff, and landing, and any emergency exit must have a means to signal to the flightcrew, at the flightdeck, that the door is in the open position for taxi, takeoff and landing.

(b) Appropriate procedures/limitations must be established to ensure that any such door is in the open configuration for takeoff and landing.

(c) Each door between any passenger seat and any exit must have dual means to retain it in the open position, each of which is capable of reacting the inertia loads specified in § 25.561.

(d) Doors installed across a longitudinal aisle must translate laterally to open and close, e.g., pocket doors.

(e) Each door between any passenger seat and any exit must be frangible in either direction.

(f) Each door between any passenger seat and any exit must be operable from either side, and if a locking mechanism is installed, it must be capable of being unlocked from either side without the use of special tools.

11. *Width of Aisle.* Compliance is required with § 25.815, except that aisle width may be reduced to 0 inches between passenger seats during in-flight operations only, provided that the applicant demonstrates that all areas of the cabin are easily accessible by a crew member in the event of an emergency (*e.g.,* in-flight fire, decompression). Additionally, instructions must be provided at each passenger seat for restoring the aisle width required by § 25.815. Procedures must be established and documented in the AFM to ensure that the required aisle widths are provided during taxi, takeoff, and landing.

12. *Materials for Compartment Interiors.* Compliance is required with the applicable provisions of § 25.853, except that compliance with appendix F, parts IV and V, to part 25, need not be demonstrated if it can be shown by test or a combination of test and analysis that the maximum time for evacuation of all occupants does not exceed 45 seconds under the conditions specified in appendix J to part 25.

13. *Fire Detection.* For airplanes with a type certificated passenger capacity of 20 or more, there must be means that meet the requirements of § 25.858(a)

through (d) to signal the flightcrew in the event of a fire in any isolated room not occupiable for taxi, takeoff and landing, which can be closed off from the rest of the cabin by a door. The indication must identify the compartment where the fire is located. This does not apply to lavatories, which continue to be governed by § 25.854.

14. *Cooktops.* Each cooktop must be designed and installed to minimize any potential threat to the airplane, passengers, and crew. Compliance with this requirement must be found in accordance with the following criteria:

(a) Means, such as conspicuous burner-on indicators, physical barriers, or handholds, must be installed to minimize the potential for inadvertent personnel contact with hot surfaces of both the cooktop and cookware. Conditions of turbulence must be considered.

(b) Sufficient design means must be included to restrain cookware while in place on the cooktop, as well as representative contents, e.g., soup, sauces, etc., from the effects of flight loads and turbulence. Restraints must be provided to preclude hazardous movement of cookware and contents. These restraints must accommodate any cookware that is identified for use with the cooktop. Restraints must be designed to be easily utilized and effective in service. The cookware restraint system should also be designed so that it will not be easily disabled, thus rendering it unusable. Placarding must be installed which prohibits the use of cookware that cannot be accommodated by the restraint system.

(c) Placarding must be installed which prohibits the use of cooktops (i.e., power on any burner) during taxi, takeoff, and landing.

(d) Means must be provided to address the possibility of a fire occurring on or in the immediate vicinity of the cooktop. Two acceptable means of complying with this requirement are as follows:

(1) Placarding must be installed that prohibits any burner from being powered when the cooktop is unattended. (**Note**: This would prohibit a single person from cooking on the cooktop and intermittently serving food to passengers while any burner is powered.) A fire detector must be installed in the vicinity of the cooktop which provides an audible warning in the passenger cabin, and a fire extinguisher of appropriate size and extinguishing agent must be installed in the immediate vicinity of the cooktop. Access to the extinguisher may not be blocked by a fire on or around the cooktop.

(2) An automatic, thermally activated fire suppression system must be installed to extinguish a fire at the cooktop and immediately adjacent surfaces. The agent used in the system must be an approved total flooding agent suitable for use in an occupied area. The fire suppression system must have a manual override. The automatic activation of the fire suppression system must also automatically shut off power to the cooktop.

(e) The surfaces of the galley surrounding the cooktop which would be exposed to a fire on the cooktop surface or in cookware on the cooktop must be constructed of materials that comply with the flammability requirements of part III of appendix F to part 25. This requirement is in addition to the flammability requirements typically required of the materials in these galley surfaces. During the selection of these materials, consideration must also be given to ensure that the flammability characteristics of the materials will not be adversely affected by the use of cleaning agents and utensils used to remove cooking stains.

(f) The cooktop must be ventilated with a system independent of the airplane cabin and cargo ventilation system. Procedures and time intervals must be established to inspect and clean or replace the ventilation system to prevent a fire hazard from the accumulation of flammable oils and be included in the instructions for continued airworthiness. The ventilation system ducting must be protected by a flame arrestor. [**Note**: The applicant may find additional useful information in Society of Automotive Engineers, Aerospace Recommended Practice 85, Rev. E, entitled ''Air Conditioning Systems for Subsonic Airplanes,'' dated August 1, 1991.]

(g) Means must be provided to contain spilled foods or fluids in a manner that will prevent the creation of a slipping hazard to occupants and will not lead to the loss of structural strength due to airplane corrosion.

(h) Cooktop installations must provide adequate space for the user to immediately escape a hazardous cooktop condition.

(i) A means to shut off power to the cooktop must be provided at the galley containing the cooktop and in the cockpit. If additional switches are introduced in the cockpit, revisions to smoke or fire emergency procedures of the AFM will be required.

(j) If the cooktop is required to have a lid to enclose the cooktop there must be a means to automatically shut off power to the cooktop when the lid is closed.

15. *Hand-Held Fire Extinguishers.*

(a) For airplanes that were originally type certificated with more than 60 passengers, the number of hand-held fire extinguishers must be the greater of—

(1) That provided in accordance with the requirements of § 25.851, or

(2) A number equal to the number of originally type certificated exit pairs, regardless of whether the exits are deactivated for the proposed configuration.

(b) Extinguishers must be evenly distributed throughout the cabin. These extinguishers are in addition to those required by paragraph 14 of this SFAR, unless it can be shown that the cooktop was installed in the immediate vicinity of the original exits.

16. *Security.* The requirements of § 25.795 are not applicable to airplanes approved in accordance with this SFAR.

Issued in Washington, DC, on February 11, 2009.

**Lynne A. Osmus,**

*Acting Administrator.*

[FR Doc. E9–10807 Filed 5–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–0419; Directorate Identifier 2009–NM–050–AD; Amendment 39–15898; AD 2009–10–03]**

**RIN 2120–AA64**

## Airworthiness Directives; 328 Support Services GmbH Dornier Model 328–100 and –300 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 a recent Aileron Dual Load Path and Linkage Inspection, which is a certification maintenance requirement (CMR) task, the installed control rods were found to be corroded. The affected rod assemblies

were removed for investigation and it was found that the Tab Side Fitting was cracked.

Subsequently, similar cracks were found on another aeroplane in a supporting lever of the Control Rod attachment fitting of the Trim Tab. Those cracks were found during the applicable CMR inspection.

This condition, if not corrected, could lead to structural failure of the dual load path attachment arrangement of the affected trim and spring tabs, possibly resulting in a flutter problem that could lead to loss of control of the aeroplane.

* * * * *

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

**DATES:** This AD becomes effective May 26, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 26, 2009.

We must receive comments on this AD by June 8, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 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 Groves, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1503; 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 2009–0044, dated February 27, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During a recent Aileron Dual Load Path and Linkage Inspection, which is a certification maintenance requirement (CMR) task, the installed control rods were found to be corroded. The affected rod assemblies were removed for investigation and it was found that the Tab Side Fitting was cracked.
>
> Subsequently, similar cracks were found on another aeroplane in a supporting lever of the Control Rod attachment fitting of the Trim Tab. Those cracks were found during the applicable CMR inspection.
>
> This condition, if not corrected, could lead to structural failure of the dual load path attachment arrangement of the affected trim and spring tabs, possibly resulting in a flutter problem that could lead to loss of control of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires a one-time inspection of all flight controls trim and spring tab assemblies and their surrounding area, the replacement of any parts that are found to be cracked and the reporting of all findings to the TC [type certificate] holder. This AD is considered to be an interim action and the current [CMR] inspection interval for the affected parts may be reduced.

You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

328 Support Services has issued Service Bulletins SB–328–27–483 and SB–328J–27–233, both including Compliance Report, both dated December 30, 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.

**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 structural failure of the control rod attachment fittings could lead to control surface flutter, and consequent loss of control of the airplane. 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–2009–0419; Directorate Identifier 2009–NM–050–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:

**2009–10–03 328 Support Services GmbH (Formerly, AvCraft Aerospace GmbH, formerly Fairchild Dornier GmbH, formerly Dornier Luftfahrt GmbH):** Amendment 39–15898. Docket No. FAA–2009–0419; Directorate Identifier 2009–NM–050–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective May 26, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to 328 Support Services GmbH Dornier Model 328–100 and –300 airplanes, certificated in any category, all serial numbers.

**Subject**

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

**Reason**

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

During a recent Aileron Dual Load Path and Linkage Inspection, which is a certification maintenance requirement (CMR) task, the installed control rods were found to be corroded. The affected rod assemblies were removed for investigation and it was found that the Tab Side Fitting was cracked.

Subsequently, similar cracks were found on another aeroplane in a supporting lever of the Control Rod attachment fitting of the Trim Tab. Those cracks were found during the applicable CMR inspection.

This condition, if not corrected, could lead to structural failure of the dual load path attachment arrangement of the affected trim and spring tabs, possibly resulting in a flutter problem that could lead to loss of control of the aeroplane.

For the reasons described above, this [European Aviation Safety Agency (EASA)] AD requires a one-time inspection of all flight controls trim- and spring tab assemblies and their surrounding area, the replacement of any parts that are found to be cracked and the reporting of all findings to the TC [type certificate] holder. This AD is considered to be an interim action and the current [CMR] inspection interval for the affected parts may be reduced.

**Actions and Compliance**

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

(1) Within 3 months after the effective date of this AD: Do a detailed visual inspection of all flight controls trim and spring tab assemblies and their surrounding area, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–27–483 or 328 Support Services Service Bulletin SB–328J–27–233, both dated December 30, 2008, as applicable.

(2) If any crack is detected during any inspection required by this AD: Before further flight, replace the cracked fitting with a new fitting in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–27–483 or 328 Support Services Service Bulletin SB–328J–27–233, both dated December 30, 2008, as applicable.

(3) At the applicable time specified in paragraph (f)(3)(i) or (f)(3)(ii) of this AD: Using the Compliance Report attached to 328 Support Services SB–328–27–483 or 328 Support Services Service Bulletin SB–328J–27–233, both dated December 30, 2008, as applicable, send 328 Support Services GmbH a report of findings (both positive and negative) found during the inspection required by paragraph (f)(1) of this AD. The report must include the inspection results, a description of any cracks found, the airplane serial number, and the number of landings and flight hours on the airplane. Send the report to: Attention: Dept. P1, 328 Support Services, Customer Services, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax 49 8153 88111 6565; e-mail *gsc.op@328support.de.*

(i) For any inspection done on or after the effective date of this AD: Within 30 days after the inspection.

(ii) For any inspection done before the effective date of this AD: 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**

(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: Tom Groves, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1503; 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, 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 2009–0044, dated February 27, 2009; and 328 Support Services Service Bulletins SB–328–27–483 and SB–328J–27–233, both dated December 30, 2008; for related information.

**Material Incorporated by Reference**

(i) You must use 328 Support Services Service Bulletin SB–328–27–483, dated December 30, 2008, including Compliance Report; or 328 Support Services Service Bulletin SB–328J–27–233, dated December 30, 2008, including Compliance Report; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. (Only the odd-numbered pages of these documents contain the issue date of the documents.)

(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 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; e-mail *gsc.op@328support.de;* Internet *http://www.328support.de.*

(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 April 29, 2009.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–10655 Filed 5–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 199

**[Docket ID: DOD–2007–HA–0048]**

## TRICARE; Hospital Outpatient Prospective Payment System (OPPS): Statement Concerning Additional Public Comments Following Final Rule Issuance

**AGENCY:** Office of the Secretary, Department of Defense (DoD).

**ACTION:** Response to comments.

**SUMMARY:** This document is to inform the public of DoD's views regarding the additional public comments that were invited by the document published February 6, 2009 (74 FR 6228), on the final rule issued December 10, 2008 (73 FR 74945). DoD is making no changes to the final rule as implementation of the Temporary Military Contingency Payment Adjustment (TMCPA) included in the final rule will accommodate the major concerns expressed in the additional public comments.

**DATES:** *Effective Date:* The effective date of the final rule issued December 10, 2008, is unchanged; it continues to be May 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** David Bennett or Martha M. Maxey, TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Branch; *telephone:* (303) 676–3494 or (303) 676–3627.

**SUPPLEMENTARY INFORMATION:**

DoD received approximately 300 public comments during the additional comment period, mostly following a similar pattern from or on behalf of hospitals. In the additional public comments received, there were three predominant themes: (1) That for some hospitals, particularly some close to military installations, TRICARE OPPS would have a significant financial impact; (2) DoD should follow the Medicare precedent in making first-year OPPS implementation cost neutral; and (3) DoD should follow the TRICARE CHAMPUS Maximum Allowable Charge physician payment system reform precedent and limit reductions to no more than 15 percent per year during the transition period.

DoD is not making any changes to the final rule. Implementation of the TMCPAs under the final rule will accommodate the concerns expressed by hospitals. TMA has provided instructions to TRICARE Regional Offices on TMCPAs and included additional guidance in the TRICARE Reimbursement Manual, Chapter 13, Section 3, paragraph III.D.5.g. at *http://manuals.tricare.osd.mil.* A Transitional Adjustment Information Paper is also available on TMA's OPPS Web site at *http://www.tricare.mil/opps/.*

Dated: May 5, 2009.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E9–10708 Filed 5–7–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket No. USCG–2009–0107]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events; Patuxent River, Patuxent River, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for ''U.S. Naval Air Station Patuxent River Air Expo 2009'', an aerial demonstration to be held over the waters of the Patuxent River adjacent to Patuxent River, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in portions of the Patuxent River during the aerial demonstration.

**DATES:** This rule is effective from May 21 through May 24, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0107 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0107 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, at 757–398–6204 or e-mail at *Dennis.M.Sens@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 March 24, 2009, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Patuxent River, Patuxent

River, MD in the **Federal Register** (74 FR 12287). We received no comments on the proposed rule. No public meeting was requested, and none was held.

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.** The potential dangers posed by high performance aircraft operating in close proximity to adjacent waterways and to ensure compliance with FAA rules make special local regulations necessary. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. However, the Coast Guard will provide advance notifications to users of the effected waterways via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers.

**Background and Purpose**

On May 23, 2009 and May 24, 2009, U.S. Naval Air Station Patuxent River, Maryland will sponsor the ''U.S. Naval Air Station Patuxent River Air Expo 2009''. The public event will consist of military and civilian aircraft performing low-flying, high speed precision maneuvers and aerial stunts over both the airfield at Naval Air Station Patuxent River and the waters of the Patuxent River. Federal Aviation Administration restrictions require that portions of the Blue Angels and aerobatic performance boxes take place over the waters of the Patuxent River. In addition to the air show dates, on May 21, 2009 and May 22, 2009, military and civilian aircraft performing in the air show will conduct practice and demonstration maneuvers and stunts over both the airfield at Naval Air Station Patuxent River and specified waters of the Patuxent River. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the vicinity of the air shows, practices and demonstrations, and during other scheduled activities related to the air show.

**Discussion of Comments and Changes**

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Patuxent River, MD.

**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.

Although this rule prevents vessel traffic from transiting a portion of the Patuxent River during the Air Show event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

**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 would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in this segment of the Patuxent River during the event. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during the air show. In some cases, vessels may be able to safely transit around or through the regulated area at various times with the permission of the Coast Guard Patrol Commander. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 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 the category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under section 2.B.2, Figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States. Such events have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water events and activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing.

Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

**List of Subjects in 33 CFR Part 100**

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. Add a temporary section, § 100.35–T05–0107 to read as follows:

**§ 100.35–T05–0107 Special Local Regulations for Marine Events; Patuxent River, Patuxent River, MD.**

(a) *Regulated area.* The following locations are regulated areas:

(1) All waters of the lower Patuxent River, near Solomons, Maryland, located between Fishing Point and the base of the break wall marking the entrance to the East Seaplane Basin at Naval Air Station Patuxent River, within an area bounded by a line connecting position latitude 38°17′39″ N, longitude 076°25′47″ W; thence to latitude 38°17′47″ N, longitude 076°26′00″ W; thence to latitude 38°18′09″ N, longitude 076°25′40″ W; thence to latitude 38°18′00″ N, longitude 076°25′25″ W, located along the shoreline at U.S. Naval Air Station Patuxent River, Maryland.

(2) All waters of the lower Patuxent River, near Solomons, Maryland, located between Hog Point and Cedar Point, within an area bounded by a line drawn from a position at latitude 38°18′41″ N, longitude 076°23′43″ W; to latitude 38°18′16″ N, longitude 076°22′35″ W; thence to latitude 38°18′12″ N, longitude 076°22′37″ W; thence to latitude 38°18′36″ N, longitude 076°23′46″ W, located adjacent to the shoreline at U.S. Naval Air Station Patuxent River, Maryland. All coordinates reference Datum NAD 1983.

(b) *Definitions*—(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer of the U.S. Coast Guard on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) *Enforcement period.* This section will be enforced as follows:

(1) During the air show practice from 9 a.m. to 5 p.m. on May 21, 2009.

(2) Air show practice and modified show from 9 a.m. to 5 p.m. on May 22, 2009.

(3) ''Meet the Performers Party'' (at Cedar Point Officers' Club) performance from 6 p.m. to 9 p.m. on May 22, 2009.

(4) Air show performances from 9 a.m. to 5 p.m. on May 23 and 24, 2009.

Dated: April 27, 2009.

**Fred M. Rosa, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. E9–10751 Filed 5–7–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2009–0288]**

### Safety Zone; Chicago Harbor, Navy Pier East, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Navy Pier East Safety Zone in Chicago Harbor from 9 p.m. until 9:40 p.m. on May 22, 2009. This action is necessary to protect vessels and people from the hazards associated with fireworks displays. All vessels must obtain permission from the Captain of the Port or his on-scene representative to enter, move within or exit the safety zone.

**DATES:** The regulations in § 165.933 will be enforced from 9 p.m. on May 22, 2009 to 9:40 p.m. on May 22, 2009.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail LCDR Kimber Bannan, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154, e-mail *Kimber.L.Bannon@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Safety Zone, Navy Pier East, Chicago Harbor, Chicago, IL, found in 33 CFR 165.933 (published on June 13, 2007 at 72 FR 32525) on May 22, 2009 from 9 p.m. through 9:40 p.m., for the Municipal Clerks of Illinois Fireworks.

The general regulations in 33 CFR 165.23 apply. All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or a designated representative. All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

This notice is issued under authority of 33 CFR 165.933 Safety Zone, Navy Pier East, Chicago Harbor, Chicago, IL, and 5 U.S.C. 552(a). In addition to this notice in the Federal Register, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners and Local Notice to Mariners.

The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on channel 16, VHF–FM.

Dated: April 23, 2009.

**Bruce C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. E9–10756 Filed 5–7–09; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2009–0043; FRL–8901–8]**

### Finding of Failure To Submit State Implementation Plans Required for the 1997 8-Hour Ozone National Ambient Air Quality Standard; North Carolina and South Carolina

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking a final action finding that North Carolina and South Carolina have failed to submit state implementation plan (SIP) revisions to satisfy certain requirements of the Clean Air Act (CAA) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The submissions at issue were due because the Charlotte bi-state area (Charlotte Area), which includes areas in both North and South Carolina, is a moderate nonattainment area for the 1997 8-hour ozone standard. Under the CAA and EPA's implementing regulations, states with nonattainment areas classified as moderate, serious, severe or extreme were required to submit by June 15, 2007, SIPs: demonstrating how each nonattainment area would attain the 1997 8-hour ozone standard as expeditiously as practicable but no later than the applicable dates established in the implementing regulations and demonstrating reasonable further progress (RFP). Additionally, states were required by September 15, 2006, to submit for these same areas, SIPs demonstrating that sources specified under the CAA were subject to reasonably available control technology requirements (RACT). North Carolina and South Carolina made these required submissions but later withdrew the attainment demonstration submissions for the Charlotte Area. As a result, EPA is making a finding of failure to submit for both North Carolina and South Carolina of the attainment demonstrations for the Charlotte Area.

**DATES:** *Effective Date:* This action is effective on May 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** General questions concerning this notice should be addressed to Mr. Richard A. Schutt, U.S. EPA Region 4; *e-mail: Schutt.dick@epa.gov;* telephone (404) 562–9033.

**SUPPLEMENTARY INFORMATION:**

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### I. Background

The CAA requires states with areas that are designated nonattainment for the 1997 8-hour ozone NAAQS to develop a SIP providing how such areas will attain and maintain the NAAQS. Part D of title I of the CAA specifies the required elements of a SIP for an area designated nonattainment. These requirements include, but are not limited to, RFP, RACT, and an attainment demonstration. *See* CAA sections 172 and 182. On March 24, 2008, EPA published a final rule in the **Federal Register** announcing that EPA had found that 11 states failed to make required SIP submissions for 11 nonattainment areas and 3 states or portions of states in the Ozone Transport Region. 73 FR 15416. At that time, EPA was in receipt of the required submissions from North Carolina and South Carolina for RFP, RACT and an attainment demonstration. However, both North Carolina and South Carolina have since withdrawn their attainment demonstration submittals, thus resulting in their failure to submit a required SIP.

EPA received the required submittals from North Carolina on June 15, 2007, and South Carolina on August 31, 2007. EPA reviewed the submittals, as well as air quality data from the ozone season in 2007 and, more recently, preliminary

data from the ozone season in 2008. After undertaking this review, EPA sent North Carolina and South Carolina letters on November 17, 2008, explaining its intention to propose disapproval of the attainment demonstrations for the Charlotte Area for the 1997 8-hour ozone standard by January 9, 2009, unless the States requested voluntary reclassification from moderate to serious. EPA's letter was prompted by air quality data for the area which indicates that the area will be unable to meet the latest moderate area attainment date of June 2010, which was the attainment date relied on in the submitted attainment demonstrations. On December 19, 2008, and December 22, 2008, the states of North Carolina and South Carolina, respectively, submitted letters to EPA withdrawing their attainment demonstrations for the Charlotte area. As such, EPA no longer has pending before it the required attainment demonstrations for the 1997 8-hour ozone standard for either the North Carolina or South Carolina portion of the Charlotte Area. Therefore, EPA is now making a finding of failure to submit for North Carolina and South Carolina for these required SIPs. Specifically, this finding is for the attainment demonstration requirement found in sections 172, 182(b), of the CAA, and 40 CFR 51.112 and 40 CFR 51.908 (c) and (d), of EPA's implementing regulations.

On January 9, 2009, letters were sent to North Carolina and South Carolina informing them that as a result of the withdrawal of their attainment demonstrations, EPA would be moving forward with a finding of failure to submit the attainment demonstration SIP elements. On January 9, 2009, EPA also sent the Catawba Indian Nation a letter informing them of this pending EPA action. The Catawba Indian Nation has land that is included in York County, South Carolina, which is included as part of the Charlotte Area.[1] These letters, and any accompanying enclosures, have been included in the docket to this rulemaking.

## II. Statutory Requirements

On July 18, 1997, EPA issued a revised ozone standard. At that time, the ozone standard was 0.12 parts per million (ppm) measured over a 1-hour period. EPA revised the NAAQS to rely on an 8-hour averaging period (versus 1 hour for the previous NAAQS), and the level of the standard was changed from 0.12 ppm to 0.08 ppm (62 FR 38856). EPA's initial implementation strategy for the 1997 8-hour standard was vacated and remanded by the Supreme Court. *Whitman* v. *American Trucking Associations, Inc.,* 531 U.S. 457 (2001). On April 30, 2004 (69 FR 23951) and on November 29, 2005 (70 FR 71612), EPA published final rules that addressed the elements related to implementation of the 1997 8-hour ozone NAAQS (Phase 1 and Phase 2 Implementation Rules). In an April 30, 2004, rulemaking (69 FR 23858), EPA designated attainment and nonattainment areas for the 1997 8-hour ozone standard, and specified the classification for each nonattainment area. The 1997 8-hour ozone designations took effect on June 15, 2004. The November 30, 2005, Phase 2 implementation rule set forth deadlines for state and local governments to develop and submit to EPA implementation plans designed to meet the 1997 8-hour standard by reducing air pollutant emissions contributing to ground-level ozone concentrations. The Phase 2 Rule required states with nonattainment areas to submit SIPs by June 15, 2007, demonstrating how each nonattainment area would attain the 1997 8-hour ozone standard as expeditiously as practicable, but no later than specified dates and demonstrating how the area would make reasonable further progress toward attainment in the years prior to the attainment year. Additionally, the Phase 2 Rule required states to submit SIPs requiring RACT for nonattainment areas and for areas within the OTR by September 15, 2006.

## III. Consequences of Findings of Failure To Submit

The CAA establishes specific consequences if EPA finds that a state has failed to submit a SIP or, with regard to a submitted SIP, EPA determines it is incomplete or disapproves it. CAA section 179(a)(1). Additionally, any of these findings also triggers an obligation for EPA to promulgate a Federal Implementation Plan (FIP) if the states have not submitted, and EPA has not approved the required SIP within 2 years of the finding. CAA section 110(c). The first finding, that a state has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding relevant to this action.

EPA is finding that North Carolina and South Carolina have failed to make required attainment demonstration SIP submissions for the Charlotte Area. If EPA has not affirmatively determined that North Carolina and South Carolina have made the required complete submittals for the area within 18 months of the effective date of this action, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in the area subject to the finding.[2] The highway funding sanction will apply six months after the offset sanctions applies if EPA has not determined that the states submitted complete attainment demonstration submittals within that time. The sanctions clock will stop and the sanctions will not take effect if, within the required timeframe after the date of the finding, EPA finds that the States have made complete attainment demonstration submittals. In addition, we note that if the area is reclassified to serious or above for the 1997 8-hour standard, the area will then have a new attainment demonstration requirement for its new classification and such reclassification would stop the sanction clock triggered for the moderate area attainment demonstration.

In addition, this finding triggers EPA's FIP obligation. However, EPA is not required to promulgate a FIP if the States make the required SIP submittals and EPA takes final action to approve the submittals within 2 years of EPA's finding. Additionally, if the area is reclassified for the 1997 ozone standard, EPA would be relieved of the FIP obligation.

## IV. Final Action

In this action, EPA is making a finding that North Carolina and South Carolina have failed to submit the required moderate-area attainment demonstration SIP submittals for the Charlotte Area for the 1997 8-hour ozone standard. This finding starts the sanctions clock and a 24-month clock for the promulgation of a FIP by EPA. This action will be effective on May 8, 2009.

[1] The Catawba Indian Nation does not have jurisdiction over CAA implementation. *See, e.g.,* 69 FR 23858, 23862 (April 30, 2004) (EPA 8-hour ozone classifications explaining Tribal involvement).

[2] If EPA has not affirmatively determined that the state has made a complete submission within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in areas designated nonattainment, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. If the highway funding sanction is implemented, the conformity status of the transportation plans and transportation improvement programs will lapse on the date of implementation of the highway sanctions. During a conformity lapse, only projects that are exempt from transportation conformity, transportation control measures that are in the approved SIP, and project phases that were approved prior to the start of the lapse can proceed.

## V. Statutory and Executive Order Reviews

*A. Notice and Comment Under the Administrative Procedure Act (APA)*

This is a final EPA action, but is not subject to notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit elements of SIP submissions required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. *See* 58 FR 51270, 51272, n.17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

*B. Effective Date Under the APA*

This action will be effective on May 8, 2009. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to specify an earlier effective date. This action concerns SIP submissions that are already overdue; and EPA previously cautioned the affected states that the SIP submissions were overdue and that EPA was considering taking this action. In addition, this action simply starts a ''clock'' that will not result in sanctions against the states for 18 months, and that the states may ''turn off'' through the submission of complete SIP submittals. These reasons support an effective date prior to 30 days after the date of publication.

*C. Executive Order 12866: Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' because none of the above factors apply. As such, this final rule was not submitted to OMB for review.

*D. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule relates to the requirement in the CAA for states to submit SIPs under section Part D of title I of the CAA to satisfy elements required for the 1997 8-hour ozone NAAQS. The present final rule does not establish any new information collection requirement. Burden means that 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. 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 the CFR are listed in 40 CFR part 9.

*E. Regulatory Flexibility Act (RFA)*

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because although the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirement.

*F. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on state, local and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandate'' that may result in expenditures to state, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small government on compliance with regulatory requirements. This action

does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any 1 year by either state, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create any additional requirements beyond those of the 1997 8-hour ozone NAAQS (62 FR 38652; 62 FR 38856, July 18, 1997), therefore, no UMRA analysis is needed. EPA has determined that this action is not a Federal mandate. The CAA provisions require states to submit SIPs. This notice merely provides a finding that the States at issue have not met the requirement to submit certain SIPs and begins a clock that could result in the imposition of sanctions if the states continue to not meet this statutory obligation. This notice does not, by itself, require any particular action by any state, local, or Tribal government; or by the private sector. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any 1 year.

*G. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, or the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' This final rule does not have federalism implications. 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 Executive Order 13132. The CAA establishes the scheme whereby states take the lead in developing plans to meet the NAAQS and the Federal Government acts as a backstop where states fail to take the required actions. This rule will not modify the relationship of the states and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

*H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' EPA has concluded that this final rule will not have Tribal implications. It will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. This rule responds to the requirement in the CAA for states to submit SIPs to satisfy the nonattainment area requirements of the CAA for the 1997 8-hour ozone NAAQS. The CAA requires states with areas that are designated nonattainment for the NAAQS to develop a SIP describing how the state will attain and maintain the NAAQS. There are Tribal governments within certain nonattainment areas for which this rule turns on a sanctions clock. However, this rule does not have Tribal implications because it does not impose any compliance costs on Tribal governments nor does it preempt Tribal law. The rule will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

*I. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action should reduce the levels of harmful pollutants in the air that should reduce harmful effects on children.

*J. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In this action, EPA is finding that several states have failed to submit SIPs to satisfy certain nonattainment area requirements of the CAA for the 1997 8-hour ozone NAAQS.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This notice finds that certain states have not met the requirement to submit one or more SIPs and begins a clock that could result in the imposition of sanctions if the states continue to not meet this statutory obligation. If the states fail to submit the required SIPs or if they submit SIPs that EPA cannot approve, then EPA will be required to develop the plans in lieu of the states.

*L. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

*M. Congressional Review Act*

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 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 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). This rule will be effective May 8, 2009.

*N. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date final action is published in the **Federal Register.** Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. Thus, any petitions for review of this action making findings of failure to submit attainment demonstration SIPs for the Charlotte Area, must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register.**

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 29, 2009.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E9–10683 Filed 5–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 745

## Lead-Based Paint Poisoning Prevention in Certain Residential Structures

*CFR Correction*

In Title 40 of the Code of Federal Regulations, parts 700 to 789, revised as of July 1, 2008, on page 609, in § 745.225, remove the phrase ''lead-based paint activities'' and add in its place the phrase ''renovator, dust sampling technician, or lead-based paint activities'' in paragraphs (c)(13)(i) (two occurrences); (c)(13)(ii) introductory text, (A), and (B); (c)(13)(iii); (c)(13)(vi); and (c)(13)(viii).

[FR Doc. E9–10939 Filed 5–7–09; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 46 CFR Part 8

**[Docket No. USCG–2008–1014]**

**RIN 1625–AB31**

## International Air Pollution Prevention (IAPP) Certificates

**AGENCY:** Coast Guard, DHS.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** By this direct final rule, the Coast Guard amends its vessel inspection regulations to add the International Air Pollution Prevention (IAPP) certificate to the list of certificates a recognized classification society may be authorized to issue on behalf of the United States. This action is being taken because the United States recently deposited an instrument of ratification with the International Maritime Organization for Annex VI of the International Convention for the Prevention of Pollution by Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78). As a result, Annex VI entered into force for the United States on January 8, 2009. This rulemaking will offer a more efficient means for U.S. ships to obtain an IAPP certificate.

**DATES:** This rule is effective August 6, 2009, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via *http://www.regulations.gov* on or before June 22, 2009 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by June 22, 2009, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

**ADDRESSES:** You may submit comments identified by docket number USCG–2008–1014 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 methods. For instructions on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Mr. Wayne Lundy, Systems Engineering Division, Coast Guard, telephone 202–372–1379. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents for the Preamble**

## I. 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.

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1014), indicate the specific section of this document to which each comment applies, and give the reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone 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*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–1014'' in the Docket ID box, press Enter, and 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 them 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.

### *B. 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*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–1014'' in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the internet, you may also view the docket online by visiting 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.

### *C. Privacy Act*

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

### *D. Public Meeting*

We do not now plan to hold a public meeting. But you may use the same means of submitting a comment to request a public meeting. In your request, explain why you believe this additional forum for public comments 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**.

## II. Abbreviations

Annex VI MARPOL Annex Re Prevention of Air Pollution From Ships
APPS Act to Prevent Pollution from Ships
CFR Code of Federal Regulations
DHS Department of Homeland Security
EIAPP Engine International Air Pollution Prevention
EPA Environmental Protection Agency
IAPP International Air Pollution Prevention
IMO International Maritime Organization
MARPOL International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978
MPPA Maritime Pollution Prevention Act of 2008
NEPA National Environmental Policy Act of 1969
NTTAA National Technology Transfer and Advancement Act
U.S.C. United States Code

## III. Regulatory Information

We are publishing this direct final rule under 33 CFR 1.05–55 because we do not expect an adverse comment. If no adverse comment or notice of intent to submit an adverse comment is received by June 22, 2009, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule.

A comment is considered ''adverse'' if it explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change. If an adverse comment applies only to part of this rule and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we cannot proceed to a direct final rule following receipt of an adverse comment, and we decide to proceed with a rulemaking, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

## IV. Background and Purpose

On May 19, 2005, air pollution prevention regulations in Annex VI to the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL), came into force internationally. Under the terms of the convention, Article V(4), nations that are parties to MARPOL Annex VI may require ships in their waters to comply with these international air pollution prevention regulations. The International Air Pollution Prevention (IAPP) Certificate and Engine International Air Pollution Prevention (EIAPP) Certificate are used to document compliance with MARPOL Annex VI.

On July 21, 2008, the United States enacted the Maritime Pollution Prevention Act of 2008 (MPPA), Pub. L. 110–280, 122 Stat 2611. The MPPA amends the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. 1901–1910, for the purpose of implementing MARPOL Annex VI. The U.S. State Department deposited the U.S. instrument of ratification for Annex VI with the International Maritime Organization (IMO) on October 8, 2008. Under MARPOL Article 15(5), Annex VI entered into force for the United States on January 8, 2009. With the exception of EIAPP certificates to be issued by the Environmental Protection Agency

(EPA), in 33 U.S.C. 1904, Congress directs the Secretary of the Department of Homeland Security (DHS) to designate those persons authorized to issue on behalf of the United States the certificates required by the MARPOL Protocol. The Secretary delegated that authority to the Coast Guard Commandant in DHS Delegation No. 0170.1 sec. 2(77). The Commandant has delegated authority to issue IAPP certificates to the Assistant Commandant for Marine Safety, Security and Stewardship and Coast Guard Officers in Charge, Marine Inspection (OCMI).

Under authority of 46 U.S.C. 3103, 3306, 3316, 3703, the Coast Guard may delegate authority to issue international convention certificates to a recognized classification society. Because the United States had not ratified MARPOL Annex VI until recently, our Vessel Inspection Alternatives regulations in 46 CFR part 8 do not include the IAPP certificate as one of the international certificates that may be so delegated. In this direct final rule, we are adding the IAPP certificate to the list of international certificates that a recognized classification society may be authorized to issue on our behalf.

Regulation 7 of MARPOL Annex VI, which entered into force internationally on May 19, 2005, prohibits issuing an IAPP certificate to a ship that is entitled to fly the flag of a State which is not a Party to MARPOL Annex VI. Although the U.S. deposited the instrument of ratification on October 8, 2008, MARPOL Annex VI did not enter into force for the United States until January 8, 2009. Starting on that date, IAPP certificates may be issued to U.S. ships.

Before January 8, 2009, U.S. ships had not been able to obtain an IAPP certificate. This put them at risk of port state control from nations already party to MARPOL Annex VI. Therefore, the Coast Guard coordinated with the EPA to reduce that risk by documenting compliance with MARPOL Annex VI without issuing an IAPP certificate.

Under this program, owners and operators of those ships required by MARPOL Annex VI to have an EIAPP certificate could request a statement of voluntary compliance with the MARPOL Annex VI engine certification provisions from EPA. See discussion in 68 FR 9746, at 9756–57 and 9769–70, February 28, 2003. Once the statement of voluntary compliance was issued by EPA, the ship owner or operator could ask the Coast Guard or a recognized classification society for a statement of voluntary compliance with all the provisions in MARPOL Annex VI. The owners and operators of ships not required by MARPOL Annex VI to have an EIAPP certificate could approach the Coast Guard or a recognized classification society directly for a statement of voluntary compliance for the ship. Therefore, to obtain a statement of voluntary compliance, U.S. ships underwent, on a voluntary basis, the same surveys, testing, and inspection called for by MARPOL Annex VI for an IAPP certificate.

Since the United States is now a party to MARPOL Annex VI, ship owners and operators possessing a valid statement of voluntary compliance issued by the Coast Guard or a recognized classification society may exchange the statement of voluntary compliance for an IAPP certificate if they have obtained an Engine International Air Pollution Prevention (EIAPP) certificate from the EPA. To make this exchange, ship owners and operators should request an EIAPP certificate from the EPA. Then, the owner or operator should display the EIAPP to the local Coast Guard OCMI or a recognized classification society to receive the IAPP certificate. Owners and operators of ships not required by MARPOL Annex VI to have an EIAPP certificate may simply approach the local OCMI or recognized classification society directly for an IAPP certificate. Under this process, the new IAPP certificate would have the same expiration date as the statement of voluntary compliance.

Alternatively, an owner or operator could have the ship undergo an initial inspection to obtain an IAPP certificate. If the ship were required to have an EIAPP, it could not be issued an IAPP certificate without first having obtained an EIAPP certificate from the EPA.

For further information, Policy Letter 09–01 from the Coast Guard Office of Vessel Activities provides guidance for owners and operators of U.S. and foreign flag ships that operate in U.S. waters regarding compliance with the provisions of MARPOL 73/78. This policy letter and other guidance pertaining to Annex VI compliance, including links to Annex VI, the NOx Technical code, and EPA EIAPP Certificate information, are available on the Coast Guard's Annex VI information web site at *http://homeport.uscg.mil* by selecting the following tabs: Missions > Domestic Vessels > Domestic Vessel General > MARPOL ANNEX VI.

## V. Discussion of Rule

Through this direct final rule, the Coast Guard amends 46 CFR 8.320(b) by adding the MARPOL 73/78 International Air Pollution Prevention Certificate to the current list of certificates in that section.

## VI. 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.

### *A. Regulatory Planning and Review*

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

The rule does not impose mandatory actions on the U.S. maritime industry. Industry will have to meet the conditions of MARPOL Annex VI regardless of whether this rulemaking is promulgated.

This rule initiates the process that may allow recognized classification societies to issue IAPP certificates on behalf of the Coast Guard. The full range of activities related to compliance with the MARPOL Annex VI requirements are beyond the scope of this limited rulemaking and are not accounted for under this rule as these activities will take place in the absence of this rulemaking.

However, as a result of the rule, classification societies may take action to request delegation of authority to conduct IAPP inspections and certifications. In response, the Coast Guard would evaluate the application and may issue a delegation of authority.

Although voluntary, classification societies may incur minor costs associated with requesting the delegation of authority to conduct IAPP inspections and certifications. The Coast Guard may incur costs associated with the evaluation of these requests and the issuance of delegations of authority to recognized classification societies.

We estimate that the rule potentially affects five classification societies that may request delegation of authority to issue IAPP certifications. We use OMB-approved collections of information (1625–0101, 1625–0095, 1625–0093, and 1625–0041) to estimate the costs and burden.

We estimate that it will take classification society employees about 5.25 hours to review the rulemaking requirements and prepare the delegation request, at an average cost of $458.50 per classification society (3.5 hours @ $112 per hour for a director and 1.75 hours @ $38 per hour for a secretary). We estimate the total one-time costs for

all five classification societies to be $2,300 (rounded).

In addition, we estimate that the federal government (Coast Guard) will incur one-time costs to review and approve the requests for delegation. Based on the OMB-approved collections of information discussed above, we estimate that it will take about 3.5 hours to review and approve each request for delegation and 1.5 hours to issue an order to delegate authority for a total one-time government cost of $1,800 based on OMB-approved collection of information estimates.

We estimate the total one-time cost of this rule to be $4,100 (non-discounted) for classification societies and the government combined.

The rulemaking would result in several direct and indirect benefits to the U.S. maritime industry. The rule may result in a reduction in potential wait time for IAPP certificates. In the absence of delegation of authority to classification societies, vessel owners and operators might have to queue for IAPP certificates from the Coast Guard. Combined with the Coast Guard's other activities, such a process could result in an unnecessary and burdensome wait for vessels. The Coast Guard might have to redirect resources that would have been used for other missions which may result in a less efficient use of government resources. Finally, the rulemaking may mitigate potential consequences to U.S. vessels due to non-compliance with MARPOL Annex VI, including costly vessel detentions in foreign ports.

*B. 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.

Classification societies affected by this rule will most likely be classified under one of the following North American Industry Classification System (NAICS) 6-digit codes for water transportation: 488330—Navigation Services to Shipping or 488390—Other Support Activities for Water Transportation. According to the Small Business Administration's size standards, a U.S. company classified under these NAICS codes with annual revenues less than $7 million is considered a small entity.

We have determined that there is only one U.S. classification society affected by this rule. We researched size and revenue data using proprietary and public business databases and found that this entity earns more than $7 million in annual revenue and is not considered a small entity by the Small Business Administration's size standards. In addition, we found other classification societies not to be small and foreign owned and operated. However, this rule is not mandatory and classification societies, regardless of size, will only choose to participate if the benefits are greater than the costs.

Therefore, 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. 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 to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

*C. 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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Wayne Lundy, Systems Engineering Division, Coast Guard, telephone 202–372–1379. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*D. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). On April 8, 2008, we published a notice in the **Federal Register** announcing our plans to seek a 3-year extension of OMB's approval of our 1625–0041 collection of information entitled, ''Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates'' (73 FR 19082, April 8, 2008), under which IAPP voluntary compliance certificates are issued.

That notice invited comments on our proposed information collection request. Our proposed information collection request estimated the burden for requests and delegation of certificates similar to the IAPP certificates. We received no comments in response to that notice and submitted our information collection request to OMB. 73 FR 41364, July 18, 2008. We received OMB approval without change on November 19, 2008. However, we expect only five entities will be affected by this requirement in the first year it is implemented. As such, this rule contains no new collection of information under the Paperwork Reduction Act.

*E. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if the rule 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.

*F. Unfunded Mandates Reform Act*

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

*G. Taking of Private Property*

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

*H. Civil Justice Reform*

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

*I. Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to

health or risk to safety that may disproportionately affect children.

*J. Indian Tribal Governments*

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

*K. Energy Effects*

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

*L. Technical Standards*

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

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. In the separate action of a recognized classification society issuing an IAPP, any technical standards applied would be those from MARPOL Annex VI itself and 33 U.S.C. 1907(a), which makes it unlawful to act in violation of the MARPOL Protocol. MARPOL Protocol is now defined to include Annex VI. 33 U.S.C. 1901(a)(4)&(5).

*M. Environment*

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

**List of Subjects for 46 CFR Part 8**

Administrative practice and procedure, Incorporation by reference, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Vessels.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 8 as follows:

## PART 8—VESSEL INSPECTION ALTERNATIVES

■ 1. The authority citation for part 8 continues to read as follows:

**Authority:** 46 U.S.C. 3103, 3306, 3316, 3703; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 8.320—

■ a. In paragraph (b)(10), remove the word ''and'';

■ b. In paragraph (b)(11), remove the period and add, in its place, ''; and''; and

■ c. Add new paragraph (b)(12) to read as follows:

**§ 8.320 Classification society authorization to issue international certificates.**

* * * * *

(b) * * *

(12) MARPOL 73/78 International Air Pollution Prevention Certificate.

* * * * *

Dated: April 30, 2009.

**Jeffrey G. Lantz,**

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

[FR Doc. E9–10749 Filed 5–7–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 970730185–7206–02]**

**RIN 0648–XO98**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2009 Gulf of Mexico Recreational Fishery for Red Snapper

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS closes the recreational fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf). In addition, a person aboard a vessel for which a Federal charter vessel/headboat permit for Gulf reef fish has been issued, must also abide by these closure provisions in state waters if the Federal closure provisions are more restrictive than applicable state law. NMFS has determined this action is necessary to prevent the recreational fishery from exceeding its quota for the fishing year. This closure is necessary to prevent overfishing of Gulf red snapper.

**DATES:** The closure is effective 12:01 a.m., local time, August 15, 2009, through December 31, 2009. The recreational fishery will reopen on June 1, 2010, the beginning of the 2010 recreational fishing season.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Branstetter, telephone 727–551–5796, fax 727–824–5308, e-mail *Steve.Branstetter@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The red snapper fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

**Background**

Constraining harvest to the quota is crucial to meeting the legal requirements to prevent and end overfishing and rebuild the red snapper resource of the Gulf of Mexico. On February 28, 2008, new fishing regulations were implemented by NMFS

to reduce the harvest and discard of red snapper in the Gulf commercial and recreational directed snapper fishery and shrimp fishery. Regulatory changes for the recreational fishery included reducing the recreational quota to 2.45 million lb (1.11 million kg), reducing the recreational bag limit from 4 to 2 fish per person, prohibiting for-hire captain and crew from retaining bag limits of red snapper while under charter, and reducing the recreational season length from 194 days (April 21–October 31) to 122 days (June 1–September 30).

On March 25, 2008, NMFS announced the Gulf red snapper recreational fishery was being closed effective August 5, 2008, for the remainder of the 2008 fishing year (73 FR 15674). Projections at that time indicated the quota would be met or exceeded by that date due to incompatible regulations with some Gulf states. Despite the early closure and new regulatory measures, 2008 recreational red snapper landings were 3.65 million lb (1.66 million kg)--exceeding the quota by 1.2 million lb (0.5 million kg). This overage was in part due to incompatible regulations with some Gulf states, as well as larger, heavier red snapper being landed in 2008.

In 2009, red snapper state fishing season changes are proposed for the states of Alabama and Florida to further reduce recreational red snapper harvest. Both Florida and Alabama are proposing fishing seasons in state waters consistent with the Federal fishing season. No changes to fishing seasons are proposed for the remaining Gulf states. The fishing season in state waters off Mississippi will be the same as the Federal red snapper season, Louisiana's season currently extends from June 1 through September 30 but compatibility with the Federal fishing season is anticipated, and Texas will maintain a year-round fishing season in state waters.

Using reported landings for 2008, and taking into account state regulatory changes in 2009, NMFS projects the 2009 recreational red snapper quota will be met on August 14, 2009. Therefore, in accordance with 50 CFR 622.43(a), NMFS is closing the recreational red snapper fishery in the Gulf EEZ effective 12:01 a.m. local time on August 15, 2009; the recreational fishery will reopen on June 1, 2010, the beginning of the 2010 recreational fishing season. This quota closure also complies with section 407(d) of the Magnuson-Stevens Act, which requires that the retention of red snapper be prohibited for the remainder of the fishing year once the quota is met.

In addition to the Gulf EEZ closure, as specified in 50 CFR 622.4(a)(1)(iv), a person aboard a vessel for which a Federal charter vessel/headboat permit for Gulf reef fish has been issued must also abide by these closure provisions in state waters if Federal regulations regarding this closure are more restrictive than applicable state law. The closure is intended to prevent overfishing and increase the likelihood that the 2009 quota will not be exceeded. A detailed summary of the quota closure analysis can be found at *http://sero.nmfs.noaa.gov/*.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B). Such procedures would be unnecessary because the rule implementing the quota and the associated requirement for closure of the fishery when the quota is reached or projected to be reached already has been subject to notice and comment, and all that remains is to notify the public of the closure. NMFS is mandated by section 407(d) of the Magnuson-Stevens Act, to establish this quota; keep harvest within the quota; and close the fishery when the quota is reached. NMFS also has a legal obligation to keep harvest within the quota limits established by the stock rebuilding plan in the FMP.

Providing prior notice and opportunity for public comment on this action would be contrary to the public interest. Many of those affected by this closure, particularly charter vessel and headboat operations, book trips for clients months in advance and, therefore, need as much time as possible to adjust business plans to account for the closure. Delaying announcement of the closure rule to accommodate prior public notice and comment would result in significantly less advance notice of the definitive closure date; decrease the time available for affected participants to adjust business plans; and be very disruptive. Given the legal obligation to implement this closure in a timely manner, NMFS believes it is important to establish the closure date as soon as possible to allow affected participants the maximum amount of time to adjust their fishing activities consistent with the closure.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 5, 2009.

**Kristen C. Koch,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E9–10822 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No.070817467–8554–02]**

**RIN 0648–XP03**

## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Limited Access General Category Scallop Fishery to Individual Fishing Quota Scallop Vessels

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the Limited Access General Category (LAGC) Scallop Fishery will close to individual fishing quota (IFQ) scallop vessels until it re-opens on June 1, 2009, under current regulations. This action is based on the determination that the first quarter scallop total allowable catch (TAC) for LAGC IFQ scallop vessels (including vessels issued an IFQ letter of authorization (LOA) to fish under appeal), is projected to be landed. This action is being taken to prevent IFQ scallop vessels from exceeding the 2009 first quarter TAC, in accordance with the regulations implementing Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP), enacted by Framework 19 to the FMP, and the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** The closure of the LAGC fishery to all IFQ scallop vessels is effective 0001 hr local time, May 6, 2009, through May 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Don Frei, Fishery Management Specialist, (978) 281–9221, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing fishing activity in the LAGC fishery are found at §§ 648.59 and 648.60. Regulations specifically governing IFQ scallop vessel operations

in the LAGC fishery are specified at § 648.53(a)(8)(iii). These regulations authorize vessels issued a valid IFQ scallop permit to fish in the LAGC fishery under specific conditions, including a TAC. The TACs were established by the final rule that implemented Framework 19 to the FMP (73 FR 30790 May 29, 2008) and included a TAC of 1,606,508 lb (728,699.8 kg) that may be landed by IFQ vessels during the first quarter of the 2009 fishing year. The regulations at § 648.53(a)(8)(iii) require the LAGC fishery to be closed to IFQ vessels once the NMFS Northeast Regional Administrator has determined that the TAC is projected to be landed.

Based on dealer reporting and vessel pre-landing reports through Vessel Monitoring Systems (VMS), a projection concluded that, given current activity levels by IFQ scallop vessels in the area, 1,606,508 lb (728,699 kg) will have been landed on May 4, 2009. Therefore, in accordance with the regulations at § 648.53(a)(8)(iii), the LAGC scallop fishery is closed to all IFQ vessels as of 0001 hr local time, May 4, 2009. IFQ scallop vessels are not allowed to fish for, possess, or retain scallops; or declare, or initiate, a scallop trip following this closure for the remainder of the 2009 first quarter, through May 31, 2009. The LAGC scallop fishery will re-open to IFQ scallop vessels on June 1, 2009.

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

This action closes the LAGC scallop fishery to all IFQ scallop vessels until June 1, 2009,. The regulations at § 648.53(a)(8)(iii) require such action to ensure that IFQ scallop vessels do not exceed the 2009 first quarter TAC. The LAGC scallop fishery opened for the first quarter of the 2009 fishing year at 0001 hours on March 1, 2009. Data indicating the IFQ scallop fleet has landed all of the 2009 first quarter TAC have only recently become available. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest to allow a period public comment. If implementation of this closure is delayed to solicit prior public comment, the quota for this quarter will be exceeded, thereby undermining the conservation objectives of the FMP. Also, if the magnitude of any overage is significant, it would warrant a decrease in the third quarter quota. This would have a negative economic impact on vessels that fish seasonally in that period. The AA further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the 30 day delay in effectiveness for the reasons stated above.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 4, 2009.

**Kristen C. Koch,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E9–10673 Filed 5–4–09; 8:45 am]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 74, No. 88
Friday, May 8, 2009

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–0437; Directorate Identifier 2009–CE–018–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, PC–12/47 and PC–12/47E Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above that would 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 (two different MCAI) describe the unsafe conditions as:

FOCA AD HB 2002–271 was issued because the Nose Landing Gear (NLG) Right Hand (RH) upper drag link, Part Number (P/N) 532.20.12.140 was found broken on some aircraft due to fatigue cracking, and therefore a life limit of 4,000 landings was introduced.

Recent investigation of a new occurrence revealed that the replacement part NLG RH upper drag link P/N 532.20.12.289 also suffered fatigue cracking, however on a different location.

Complete failure of the NLG RH upper drag link could result in NLG collapse during landing.

and

This Airworthiness Directive (AD) is prompted by reports of several in-service cracked torque tubes. A reduced wall thickness produced during the manufacturing process has been determined to be the initial cause. Additionally, all the involved torque tubes have been found to show fatigue cracking problems.

Such a condition, if left uncorrected, could lead to failure of the torque tube and result in loss of the steering control on ground and consequent unsafe condition.

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

**DATES:** We must receive comments on this proposed AD by June 8, 2009.

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0437; Directorate Identifier 2009–CE–018–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

On July 7, 2003, we issued AD 2003–14–07, Amendment 39–13226 (68 FR 41903; July 16, 2003). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2003–14–07, an investigation of a new occurrence of an upper drag link failure revealed that the replacement part NLG RH upper drag link P/N 532.20.12.289 also suffered fatigue cracking, however at a different location.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2009–0086 dated April 14, 2009, and AD No.: 2009–0060 dated March 11, 2009 (referred to after this as ''the MCAI''), to correct the unsafe conditions for the specified products. The MCAI (two different MCAI) states:

FOCA AD HB 2002–271 was issued because the Nose Landing Gear (NLG) Right Hand (RH) upper drag link, Part Number (P/N) 532.20.12.140 was found broken on some aircraft due to fatigue cracking, and therefore a life limit of 4,000 landings was introduced.

Recent investigation of a new occurrence revealed that the replacement part NLG RH upper drag link P/N 532.20.12.289 also suffered fatigue cracking, however on a different location.

Complete failure of the NLG RH upper drag link could result in NLG collapse during landing. To address that condition, this AD is issued to mandate the implementation of the latest revision of the PC–12 Aircraft Maintenance Manual (AMM) chapter 4—airworthiness limitations section—by establishing repetitive inspections for the NLG RH upper drag links P/N 532.20.12.140 and P/N 532.20.12.289.

and

This Airworthiness Directive (AD) is prompted by reports of several in-service cracked torque tubes. A reduced wall thickness produced during the manufacturing process has been determined to be the initial cause. Additionally, all the

involved torque tubes have been found to show fatigue cracking problems.

Such a condition, if left uncorrected, could lead to failure of the torque tube and result in loss of the steering control on ground and consequent unsafe condition.

For the reason described above, this new AD mandates the replacement of certain torque tubes by new ones of an improved design and the latest revision of chapter 4 'limitations' of the PC–12 Aircraft Maintenance Manual (AMM) which introduces the new life limit for torque tubes with Part Number (P/N) 532.50.12.047.

You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

PILATUS AIRCRAFT LTD. has issued Service Bulletin No: 32–021, dated November 21, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of the Proposed AD**

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

**Differences Between This Proposed AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD will affect 540 products of U.S. registry. We also estimate that it would take about 3.5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $300 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $313,200, or $580 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $4,000, for a cost of $4,480 per product. We have no way of determining the number of products that may need these actions.

**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 39–13226 (68 FR 41903; July 16, 2003), and adding the following new AD:

**Pilatus Aircraft LTD.:** Docket No. FAA–2009–0437; Directorate Identifier 2009–CE–018–AD.

**Comments Due Date**

(a) We must receive comments by June 8, 2009.

**Affected ADs**

(b) This AD supersedes AD 2003–14–07, Amendment 39–13226.

**Applicability**

(c) This AD applies to the following model and serial number airplanes, certificated in any category:

(1) Models PC–12, PC–12/45, PC–12/47, manufacturer serial numbers (MSNs) 101 through 544, and MSNs 546 through 888; and

(2) Model PC–12/47E, MSN 545 and MSNs 1001 through 1150.

**Subject**

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

**Reason**

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

FOCA AD HB 2002–271 was issued because the Nose Landing Gear (NLG) Right Hand (RH) upper drag link, Part Number (P/N) 532.20.12.140 was found broken on some aircraft due to fatigue cracking, and therefore a life limit of 4,000 landings was introduced.

Recent investigation of a new occurrence revealed that the replacement part NLG RH upper drag link P/N 532.20.12.289 also suffered fatigue cracking, however on a different location.

Complete failure of the NLG RH upper drag link could result in NLG collapse during landing. To address that condition, this AD is issued to mandate the implementation of the latest revision of the PC–12 Aircraft Maintenance Manual (AMM) chapter 4—airworthiness limitations section—by establishing repetitive inspections for the NLG RH upper drag links P/N 532.20.12.140 and P/N 532.20.12.289.

and

This Airworthiness Directive (AD) is prompted by reports of several in-service cracked torque tubes. A reduced wall thickness produced during the manufacturing process has been determined to be the initial cause. Additionally, all the involved torque tubes have been found to show fatigue cracking problems.

Such a condition, if left uncorrected, could lead to failure of the torque tube and result in loss of the steering control on ground and consequent unsafe condition.

For the reason described above, this new AD mandates the replacement of certain torque tubes by new ones of an improved design and the latest revision of chapter 4 'limitations' of the PC–12 Aircraft Maintenance Manual (AMM) which introduces the new life limit for torque tubes with Part Number (P/N) 532.50.12.047.

**Actions and Compliance**

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

(1) *Limitations Section Actions:* For all airplanes, before further flight after the effective date of this AD, insert Structural and Component Limitations—Airworthiness Limitations, document 12–A–04–00–00–00A–000T–A, dated January 28, 2009 (for PC–12, PC–12/45, PC–12/47), and Structural and Component Limitations—Airworthiness Limitations, document 12–B–04–00–00–00A–000A–A, dated January 27, 2009 (for PC–12/47E), into the Limitations section of the FAA-approved maintenance program (e.g., maintenance manual). The owner/operator holding at least a private pilot certificate as authorized by 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. The limitations section revision does the following:

(i) Establishes a life limit for torque tube P/N 532.50.12.047 and does not impose a life limit on torque tube P/N 532.50.12.064;

(ii) Requires doing initial and repetitive inspections of nose landing gear right hand upper drag link P/N 532.20.12.140 (for PC–12 and PC–12/45 airplanes) or P/N 532.20.12.289 (for all airplanes) in accordance with the time limits specified in the revision. The previous limitations did not allow installation of the upper drag link P/N 532.20.12.140 on PC–12/47 and PC–12/47E. The 4,000 landing limit for the upper drag link P/N 532.20.12.140 installed on the PC–12 and PC–12/45 is retained from AD 2003–14–07 through this limitation requirement; and

(iii) Does not require doing initial and repetitive inspections of nose landing gear right hand upper drag link P/N 532.20.12.296; therefore, installation of upper drag link P/N 532.20.12.296 terminates the inspection requirement referenced in paragraph (f)(1)(ii) of this AD.

(2) *Additional Torque Tube Actions:*

(i) For PC–12 and PC–12/45, S/N 101 through 299, airplanes: Within the next 100 hours time-in-service (TIS) after the effective date of this AD or 1 year after the effective date of this AD, whichever occurs first, replace the torque tube P/N 532.50.12.047 with torque tube P/N 532.50.12.064 following PILATUS AIRCRAFT LTD. Service Bulletin No: 32–021, dated November 21, 2008.

(ii) For all airplanes: As of the effective date of this AD, do not install torque tube P/N 532.50.12.047.

**FAA AD Differences**

**Note:** 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, 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.

**Special Flight Permit**

(i) We are limiting the special flight permits for this AD by requiring you to fly with the landing gear extended in order to reach the nearest maintenance facility where the inspection or replacement is done.

**Related Information**

(j) Refer to MCAI (two different MCAI) AD No.: 2009–0086 dated April 14, 2009, and AD No.: 2009–0060 dated March 11, 2009; PILATUS AIRCRAFT LTD. Service Bulletin No: 32–021, dated November 21, 2008; Structural and Component Limitations—Airworthiness Limitations, document 12–A–04–00–00–00A–000T–A, dated January 28, 2009; and Structural and Component Limitations—Airworthiness Limitations, document 12–B–04–00–00–00A–000A–A, dated January 27, 2009, for related information.

Issued in Kansas City, Missouri, on May 1, 2009.

**Scott A. Horn,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–10728 Filed 5–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

## SOCIAL SECURITY ADMINISTRATION

## 20 CFR Parts 404 and 416

**[Docket No. SSA 2006–0182]**

**RIN 0960–AG29**

## Age as a Factor in Evaluating Disability

**AGENCY:** Social Security Administration.

**ACTION:** Proposed rules; withdrawal.

**SUMMARY:** We are withdrawing the proposed rules entitled ''Age as a Factor in Evaluating Disability'' that we published in the **Federal Register** on November 4, 2005.

**DATES:** The proposed rules published on November 4, 2005 at 70 FR 67101 are withdrawn as of May 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Call (410) 965–1758 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number 1–(800) 772–1213 or TTY 1–(800) 325–0778. You may also contact Social Security Online at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

### Background

In the notice of proposed rulemaking (NPRM) we published in the **Federal Register** on November 4, 2005, we proposed to revise by 2 years the age categories we use as one of the criteria in determining disability under titles II and XVI of the Social Security Act. The proposed rules reflected our adjudicative experience, advances in medical treatment and healthcare, changes in the workforce since we originally published our rules for considering age in 1978, and current and future increases in the full retirement age under Social Security law. (70 FR at 67101.) We received almost 900 public comments on the NPRM. We have decided to withdraw the proposal while we continue to consider public comments and other relevant data sources.

Dated: May 1, 2009.

**Michael J. Astrue,**

*Commissioner of Social Security.*

[FR Doc. E9–10733 Filed 5–7–09; 8:45 am]

**BILLING CODE 4191–02–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG–2008–1017]**

**RIN 1625–AA11**

## Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington

**AGENCY:** Coast Guard, DHS.

**ACTION:** Proposed rule; notice of reopening of comment period; request for comments.

**SUMMARY:** The Coast Guard announces the reopening of the comment period to receive comments on the notice of proposed rulemaking (NPRM) entitled ''Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington'' that was published in the **Federal Register** on February 12, 2009. As stated in the NPRM, the Coast Guard proposes to establish Regulated Navigation Areas (RNA) covering specific bars along the coasts of Oregon and Washington that will include procedures for restricting and/or closing those bars as well as additional safety requirements for recreational and small commercial vessels operating in the RNAs. The RNAs are necessary to help ensure the safety of the persons and vessels operating in those hazardous bar areas. The RNAs will do so by establishing clear procedures for restricting and/or closing the bars and mandating additional safety requirements for recreational and small commercial vessels operating in the RNAs when certain conditions exist.

**DATES:** The comment period for the proposed rule published on February 12, 2009 (74 FR 7022), is reopened and will close on June 30, 2009. All comments and related material must be received by the Coast Guard on or before June 30, 2009.

**ADDRESSES:** You may submit written comments identified by docket number USCG–2008–1017 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. Our online docket for this rulemaking is available on the Internet at *http://www.regulations.gov* under docket number USCG–2008–1017. For instructions on submitting comments, see the ''Public Participating and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning the proposed rule, please call or e-mail LCDR Emily Saddler, Thirteenth Coast Guard District, Prevention Division, Inspections and Investigations Branch; telephone 206–220–7210, e-mail *Emily.C.Saddler@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

We published an NPRM in the **Federal Register** on February 12, 2009 (74 FR 7022), entitled ''Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington.'' On April 13, 2009 (74 FR 16814), we published a notice of public meetings and the reopening of the comment period to April 14, 2009.

In the NPRM, we propose to establish Regulated Navigation Areas (RNA) covering specific bars along the coasts of Oregon and Washington that will include procedures for restricting and/or closing those bars as well as additional safety requirements for recreational and small commercial vessels operating in the RNAs. The RNAs are necessary to help ensure the safety of the persons and vessels operating in those hazardous bar areas. The RNAs will do so by establishing clear procedures for restricting and/or closing the bars and mandating additional safety requirements for recreational and small commercial vessels operating in the RNAs when certain conditions exist.

### Public Participation and Request for Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1017), 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, or by fax, mail or hand delivery, but please use only one of these means. 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*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–1017'' in the Docket ID box, press Enter, and 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 them 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.

You may view the NPRM in our online docket, in addition to supporting documents prepared by the Coast Guard, including an ''Environmental Analysis Checklist'' and RNA Fact Sheets for recreational, passenger, and commercial fishing vessels, and comments submitted thus far by going to *http://www.regulations.gov.* Once there, select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–1017 in the Docket ID box, press Enter, and then click on the item in the Docket ID 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; or the Thirteenth Coast Guard District, Prevention Division, Inspections and Investigations Branch in Room 3506 on the 35th floor of the Jackson Federal Building, 915 Second Avenue, Seattle, WA 98174, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate in this rulemaking by submitting comments via one of the methods listed under **ADDRESSES**. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Comments must reach the Coast Guard on or before June 30, 2009. 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.

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).

Dated: April 27, 2009.

**J.P. Currier,**

*Rear Admiral, U.S. Coast Guard Commander, Thirteenth Coast Guard District.*

[FR Doc. E9–10755 Filed 5–7–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900–AN13**

### Vocational Rehabilitation and Employment Program—Basic Entitlement; Effective Date of Induction Into a Rehabilitation Program; Cooperation in Initial Evaluation

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the vocational rehabilitation and employment regulations of the Department of Veterans Affairs (VA). Specifically, it proposes to amend provisions concerning: individuals' basic entitlement to vocational rehabilitation benefits and services; effective dates of induction into a rehabilitation program, including retroactive induction; and cooperation and lack of cooperation in the initial evaluation process. The proposed amendments are intended to update pertinent regulations to reflect changes in law, VA's interpretation of applicable law, and VA's determination of appropriate procedures, and to improve clarity.

**DATES:** Comments must be received on or before July 7, 2009.

**ADDRESSES:** Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN13—Vocational Rehabilitation and Employment Program—Basic Entitlement, etc.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–9613.

**SUPPLEMENTARY INFORMATION:** In 38 CFR Part 21, Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31, we propose to revise VA's regulations in 38 CFR 21.40 concerning basic entitlement to vocational rehabilitation benefits and services; in § 21.282 concerning effective dates of induction into a rehabilitation program; and in § 21.50(d) concerning cooperation and lack of cooperation in the initial evaluation process. We note that VA previously addressed changes in the provision of services under 38 U.S.C. chapter 31 that resulted from a court decision and the enactment of Public Law 104–275, the Veterans Benefits Improvement Act of 1996. This included VA's issuance of Circular 28–97–1 in 1997 (last revised in October 2004) to provide guidance regarding the implementation of these changes. The proposed rule would update 38 CFR part 21 consistent with current VA practice. In addition, the proposed rule would make other nonsubstantive changes.

#### Basic Entitlement to Vocational Rehabilitation Benefits and Services

We propose to revise § 21.40 to include criteria, effective October 1, 1993, for vocational rehabilitation basic entitlement determinations resulting from the Veterans' Benefits Act of 1992 (Pub. L. 102–568), enacted October 29, 1992. Public Law 102–568 amended 38 U.S.C. 3102(2) to entitle veterans to vocational rehabilitation if they have a 10 percent service-connected disability and are determined by the Secretary of Veterans Affairs to be in need of rehabilitation because of a serious employment handicap.

The proposed changes to § 21.40 are also intended to reflect the provisions of section 602(c) of the Veterans Benefits Improvement Act of 1994 (Pub. L. 103–446), which amended section 404(b) of Public Law 102–568 with a technical correction, effective October 29, 1992. VA's interpretation of the effect of these statutory changes is to give individuals basic entitlement to vocational rehabilitation if:

- They have a 10 percent service-connected disability;
- They originally applied for assistance under chapter 31 of title 38, United States Code, before November 1, 1990; and
- VA determines they need rehabilitation because of an employment handicap.

In addition, the proposed changes to § 21.40 are intended to make clarifying changes and to restructure and rewrite this section in reader-focused plain English.

Due to changes that this document proposes in the structure of § 21.40, we are proposing to make a conforming change to refer elsewhere in Subpart A to § 21.40 rather than § 21.40(a).

#### Effective Dates of Induction Into a Rehabilitation Program, Including Retroactive Induction

In § 21.282, we propose to reflect a decision by the United States Court of Appeals for Veterans Claims (then the United States Court of Veterans Appeals) in *Bernier* v. *Brown,* 7 Vet. App. 434 (1995), which concerned effective dates for induction into a program of rehabilitation benefits and services. The *Bernier* decision set aside two provisions of current § 21.282 that limit retroactive induction into programs of rehabilitation benefits and services under 38 U.S.C. chapter 31. The first provision, in current § 21.282(b)(2)(ii), prohibits retroactive induction for any period for which an individual received another VA education benefit. The other provision, in current § 21.282(c), limits retroactive induction to no more than one year prior to the date of application for chapter 31 benefits and services. We address each of these provisions in our proposed revision of § 21.282.

Under proposed § 21.282, VA would be able to retroactively approve a period of training that occurred within an individual's period of eligibility under 38 CFR 21.41 through 21.46, beginning for a veteran on the effective date of the individual's entitlement to disability compensation, provided that the

individual met the criteria for entitlement to chapter 31 benefits and services for that period. VA must also determine that the training and other rehabilitation services that the individual received during the period of retroactive induction were reasonably needed to achieve the planned goals and objectives identified for the individual. If the individual received other VA-administered education benefits during any portion of that period, VA must offset the previous education benefits received against the payment of chapter 31 vocational rehabilitation benefits for the same period.

We propose to add specific language in § 21.282(b) and (c) to clarify when an individual on active duty can qualify for retroactive induction and when the conditions for retroactive induction may apply to both veterans and servicemembers. For servicemembers, we propose, as one condition for retroactive induction, that the period of retroactive induction must be within a period under proposed § 21.40(c) during which a servicemember was awaiting discharge for disability. In § 21.282(b), we also propose to include clear statements, applicable in the case of an individual who is retroactively inducted, regarding authorization by VA of payment for tuition, fees, and other verifiable expenses that an individual paid or incurred consistent with an approved rehabilitation program, and authorization by VA of payments of subsistence allowance for the period of retroactive induction, not including any period for which the individual was on active duty, in order to provide more complete information for the benefit of the reader. In § 21.282(c), we propose to restructure current provisions to more objectively state the conditions that must be met before an individual may be inducted into a rehabilitation program on a retroactive basis in order to comply fully with pertinent statutory authorities.

In response to the invalidation of language in current § 21.282(c) in *Bernier,* we propose to state in § 21.282(d) that the effective date for retroactive induction is the date on which all the entitlement conditions set forth in proposed § 21.282(c) are met, and for a veteran (except as to a period prior to discharge from active duty) in no event before the effective date of a VA rating establishing a qualifying level of service-connected disability under § 21.40. We believe this change will bring the effective-date provision in line with the court's decision, and with 38 U.S.C. 5113.

We are also proposing nonsubstantive changes in § 21.282 for purposes of clarity and a conforming change in the center heading preceding § 21.282.

**Cooperation and Lack of Cooperation in the Initial Evaluation Process**

This document also proposes changes with regard to § 21.50, Initial evaluations. In the **Federal Register** of March 26, 2007, (72 FR 14041), VA published amendments to several sections in 38 CFR part 21, including § 21.50. Here, we propose a further amendment, to revise § 21.50(d), Need for cooperation in evaluation. The changes are intended to reflect VA's determination of appropriate procedures and to clarify the action VA will take if an individual fails to cooperate with the counseling psychologist (CP) or vocational rehabilitation counselor (VRC) in the initial evaluation process. In brief, this document's proposed revision would provide that if after reasonable efforts are made to secure an individual's cooperation the individual continues to be uncooperative, VA will ''suspend'' that evaluation process. The changes proposed in this document would add references to § 21.362, Satisfactory conduct and cooperation, and § 21.364, Unsatisfactory conduct and cooperation. The changes would remove from that paragraph an unnecessary and potentially confusing statement that ''[a] redetermination of entitlement as described in § 21.58 will be made in the case of an individual whose program has been discontinued due to failure to cooperate.'' During the initial evaluation process, it would not be correct to consider the individual to have already been inducted into a program, and therefore it would not be correct to state that his or her ''program'' has been discontinued. In addition, we believe that § 21.50(d) does not need to refer to the provisions of § 21.58 concerning redeterminations.

**Paperwork Reduction Act of 1995**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The program that this rule would affect has the following Catalog of Federal Domestic Assistance number

and title: 64.116, Vocational Rehabilitation for Disabled Veterans.

**List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 24, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 21 (subpart A) as follows:

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. Revise the authority citation for part 21, subpart A to read as follows:

**Authority:** 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

## Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

2. The subpart A heading is revised as set forth above.

3. Revise the undesignated center heading immediately preceding § 21.40 and that section to read as follows:

**Entitlement**

### § 21.40 Basic entitlement to vocational rehabilitation benefits and services.

An individual meets the basic entitlement criteria for vocational rehabilitation benefits and services under this subpart if VA determines that he or she meets the requirements of paragraph (a), (b), (c), or (d) of this section. For other requirements affecting the provision of vocational rehabilitation benefits and services, see §§ 21.41 through 21.46 (period of eligibility), § 21.53 (reasonable feasibility of achieving a vocational goal), and §§ 21.70 through 21.79 (months of entitlement).

(a) *Veterans with at least 20 percent disability.* The individual is a veteran who meets all of the following criteria:

(1) Has a service-connected disability or combination of disabilities rated 20 percent or more under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

(b) *Veterans with 10 percent disability.* The individual is a veteran who meets all of the following criteria:

(1) Has a service-connected disability or combination of disabilities rated less than 20 percent under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of a serious employment handicap.

(c) *Servicemembers awaiting discharge.* The individual is a servicemember who, while waiting for discharge from the active military, naval, or air service, is hospitalized, or receiving outpatient medical care, services, or treatment, for a disability that VA will likely determine to be service-connected. In addition, VA must have determined that:

(1) The hospital or other medical facility providing the hospitalization, care, service, or treatment is doing so under contract or agreement with the Secretary concerned, or is under the jurisdiction of the Secretary of Veterans Affairs or the Secretary concerned;

(2) The individual is in need of rehabilitation because of an employment handicap; and

(3) The individual has a disability or combination or disabilities that will likely be:

(i) At least 10 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; or

(ii) At least 20 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 on or after November 1, 1990.

(d) *Exception for veterans who first applied after March 31, 1981, and before November 1, 1990.* The individual is a veteran who:

(1) Has a service-connected disability or combination of disabilities rated less than 20 percent under 38 U.S.C. chapter 11;

(2) Originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; and

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

**Authority:** 38 U.S.C. ch. 11, 3102, 3103, 3106; sec. 8021(b), Public Law 101–508, 104 Stat. 1388–347; sec. 404(b), Public Law 102–568, 106 Stat. 4338, as amended by sec. 602, Public Law 103–446, 108 Stat. 4671)

### § 21.42 [Amended]

4. In § 21.42, remove ''§ 21.40(a)'' each place that it appears in paragraph (a) and add, in its place, ''§ 21.40''.

### § 21.47 [Amended]

5. In § 21.47, remove ''§ 21.40(a)'' from paragraph (b)(3) and add, in its place, ''§ 21.40''.

6. Revise § 21.50(d) to read as follows:

### § 21.50 Initial evaluation.

* * * * *

(d) *Need for cooperation in the initial evaluation process.* The individual's cooperation is essential in the initial evaluation process. If the individual does not cooperate, the CP or VRC will make reasonable efforts to secure the individual's cooperation. If, despite those efforts, the individual fails to cooperate, VA will suspend the initial evaluation process (see § 21.362, regarding satisfactory conduct and cooperation, and § 21.364, regarding unsatisfactory conduct and cooperation).

(Authority: 38 U.S.C. 3111)

7. Revise the undesignated center heading immediately preceding § 21.282 and that section to read as follows:

**Induction Into a Rehabilitation Program**

### § 21.282 Effective date of induction into a rehabilitation program; retroactive induction.

(a) *Entering a rehabilitation program.* The effective date of induction into a rehabilitation program is governed by the provisions of §§ 21.320 through 21.334, except as provided in this section.

(Authority: 38 U.S.C. 3108, 5113)

(b) *Retroactive induction.* Subject to paragraphs (c) and (d) of this section, an individual may be inducted into a rehabilitation program on a retroactive basis. If the individual is retroactively inducted, VA may authorize payment pursuant to § 21.262 or § 21.264 for tuition, fees, and other verifiable expenses that an individual paid or incurred consistent with the approved rehabilitation program. In addition, VA may authorize payment of subsistence allowance pursuant to §§ 21.260, 21.266, and 21.270 for the period of retroactive induction, except for any period during which the individual was on active duty.

(Authority: 38 U.S.C. 3108, 3113, 3681, 5113)

(c) *Conditions for retroactive induction.* Retroactive induction into a rehabilitation program may be authorized for a past period under a claim for vocational rehabilitation benefits when all of the following conditions are met:

(1) The past period is within—

(i) A period under § 21.40(c) during which a servicemember was awaiting discharge for disability; or

(ii) A period of eligibility under §§ 21.41 through 21.44 or 38 U.S.C. 3103.

(2) The individual was entitled to disability compensation under 38 U.S.C. chapter 11 during the period or would likely have been entitled to that compensation but for active-duty service.

(3) The individual met the criteria for entitlement to vocational rehabilitation benefits and services under 38 U.S.C. chapter 31 in effect during the period.

(4) VA determines that the individual's training and other rehabilitation services received during the period were reasonably needed to achieve the goals and objectives identified for the individual and may be included in the plan developed for the individual (*see* §§ 21.80 through 21.88, and §§ 21.92 through 21.98).

(5) VA has recouped any benefits that it paid the individual for education or training pursued under any VA education program during any portion of the period.

(6) An initial evaluation was completed under § 21.50.

(7) A period of extended evaluation is not needed to be able to determine the reasonable feasibility of the achievement of a vocational goal.

(Authority: 38 U.S.C. 3102, 3103, 3108, 5113)

(d) *Effective date for retroactive induction.* The effective date for retroactive induction is the date when all the entitlement conditions set forth in paragraph (c) of this section are met, and for a veteran (except as to a period prior to discharge from active duty) in no event before the effective date of a VA rating under 38 U.S.C. chapter 11 establishing a qualifying level under § 21.40 of service-connected disability.

(Authority: 38 U.S.C. 5113)

[FR Doc. E9–10806 Filed 5–7–09; 8:45 am]

**BILLING CODE P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R01–OAR–2008–0117, FRL–8901–2]**

### Disapproval of Air Quality Implementation Plans; Connecticut; Attainment Demonstration for the Connecticut Portion of the New York-N. New Jersey-Long Island, NY-NJ-CT 8-Hour Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency is proposing action on the ozone attainment demonstration portion of a comprehensive State Implementation Plan (SIP) revision submitted by Connecticut to meet Clean Air Act (CAA or Act) requirements for attaining the 8-hour ozone national ambient air quality standard. EPA is proposing to disapprove Connecticut's demonstration of attainment of the 1997 8-hour ozone standard for the Connecticut portion of the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour ozone nonattainment area (New York City ozone nonattainment area).

**DATES:** Written comments must be received on or before June 8, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OAR–2008–0117, 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–2008–0117'', Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

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, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. 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–2008–0117. 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, One Congress Street, Suite 1100, 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.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency; the Bureau of Air Management, Department of Environmental

Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630. It has also been posted on the Connecticut DEP Web site at: *http://www.ct.gov/dep/cwp/view.asp?a=2684&q=385886&depNav_GID=1619.*

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, 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.

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## I. What Action Is EPA Proposing?

The Environmental Protection Agency has reviewed Connecticut's comprehensive State Implementation Plan revision for attaining the 0.08 parts per million (ppm) 8-hour ozone national ambient air quality standards (NAAQS or standard) [1] in the Connecticut portion of the New York City ozone nonattainment area along with other related Clean Air Act requirements necessary to ensure attainment of the standard. This SIP was submitted by Connecticut on February 1, 2008. The EPA is proposing to disapprove Connecticut's 8-hour ozone attainment demonstration for the Connecticut portion of the New York-N. New Jersey-Long Island, NY-NJ-CT nonattainment area, because the EPA has determined that the photochemical modeling does not demonstrate attainment and the weight of evidence analysis that Connecticut uses to support the attainment demonstration for this area does not include sufficient evidence to provide confidence that the area will attain the NAAQS by the June 2010 deadline.

EPA's analysis and findings are discussed in this proposed rulemaking. Additional technical support memoranda for this proposal are available on line at *www.regulations.gov,* Docket No. EPA–R01–OAR–2008–0117. Specifically, the docket contains the following:

1. The February 1, 2008 State Implementation Plan Revision Regarding Attainment of the 8-Hour Ozone Standard in Connecticut.

2. An EPA memorandum, dated December 23, 2008, from Bob McConnell, entitled, ''Emissions Trends in the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour Ozone Nonattainment Area.''

3. An EPA memorandum, dated January 7, 2009, from Anne McWilliams, entitled, ''Air Quality Trends in the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour Ozone Nonattainment Area.''

## II. Background Information

### *A. History and Time Frame for the State's Attainment Demonstration SIP*

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These designations became effective on June 15, 2004. In addition, EPA promulgated its Phase 1 Rule for implementation of the 8-hour standard, which provided how areas designated nonattainment for the 8-hour ozone standard would be classified. (See April 30, 2004 (69 FR 23951).) The entire state of Connecticut is designated nonattainment, divided between two moderate ozone nonattainment areas, the New York-N. New Jersey-Long Island, NY-NJ-CT nonattainment area, and the Greater Connecticut nonattainment area. The Connecticut portion of the New York City ozone nonattainment area consists of the following Connecticut counties: Fairfield; New Haven; and Middlesex. The Greater Connecticut area covers the rest of the state. Today's proposed disapproval is only for the Connecticut portion of the New York City ozone nonattainment area. We will propose action on the ozone attainment demonstration for the Greater Connecticut nonattainment area in a separate rulemaking.

The designations referenced above triggered the Act's requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit an attainment demonstration. EPA's Phase 2 8-hour ozone implementation rule (Phase 2 Rule), published on Nov. 29, 2005 (70 FR 71612), specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. (See 40 CFR 51.908(a).)

### *B. Moderate Area Requirements*

On November 29, 2005, EPA published the Phase 2 Implementation rule which addresses the control obligations that apply to areas designated nonattainment for the 8-hour NAAQS. Among other things, the Phase 1 and Phase 2 Rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, modeling and attainment demonstrations were due by June 15, 2007, along with reasonable further progress plans, reasonably available control measures, motor vehicle emissions budgets (MVEBs) and contingency measures (40 CFR 51.908(a), and (c), 51.910, and 51.912). Today's action addresses Connecticut's demonstration of attainment of the 8-hour ozone standard for the Connecticut portion of the New York-N. New Jersey-Long Island, NY-NJ-CT nonattainment area, which for moderate areas is to be attained by June 2010. In order to demonstrate attainment by June 2010, the area must adopt and implement all controls necessary for attainment by the

[1] In 2008, EPA promulgated a more stringent 8-hour standard of 0.075 ppm. (*See* 73 FR 16435 (March 27, 2008).) All references to the 8-hour ozone standard in this rulemaking refer to the 8-hour standard promulgated in 1997.

beginning of the 2009 ozone season and demonstrate that the level of the standard will be met during the 2009 ozone season.

*C. Clean Air Act Requirement for Multi-State Ozone Nonattainment Areas*

Section 182(j) of the Clean Air Act requires each state within a multi-state ozone nonattainment area to specifically use photochemical grid modeling and take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned. Under this subsection of the Clean Air Act, EPA may not approve any SIP revision for a State that fails to comply with these requirements.

**III. What is included in Connecticut's SIP submittal?**

After completing the appropriate public notice and comment procedures, Connecticut made a submittal to address the Act's 8-hour ozone moderate nonattainment area requirements identified in Section II.B. On February 1, 2008, Connecticut submitted a comprehensive 8-hour ozone SIP for the Connecticut portion of the New York City ozone nonattainment area. It included an attainment demonstration, a reasonable further progress (RFP) plan, a reasonably available control measures (RACM) analysis, contingency measures, and on-road MVEBs for 2008, 2009, and 2012.

Only the attainment demonstration portion of the SIP submittal is evaluated in this proposal. EPA will take action on the other portions of Connecticut's February 1, 2008 SIP submittal in a separate, forthcoming **Federal Register.**

**IV. EPA's Review and Technical Information**

*A. What Are the Components of an Attainment Demonstration?*

Section 110(a)(2)(k) of the Clean Air Act requires states to prepare air quality modeling to show how they will meet ambient air quality standards. EPA determined that states must use photochemical grid modeling, or any other analytical method determined by the Administrator to be at least as effective, to demonstrate attainment of the ozone health-based standard in areas classified as 'moderate' or above, and to do so by the required attainment date. (*See* 40 CFR 51.908(c); and Section 182(j) of the CAA.) In 40 CFR 51.903, EPA specified how areas would be classified with regard to the eight-hour ozone standard set by EPA in 1997. EPA followed these procedures and classified the New York-N. New Jersey-Long Island, NY-NJ-CT ozone nonattainment area as moderate (69 FR 23858). Since the attainment date is June 2010 for moderate areas, these areas must achieve emission reductions by the beginning of the ozone season of 2009 in order for ozone concentrations to be reduced, and meet the level of the standard during the last complete ozone season before the 2010 deadline. (*See* 40 CFR 51.908(d).)

EPA's photochemical modeling guidance is found at *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM2.5, and Regional Haze,* EPA–454/B–07–002, April 2007. The photochemical modeling guidance is divided into two parts. One part describes how to use a photochemical grid model for ozone to assess whether an area will come into attainment of the air quality standard. A second part describes how the user should perform supplemental analyses, using various analytical methods, to determine if the model over predicts, under predicts, or accurately predicts the air quality improvement projected to occur by the attainment date. The guidance indicates that states should review these supplemental analyses, in combination with the modeling analysis, in a ''weight of evidence'' assessment to determine whether each area is likely to achieve timely attainment.

Connecticut's SIP submittal addresses each of the elements of a modeling attainment demonstration. The plan explains how on warm, sunny days, winds at the surface and aloft move emissions from sources of ozone-forming chemicals within and outside Connecticut to create high ozone concentrations in Connecticut. In addition, emissions from large out of state combustion sources are transported by upper-level winds to Connecticut, adding to the ozone formed locally.

The Ozone Transport Commission's (OTC's) Modeling Committee developed a protocol for modeling the ozone problem in the northeastern United States. The OTC Modeling Committee coordinated preparing and running the photochemical grid model. It chose the Community Multi-scale Air Quality Model (CMAQ) as the photochemical grid model of choice. EPA concurs that this model is appropriate for modeling the formation and distribution of ozone. The model domain covered almost all of the eastern United States, with a high-resolution grid covering the states in the northeast ozone transport region, including Connecticut.

The OTC Modeling Committee used weather data for the entire 2002 ozone season in the CMAQ. The year 2002 was the base year for the attainment plans and the year of the emission inventory used in the base year modeling. Using a full ozone season covered many different weather conditions when ozone episodes occur and exceeds EPA's recommendations for episode selection. The OTC Modeling Committee used MM5, a weather forecast model, to provide weather conditions for the photochemical grid model. Details about how the states used the MM5 model is in Appendix 8 of Connecticut's SIP.

States across the eastern United States provided emissions information from their sources to be used in the model. The Mid Atlantic Regional Air Management Association (MARAMA) collected and quality assured the states' emissions data and processed these data for use by the photochemical grid model. The states also included the control measures that were already adopted, as well as the control measures that the states are committing to adopt from a list of ''Beyond On the Way'' (BOTW) control measures. The lists of control measures provided by the states to be included in the modeling are summarized in Connecticut's submittal in Appendix 4.

The performance of the CMAQ photochemical grid model in predicting ozone, and the chemicals that form ozone, met EPA's guidelines for model performance. The model outputs are generally consistent with the day-to-day patterns of observed data, with low bias and error. The OTC Modeling Committee noted that the modeling system tends to over predict low concentrations and slightly under predict peak concentrations.

For the attainment test, the state used the results from the photochemical grid model in a relative sense, as recommended by EPA's photochemical modeling guidance, by calculating the difference from ozone predicted in 2002 to ozone predicted with the emission controls Connecticut and other states planned to have in place in 2009. Details can be found in the state's submittal in Section 8.

*B. What Are the Results of the Connecticut's Attainment Demonstration and Weight of Evidence Analysis?*

According to Table 8.4.4.1 in the Connecticut SIP submittal entitled ''CMAQ Modeling Results for Connecticut for 2009 and 2012,'' the basic photochemical grid modeling used by Connecticut predicts that the

maximum 2009 design value [2] in the New York City ozone nonattainment area will be 87 parts per billion (ppb). Thus, the photochemical model predicts Connecticut will not reach the 84 ppb concentration level that marks attainment of the ozone standard, by the 2009 ozone season. Table 8.4.4.1 does, however, show that attainment is predicted by 2012, with a maximum predicted design value of 83 ppb.

1. EPA's Requirements

EPA's photochemical modeling guidance strongly recommends states complement the photochemical air quality modeling in situations where modeling predicts the area to be close to (within several parts ppb of) the 84 ppb ozone standard. Connecticut did perform additional analyses to bolster their attainment analysis. EPA can accept results of a weight of evidence determination to supplement the attainment demonstration; however, the greater the difference between the ozone standard and the photochemical modeling predictions, the more compelling the additional evidence produced by these additional analyses needs to be. In its photochemical modeling guidance, EPA notes that, if the concentration predicted by the photochemical model is 88 ppb or higher, it is far less likely that the more qualitative arguments made in a weight of evidence determination can be sufficiently convincing to conclude that the ozone standard will be attained. In Connecticut's case, the submitted photochemical model prediction of 87 ppb in the New York City ozone nonattainment area does not exceed 88 ppb. Connecticut, however, used non-guideline methods in its analysis. As shown below, if EPA guidance is followed, the design value for the Connecticut portion of the New York City ozone nonattainment area is predicted to be 90 ppb at the Stratford, Connecticut monitor at the end of the 2009 ozone season. This value is greater than 88 ppb, the upper range for a normal weight of evidence analysis. Thus, if 90 ppb is the appropriate level based on the modeling, the additional evidence needed to show that this area will actually attain the ozone standard, must be very compelling for EPA to approve the attainment demonstration.

2. EPA's Analysis

The photochemical modeling results, used according to EPA's guidelines, predict the New York City ozone nonattainment area will not attain by 2009. Connecticut's SIP deviates from the EPA guideline methods to adjust for perceived flaws in the photochemical grid model and to account for ozone reductions that may be produced by additional measures not included in the model. Connecticut supports their alternative analyses using data and other research to make the case that the New York City ozone nonattainment area may attain the ozone standard by the 2009 ozone season.

EPA has carefully reviewed Connecticut's attainment demonstration including their supplementary data and research. EPA attempted to determine if the additional information provided by Connecticut is an acceptable supplement to the photochemical grid modeling and can be approved by EPA to meet the Clean Air Act requirement as ''* * * any other analytical method determined * * * to be at least as effective'' to supplement the photochemical grid modeling (40 CFR 51.908). EPA has evaluated the information provided by the State and other information relevant to whether or not this ozone nonattainment area will attain the ozone standard by 2009 and concludes that this information does not demonstrate that Connecticut will attain the ozone standard by 2009.

EPA's review shows that Connecticut's attainment demonstration uses a method for determining the baseline 2002 ozone design value that is not consistent with EPA's modeling guidance. Connecticut uses a linear average of five fourth highest ozone values for each monitor in the nonattainment area for the years 2000–2004. This results in a baseline design value at the Stratford, Connecticut ozone monitor of 95.4 ppb. EPA's modeling guidance recommends using an average of the three years of design value centered on 2002, which creates a weighted five-year average. While Connecticut's SIP notes that EPA's method of providing a weighted average baseline value weights the base year of 2002 more heavily than other years, EPA intended this, so that the resulting value was influenced the most by the ozone data from the base year of the emission inventory. Using the EPA's modeling guidance method yields a baseline design value of 98.3 ppb at that same monitor.

The straight five-year average method used by Connecticut, while centered on 2002, is skewed by giving 2004 as much influence as other years. The ozone data from 2004 includes the effects of reductions made between the base year 2002 and the attainment year of 2009, when a major reduction in nitrogen oxides ($NO_X$) occurred. Since these emission reductions are accounted for in the photochemical grid modeling, we believe it is inappropriate to also consider them in determining the baseline design value. Specifically, EPA's $NO_X$ SIP Call and $NO_X$ Budget Trading Program produced significant reductions before the 2004 ozone season. The summer of 2004 was also a cooler than normal summer, possibly biasing the baseline design value further downward toward attainment. In an unweighted five-year average, 2004 has as much influence on the result as each of the other four years, so it provides a significant bias toward attainment. Selecting only a method that is lower than the recommended method is not a balanced use of the weight of evidence analysis. EPA does not find Connecticut's selected method of adjusting the baseline design value to be sufficiently justified and cannot accept it as a supplemental method of demonstrating attainment.

Using the baseline design value for the Stratford site of 98.3 ppb (derived using EPA's recommended method), and the 0.919 relative reduction factor calculated for this monitoring location yields a 2009 design value of 90 ppb. This is outside the upper bound of 88 ppb for a simple weight of evidence analysis, and significantly above the 84 ppb concentration used as the benchmark for attaining the ozone air quality standard. EPA does not rule out the use of alternative methods even when the photochemical grid modeling results are far from attaining the standard, but EPA's modeling guidance notes that more qualitative results are less likely to support a conclusion differing from the outcome of the modeled attainment test. The guidance notes that, in most cases, considerable amounts of precursor control (e.g., 20–25 percent or more, which are huge reductions) would be needed to lower projected ozone design values even by 3 ppb.

In Connecticut's weight of evidence analysis, they include a variety of analyses to support their conclusion ''that there is a credible case for attainment throughout all of Southwest Connecticut by the end of the 2009 ozone season.'' Connecticut's weight of evidence analysis (Section 8.5 of their

[2] Under EPA regulations at 40 CFR Part 50, the 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 (84 parts per billion (ppb)) at each monitor within the area, then the area is meeting the 1997 ozone NAAQS. (*See* 69 FR 23857 (April 30, 2004) for further information.)

submittal) includes discussions about the following topics:

- Modeling Uncertainties Indicate the CMAQ Model May Overpredict 2009 Ozone Levels (Section 8.5.1)
- Air Quality Trends Indicate the CMAQ Model May Overpredict 2009 Ozone Levels (Section 8.5.2)
- Attainment Levels Have Been Achieved During a Previous Cool Summer (Section 8.5.3)
- ''Clean Data'' in 2009 Would Qualify SWCT for Clean Air Act Extension Year(s) (Section 8.5.4)
- Modeling Does Not Include Several Important Emission Control Strategies (Section 8.5.5)

We discuss the details of Connecticut's analyses and EPA's conclusions in the sections that follow.

• Modeling Uncertainties Indicate the CMAQ Model May Overpredict 2009 Ozone Levels

Section 8.5.1 of Connecticut's SIP cites research of ozone levels during an electrical blackout in the recent past that suggests the model under predicts the amount of ozone reduction that actually occurred during the electrical blackout, or at least points out the CMAQ model ''stiffness'' to power plant emission reductions. (See Section 8.5.1.2, entitled ''Modeling Uncertainty Related to CMAQ's Response to Emission Reductions'' of the Connecticut SIP submittal.) During the blackout, measured ozone was lower than expected because some power plants and some other major sources of ozone-forming compounds were shut down. There are at least two ways to determine what ozone concentrations would have been if the major sources of ozone-forming compounds operated on that day. One way is to model the changes with the power plants operating, and with the power plants not operating and comparing the results. The other is by comparing the blackout day with a past high ozone day with similar weather and wind patterns, when the power plants operated. The research cited by Connecticut compared the blackout episode with days in the past with similar weather conditions, when the sources were operating. However, EPA concludes that the past episode when the power plants operated is not similar enough to the blackout day to draw a valid comparison. The comparison day had winds coming from areas that were not the ones most affected by the blackout, so the comparison is not convincing. There may be other days that were more similar to the meteorological patterns on the blackout day, but the fact remains that no two days are the same. The emissions precursors, ozone, and meteorological patterns on the day of and the days preceding the blackout will never occur the same way twice.

Connecticut cited the work of other researchers who ran a photochemical grid model on the blackout day with and without the blacked-out emissions. The modeled change in ozone was smaller than the change in ozone measured between the comparison day and the blackout day, so Connecticut concluded that the model did not reduce ozone as much between the blackout and non-blackout emissions. Thus, this may be a sign that the model is not responsive enough to emission reductions, or ''stiff.'' However, the differences between the modeled change and the change between monitored days may be because a sufficiently similar day was not found to determine how much ozone was really reduced on the blackout day. The other researchers cited by Connecticut also believed, on the blackout day, that the shutdown power plants had a limited effect on ozone in this area. Another point is that these studies did not look at the effect of the blackout on air quality in the urban nonattainment areas like those featured in this notice. There is no comparison using modeling of these blackout days and similar days with the goal of determining the effect of blacked out sources on ozone in the northeast corridor's urban areas or other studies that would have attempted to explain and perhaps quantify the extent of the transport issue in the states' application of the photochemical grid model.

After careful review of these studies, EPA has found uncertainties in the Connecticut SIP technical analysis and therefore does not accept Connecticut's conclusion that the modeling system under predicts changes in ozone as emissions change. Arguments in Connecticut's SIP that the model may not give full credit for emission reductions are supported by limited modeling work. Connecticut has not tested its hypothesis with its own modeling. There are other studies and ambient data that suggest contradictory conclusions. EPA believes any additional ozone reductions beyond the photochemical modeling are likely to be far less than claimed in Connecticut's SIP.

Connecticut also argues that the inadequate incorporation by the modeling system of $NO_X$ emissions occurring during high electric demand days (HEDD) may also be one of the contributors to modeling uncertainty that may result in overestimation by CMAQ of projected 2009 design values. (*See* Section 8.5.1.1, entitled ''Modeling Uncertainty Related to HEDD Emissions'' of the Connecticut SIP submittal.)

The Connecticut SIP discusses how $NO_X$ emissions from the electricity generating source sector vary widely both diurnally and on a day-to-day basis, dependent upon the demand for electricity and the emission characteristics of the mix of electric generating units (EGUs) dispatched to meet changing demand and reserve capacity requirements. Connecticut notes that the highest level of EGU emissions typically occur on hot summer days, when the demand for air conditioning results in dispatch of load-following and quick-start EGU peaking units, most of which emit $NO_X$ at much higher rates (per unit of heat input or power output) than base-load units. The SIP includes a number of graphs that depict the variability of EGU emission profiles in New England and in the metropolitan New York City-New Jersey area upwind from Connecticut.

The Connecticut SIP states that the ''large (i.e., factor of two) underestimate of EGU $NO_X$ emissions on high demand days has implications for CMAQ modeling results in both the baseline and future year modeling scenarios. Effectively doubling modeled levels of EGU emissions on high demand days (which are often high ozone days) increases the importance of the EGU sector relative to other source categories. As a result, post-2002 controls on the EGU sector, such as the CAIR program and potential HEDD strategies, may result in greater improvements in actual future year ozone levels than the current modeling results indicate.'' (*See* page 8–20 of Section 8.5.1.1.)

EPA agrees that the underestimate of EGU $NO_X$ emissions on high demand days has implications for CMAQ modeling results. The solution to this, however, is to model them as accurately as possible in the modeling, not to theorize about how the results might change if they were properly accounted for in the modeling analysis. Moreover, Connecticut's argument regarding HEDD emissions only supports their current SIP submittal's prediction of attainment by 2009, if there are substantial reductions from the EGU sector that are occurring between now and the beginning of the 2009 ozone season. Connecticut's SIP submittal contains insufficient evidence to support this.

• Air Quality Trends Indicate the CMAQ Model May Overpredict 2009 Ozone Levels

Section 8.5.2 of Connecticut's SIP depicts the significant improvement in measured 8-hour ozone values and 8-

hour design values over the last 25 years or so. Based on its analysis through the 2006 ozone season, Connecticut contends that the ''improvements in measured ozone levels suggest that Southwest Connecticut is on-track to achieve the necessary design value of less than 85 ppb to attain the 8-hour NAAQS by the end of the 2009 ozone season.'' (*See* page 8–26 of Section 8.5.2.1.) Connecticut also points out that measured design values in the New York-N. New Jersey-Long Island, NY-NJ-CT area for the 2004 through 2006 time period were close to the concentrations predicted by the photochemical grid model for 2009.

When final quality assured air quality data for 2007 are included in the analysis, however, the design value remains the same or increases for each of the Connecticut ozone monitors in the New York-N. New Jersey-Long Island, NY-NJ-CT area. (See Table 1 below.) The design values for the 2004 through 2006 time period were biased low by the cooler-than-normal summer of 2004. The design values for the 2005 through 2007 are generally greater that the values predicted by the photochemical grid modeling (using the EPA guideline methodology), which suggests that the photochemical modeling is not under predicting as suggested.

Based on preliminary 2008 ozone data, the design values for the 2006 through 2008 time period have decreased somewhat, but not in a fashion that supports the argument that the modeling system is over predicting ozone in the attainment year. (*See* Table 1 below.)

TABLE 1—TREND IN THE 8-HR DESIGN VALUE FOR SELECTED MONITORS IN THE CONNECTICUT PORTION OF THE NEW YORK CITY NONATTAINMENT AREA

| Monitor location | Monitor ID | 8-Hour ozone design values (ppm) | | | | | |
|---|---|---|---|---|---|---|---|
| | | 2001–2003 | 2002–2004 | 2003–2005 | 2004–2006 | 2005–2007 | 2006–2008 |
| Danbury, CT | 090011123 | 0.096 | 0.093 | 0.091 | 0.092 | 0.094 | 0.088 |
| Greenwich, CT | 090010017 | 0.100 | 0.092 | 0.087 | 0.087 | 0.090 | 0.089 |
| Madison, CT | 090093002 | 0.102 | 0.095 | 0.090 | 0.088 | 0.093 | 0.088 |
| Middletown, CT | 090070007 | 0.098 | 0.092 | 0.090 | 0.089 | 0.092 | 0.088 |
| Stratford, CT | 090013007 | 0.102 | 0.095 | 0.090 | 0.088 | 0.092 | 0.088 |
| Westport, CT | 090019003 | 0.097 | 0.092 | 0.089 | 0.087 | 0.087 | 0.087 |

Currently, the overall design value in the nonattainment area is 89 ppb, which is significantly above the NAAQS given that there is only one summer remaining before the 2009 attainment deadline. EPA has analyzed the emission reductions that the states are predicting between now and the 2009 ozone season, and does not believe there will be enough improvement to reduce the preliminary 2006–2008 ozone design value ppb in the New York-N. New Jersey-Long Island, NY-NJ-CT area from 89 ppb to the level of 84 ppb necessary for attainment in 2009.

Table 2 below contains a summary of the predicted emissions expected to occur by sector in the New York-N. New Jersey-Long Island, NY-NJ-CT area in 2008 and 2009 compared to 2002 levels. These data were derived from the ozone attainment plans submitted by Connecticut, New Jersey, and New York for their respective portions of the New York-N. New Jersey-Long Island, NY-NJ-CT nonattainment area. More details on these calculations can be found in the EPA memorandum, dated December 23, 2008, from Bob McConnell, entitled, ''Emissions Trends in the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour Ozone Nonattainment Area.''

TABLE 2—SUMMARY OF ESTIMATED EMISSIONS IN THE NEW YORK CITY NONATTAINMENT AREA FOR 2002, 2008, AND 2009

| Sector | 2002 | | 2008 | | | | 2009 | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | VOC (tpd) | $NO_X$ (tpd) | VOC (tpd) | % rdxn | $NO_X$ (tpd) | % rdxn | VOC (tpd) | % rdxn | $NO_X$ (tpd) | % rdxn |
| Point | 93.4 | 358.9 | 78.0 | 16.5 | 263.5 | 26.6 | 76.6 | 18.0 | 263.6 | 26.6 |
| Area | 788.9 | 109.9 | 701.6 | 11.1 | 105.9 | 3.6 | 684.0 | 13.3 | 105.4 | 4.1 |
| On-road | 468.1 | 808.9 | 263.9 | 43.6 | 415.9 | 48.6 | 246.0 | 47.4 | 383.9 | 52.5 |
| Non-road | 471.1 | 378.2 | 352.3 | 25.2 | 316.6 | 16.3 | 337.0 | 28.5 | 307.7 | 18.6 |
| Total | 1,821.5 | 1,655.9 | 1,395.8 | 23.4 | 1,101.9 | 33.5 | 1,343.6 | 26.2 | 1,060.6 | 36.0 |

As illustrated in Table 2, anthropogenic VOC and $NO_X$ emissions were predicted to decline between 2002 and 2008 by 23.4% and 33.5%, respectively. By 2009, anthropogenic VOC and $NO_X$ emissions are predicted to decline from 2002 levels by 26.2% and 36.0%, respectively. Between 2008 and 2009, ozone precursor emission reductions in the area are modest compared with the predicted reductions between 2002 and 2008. These modest levels of reductions between 2008 and 2009 do not support a conclusion that there will be an accelerated level of ozone reduction between the 2008 and 2009 ozone seasons, which would be necessary for the nonattainment area to either attain by 2009 or be eligible for a one-year extension of the attainment date.[3]

[3] To demonstrate attainment by the end of the 2009 ozone season, the average of the 4th highest level at each of the monitors for the ozone seasons of 2007–2009, would need to be at or below 84 ppb. To be eligible for a 1-year attainment date extension, the 4th highest level at each of the monitors for the 2009 ozone season would need to be at or below 84 ppb.

Also, in addition to the local emission reductions, improvements in ozone air quality in the past five years were also assisted by reduced regional emissions from EPA's $NO_X$ SIP Call and $NO_X$ Budget Trading Program and large fleet turnover in the automobile fleet (retiring older more polluting cars and replacing them with new cleaner cars). These measures produced a significant decrease in ozone. However, the reductions from the $NO_X$ SIP Call and $NO_X$ Budget Trading Program are completed, so further reductions in transported ozone are likely to be minimal. Thus, it is not likely that ozone will continue to decrease at the rate observed in the past five years unless local emission reductions are expanded to amounts well beyond those in the present state SIPs.

In summary, EPA's analysis is that recent ozone data do not support Connecticut's adjustments to the modeling results in its weight of evidence analyses. Also, 2008 ozone data do not support the State's contention that the model is under predicting ozone for 2009, because if this was the case, these areas would be closer to attainment based on 2007 and 2008 data. Since only a modest amount of additional emission reductions are quantified to occur in the New York City ozone nonattainment area between 2008 and 2009, EPA finds the case for attainment in 2009 unacceptable.

• Attainment Levels Have Been Achieved During a Previous Cool Summer

Connecticut argues in Section 8.5.3 of its SIP that the occurrence of one or more cool summers would increase the prospects of attaining the ozone standard in Southwest Connecticut by the end of 2009. They point to the 2004 summer as an example when there were only 6 days with maximum temperatures of 90 °F or higher (an average summer has 17 days ≥90 °F), and, as a result, all Connecticut ozone monitors, except for Danbury, recorded 4th highest 8-hour ozone levels that were less than the 8-hour ozone NAAQS of 85 ppb. Connecticut further argues that emissions have decreased significantly since the 2004 ozone season, and ''[b]ased on that level of emission reduction, if one or more of the summers of 2007, 2008 and 2009 are similar to, or even slightly warmer than the summer of 2004, compliance with the NAAQS could be achieved.'' This argument is flawed for a number of reasons.

The Clean Air Act requires that SIPs provide for the reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the NAAQS by the applicable attainment date. (*See* Section 182(b)(1)(A).) It is not appropriate to rely on favorable meteorology as a method for predicting attainment, but rather emission reductions should be achieved that will ensure attainment even under unfavorable meteorological conditions, which can occur as frequently as those that are favorable. Moreover, the summers of 2007 and 2008 have already occurred, and as noted previously, the preliminary design value for the area based on 2006 through 2008 data is 89 ppb. In order for this area to reach attainment by the end of 2009, the ozone monitors in this area would have to record uncharacteristically low 4th high 8-hour ozone levels in 2009.

• ''Clean Data'' in 2009 Would Qualify SWCT for Clean Air Act Extension Year(s)

Section 8.5.4 of Connecticut's SIP discusses the Clean Air Act provisions under sections 172(a)(2)(C) and 181(a)(5), which provide for the opportunity of up to two one-year extensions of the attainment date. The SIP notes that ''Southwest Connecticut could reach attainment of the NAAQS in 2011 and still comply with CAA requirements for moderate nonattainment areas.'' However, the SIP does not make a compelling case that this will actually happen.

The provisions of 40 CFR Section 51.907 state:

''For purposes of applying sections 172(a)(2)(C) and 181(a)(5) of the CAA, an area will meet the requirement of section 172(a)(2)(C)(ii) or 181(a)(5)(B) of the CAA pertaining to 1-year extensions of the attainment date if:

(a) For the first 1-year extension, the area's 4th highest daily 8-hour average in the attainment year is 0.084 ppm or less.

(b) For the second 1-year extension, the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

(c) For purposes of paragraphs (a) and (b) of this section, the area's 4th highest daily 8-hour average shall be from the monitor with the highest 4th highest daily 8-hour average of all the monitors that represent that area.''

EPA has looked at the historical ozone monitoring data for the New York-N. New Jersey-Long Island, NY-NJ-CT nonattainment area, and does not believe that the ozone trends in the area support the view that the area is on track to meet these provisions. Since the promulgation of the 1997 ozone standard, over 10 years ago, the entire nonattainment area has always had multiple monitors during each ozone season with a 4th highest daily 8-hour average above 84 ppb, even in summers that were not meteorologically conducive for ozone formation. In 2007, 14 of the 22 ozone monitors located in the nonattainment area recorded a 4th highest 8-hour ozone average above 0.084 ppm. Based on preliminary 2008 data, it appears at least 5 monitors recorded a 4th highest 8-hour ozone average above 0.084 ppm, and EPA believes it is unlikely that every monitor in 2009 will have a 4th highest 8-hour ozone average below this level. (For more information see EPA memorandum, dated January 7, 2009, from Anne McWilliams, entitled, ''Air Quality Trends in the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour Ozone Nonattainment Area.'')

• Modeling Does Not Include Several Important Emission Control Strategies

Section 8.5.5 of Connecticut's SIP attempts to quantify some emission reductions not included in the modeling. Connecticut contends that the CMAQ modeling conducted for the attainment demonstration does not account for several control strategies that are expected to provide additional emission reductions in the 2009 timeframe, thereby increasing the likelihood that ozone levels in 2009 will be lower than the modeled levels. Table 8.5.5 of the Connecticut submittal articulates what these measures are but does not make any quantifiable assessment of what the emission reduction potential of these measures might be or how that might effect future ozone levels. It appears to EPA that many of these measures, such as energy efficiency and high electricity demand day emission controls, have the potential to reduce emissions over time as they are phased in and fully implemented. However, none of them appear to have the potential to substantially reduce emissions before the 2009 ozone season which would be necessary to support approval of Connecticut's attainment demonstration. Moreover, the most effective way to predict changes in ozone is through air quality modeling and Connecticut did not perform additional modeling runs including these additional measures. Finally, in order for a control measure's benefit to be creditable towards attainment, the measures must be enforceable by the state and EPA and included in the SIP. Therefore, these measures cannot be relied upon to make up the difference

between the modeling projection and attainment.

Moreover, Connecticut also has several emission control rules and regulations that it uses in the CMAQ model, but has not yet submitted to EPA for final approval into the SIP. These include regulations for industrial, commercial and institutional boilers. In addition, new rules for adhesives and sealants and asphalt paving, as well as revisions to the state's municipal waste combustor rules, were not included in the February 1, 2008 SIP submittal but were more recently submitted and are currently under review by EPA. EPA cannot approve the attainment demonstration SIP until all of the measures relied on in the attainment demonstration SIP are submitted by Connecticut and approved into the SIP by EPA.

3. Summary of Weight of Evidence Discussion

With Connecticut's photochemical grid modeling results predicting a 2009 projected design value above the air quality health standard for the New York-N. New Jersey-Long Island, NY-NJ-CT nonattainment area, the State carries a heavy burden to demonstrate that the weight of evidence supports a conclusion that attainment will be timely reached. Connecticut needed to supply a substantial amount of evidence that the model is seriously overestimating future ozone concentrations. Modeling and air quality studies provided by Connecticut do not support an argument that the model over predicts concentrations in 2009. Air quality data through 2008 are far above the level needed for attainment and do not support the hypothesis that the models are incorrect. In order to be persuasive in demonstrating the area would timely attain, present air quality concentrations should be closer to the standard since Connecticut is only one summer from when it should be attaining the standard.

Reductions anticipated taking effect between now and the beginning of the 2009 ozone season are also not enough to close this gap. Connecticut has suggested that it will be adopting additional emission reduction strategies which will reduce ozone, but these reductions are not yet in place and they are not likely to reduce ozone enough to provide for attainment by 2009.

The information and calculations provided by Connecticut's SIP emphasize methods or data that support their claims that the nonattainment area could attain the standard by the deadline. EPA's review of the ''weight of evidence'' analyses must evaluate a spectrum of likely alternative calculations, not only those that tend to show the area will attain the ozone standard. The scale cannot be weighted only one way, toward lower design values. As noted before, the method recommended by EPA's guidance and other reasonable variations on EPA's methods predict the area will not attain the ozone standard by 2009. Connecticut has provided information in support of its ''weight of evidence.'' However, EPA has determined this information does not demonstrate that the proposed adjustments to the photochemical grid model's attainment year forecast will give a more accurate answer than the calculations based on EPA's recommendations in its modeling guidance.

*C. What Is EPA's Evaluation of the SIP?*

EPA has carefully evaluated the information provided by Connecticut and other information it deems relevant to help determine if the New York City ozone nonattainment area will attain by its deadline, as required by the CAA and as allowed in EPA's modeling guidance. The result of the evaluation using EPA's recommended methods predicts that the New York City ozone nonattainment area will not attain the standard in the attainment year of 2009. EPA finds Connecticut's argument that attainment in the New York City ozone nonattainment area is achievable in 2009 is unconvincing, and does not satisfy the requirements of the Clean Air Act that SIPs provide for attainment of the NAAQS by the applicable attainment date.

EPA is also concerned that Connecticut did not meet the requirements of section 182(j) of the Clean Air Act which requires each state within a multi-state ozone nonattainment to take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans. Although Connecticut did coordinate with New York and New Jersey on the initial modeling analyses, there are a number of areas where the weight of evidence analyses and conclusions regarding the modeling differ. Most importantly, the New York Department of Environmental Conservation (NY DEC) concluded that attainment was not possible by 2009 and, on April 4, 2008, submitted a request to EPA to voluntarily reclassify its portion of the New York City ozone nonattainment area from moderate to serious. The attainment plan submitted by NY DEC on February 8, 2008 contained a demonstration of attainment by June 15, 2013, consistent with a serious classification. In a letter dated November 17, 2008, EPA recommended that Connecticut DEP make a similar request. In a response dated December 5, 2008, the Connecticut DEP chose not to request a voluntary reclassification.

In general, EPA's conclusions can be summarized as follows:

- Connecticut's modeling, using an appropriate photochemical grid model and EPA's guidance methods, does not predict attainment in the New York City ozone nonattainment area by 2009.
- Connecticut's attainment demonstration greatly relied on adjustments to the baseline design value calculations that differ from EPA's modeling guidance and, more importantly, is not sufficiently justified and is biased toward a conclusion that the New York City ozone nonattainment area will attain the standard.
- Regardless of the issues raised by Connecticut regarding the performance of EPA's recommended air quality models, the air quality measured in the New York City ozone nonattainment area during 2007 and preliminary 2008 data exceeded the ozone standard by a significant margin. Even a linear comparison of the percentage of additional emission reductions planned by the state with the needed improvement in air quality between 2008 and 2009 indicates it is unlikely that air quality in the New York City ozone nonattainment area will improve enough to meet the ozone standard by 2009.
- When comparing the measured ozone concentrations in 2007 to the ozone concentrations predicted for 2009 by using EPA's recommended application of the photochemical grid modeling, the photochemical grid model does not exhibit the magnitude of inaccuracies suggested in Connecticut's attainment demonstration. Preliminary data from the 2008 ozone season also does not support Connecticut's demonstration of attainment by 2009.
- Air quality trend data indicate that it is unlikely that the New York City ozone nonattainment area will qualify for a one-year extension of the attainment date.
- Connecticut's attainment demonstration relies in part on emission reductions resulting from a commitment to adopt and implement a number of regulations prior to the start of the 2009 ozone season. Some of these were included in the photochemical grid modeling. These include regulations for industrial, commercial and institutional boilers. As of the date of this action, these controls have not yet been submitted to EPA for approval into the

SIP. In addition, new rules for adhesives and sealants and asphalt paving as well as revisions to the state's municipal waste combustor rules, were not included in the February 1, 2008 SIP submittal but were more recently submitted and are currently under review by EPA. EPA cannot approve the attainment demonstration SIP until all of the measures relied on in the attainment demonstration SIP are submitted by Connecticut and approved into the SIP by EPA.

• Connecticut did not take all reasonable steps as required by CAA section 182(j) to coordinate, substantively and procedurally, with the other states in the multi-state nonattainment area on the revisions and implementation of State implementation plans applicable to the nonattainment area.

For these reasons, EPA proposes to disapprove the attainment demonstration portion of Connecticut's February 1, 2008 SIP submittal. The photochemical grid modeling, if performed according to EPA's guidelines, predicts Connecticut's nonattainment area will fall short of attaining the ozone standard by a substantial margin. Connecticut provides additional information to support its argument that the area will attain the standard by 2009, but the additional information does not provide the level of compelling evidence for EPA to have confidence that this nonattainment area will attain the NAAQS by the deadline.

## V. What Are the Consequences of a Disapproved SIP?

This section explains the consequences of a disapproval of a SIP under the Act. The Act provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if a state fails to submit a plan revision that corrects the deficiencies identified by EPA in its disapproval.

### *A. What Are the Act's Provisions for Sanctions?*

If EPA disapproves a required SIP or component of a SIP, such as the Attainment Demonstration SIP, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the Act. If the state has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to sanction a broader area, but is not proposing to take such action in today's rulemaking.

### *B. What Federal Implementation Plan Provisions Apply if a State Fails To Submit an Approvable Plan?*

In addition to sanctions, if EPA finds that a state failed to submit the required SIP revision or disapproves the required SIP revision, or a portion thereof, EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected within that time period.

### *C. What Are the Ramifications Regarding Conformity?*

One consequence of EPA's disapproval of a control strategy SIP is a conformity freeze whereby affected metropolitan planning organizations (MPOs) cannot make new conformity determinations on long range transportation plans and transportation improvement programs (TIPs). If we finalize the disapproval of the attainment demonstration SIP, a conformity freeze will be in place as of the effective date of the disapproval. (40 CFR 93.120(a)(2)) This means that no transportation plan, TIP, or project not in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of 40 CFR 93.104(f) during a 12-month lapse grace period [4] may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budgets are found adequate or the attainment demonstration is approved. In addition, if the highway funding sanction is implemented, the conformity status of the transportation plan and TIP will lapse on the date of implementation of the highway sanctions. During a conformity lapse, only projects that are exempt from transportation conformity (e.g., road resurfacing, safety projects, reconstruction of bridges without adding travel lanes, bicycle and pedestrian facilities), transportation control measures that are in the approved SIP and project phases that were approved prior to the start of the lapse can proceed during the lapse. No new project-level approvals or conformity determinations can be made and no new transportation plan or TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate.

[4] Additional information on the implementation of the lapse grace period can be found in the final transportation conformity rule published on January 24, 2008. (73 FR 4423–4425)

## VI. Proposed Action

EPA is proposing to disapprove Connecticut's attainment demonstration for the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area submitted to EPA on February 1, 2008. Connecticut's demonstration does not provide the level of compelling evidence needed/required for EPA to have confidence that this nonattainment area will attain the ozone standard by the June 2010 deadline. EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before taking final action.

## VII. Statutory and Executive Order Reviews

### *A. Executive Order 12866, Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined 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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 ''for State, local, or tribal governments or the private sector.'' EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132, Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. 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 Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997).This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

**List of Subjects in 40 CFR Part 52**

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

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

Dated: April 28, 2009.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA New England.*

[FR Doc. E9–10660 Filed 5–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R02–OAR–2008–0497, FRL–8901–3]**

## Approval and Promulgation of Implementation Plans; New Jersey Ozone Attainment Demonstration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing action on the ozone attainment demonstration portion of a comprehensive State Implementation Plan revision submitted by New Jersey to meet Clean Air Act requirements for attaining the 8-hour ozone national ambient air quality standard. EPA is proposing to disapprove New Jersey's demonstration of attainment of the 8-hour ozone standard.

**DATES:** Comments must be received on or before June 8, 2009.

**ADDRESSES:** Submit your comments, identified by Docket Number EPA–R02–OAR–2008–0497, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

*Instructions:* Direct your comments to Docket No. EPA–R02–OAR–2008–0497. 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 or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert Kelly (*kelly.bob@epa.gov*) Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

**SUPPLEMENTARY INFORMATION:**

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## I. What Action is EPA Proposing?

The Environmental Protection Agency (EPA) has reviewed New Jersey's comprehensive State Implementation Plan (SIP) revision for attaining the 0.08 ppm 8-hour ozone national ambient air quality standards (NAAQS or standard) [1] in the State of New Jersey's moderate nonattainment areas along with other related Clean Air Act (Act) requirements necessary to insure attainment of the standard. The EPA is proposing to disapprove New Jersey's 8-hour ozone attainment demonstration because the EPA has determined that the photochemical modeling does not demonstrate attainment and the weight of evidence analysis that New Jersey uses to support the attainment demonstration does not provide

[1] Unless otherwise specifically noted in the action, references to the 8-hour ozone standard are to the 0.08 ppm ozone standard promulgated in 1997.

sufficient evidence to provide confidence that the two nonattainment areas located in New Jersey will attain the NAAQS by the June 2010 deadline.

EPA's analysis and findings are discussed in this proposed rulemaking and a more detailed discussion is contained in the Technical Support Document for this Proposal which is available on line at *www.regulations.gov,* Docket number EPA–R02–OAR–2008–0497.

## II. Background Information

### *A. History and Time Frame for the State's Attainment Demonstration SIP*

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. In addition, EPA promulgated its Phase 1 Rule for implementation of the 8-hour standard, which provided how areas designated nonattainment for the 8-hour ozone standard would be classified (April 30, 2004 (69 FR 23951)). The entire state of New Jersey is classified as being in nonattainment, divided between two 8-hour ozone moderate nonattainment areas it shares with other states, the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area, and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area. The New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area consists of the following New Jersey counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union and Warren. The New Jersey portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area consists of the following New Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean and Salem.

These designations triggered the Act's requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit an attainment demonstration. EPA's Phase 2 8-hour ozone implementation rule, published on November 29, 2005 (70 FR 71612) (Phase 2 Rule) specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. 40 CFR 51.908(a)

### *B. Moderate Area Requirements*

On November 29, 2005, EPA published the Phase 2 Implementation rule which addresses the control obligations that apply to areas designated nonattainment for the 8-hour NAAQS. Among other things, the Phase 1 and Phase 2 Rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas modeling and attainment demonstrations with projection year emission inventories were due by June 15, 2007, along with reasonable further progress plans, reasonably available control measures, motor vehicle emissions budgets and contingency measures (40 CFR 51.908(a), and (c) 59.910, 59.912). This action addresses New Jersey's demonstration of attainment of the 8-hour ozone standard, which for moderate areas is to be attained by the ozone season before the attainment date of June 2010. In order to demonstrate attainment by June 2010, the area must adopt and implement all controls necessary for attainment by the beginning of the 2009 ozone season and demonstrate that the level of the standard will be met during the 2009 ozone season.

### *C. Clean Air Act Requirement for Multi-State Ozone Nonattainment Areas*

Section 182(j) of the Clean Air Act requires each state within a multi-state ozone nonattainment area to specifically use photochemical grid modeling and take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned. Under this subsection of the Clean Air Act, EPA may not approve any SIP revision for a State that fails to comply with these requirements.

## III. What Was Included in New Jersey's SIP Submittals?

After completing the appropriate public notice and comment procedures, New Jersey made a submittal in order to address the Act's 8-hour ozone attainment requirements identified in Section II.A.2. On October 29, 2007, New Jersey submitted a comprehensive 8-hour ozone SIP for the New Jersey portions of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas. It included attainment demonstrations, reasonable further progress (RFP) plans for 2008 and 2009, reasonably available control measures analyses for both areas, contingency measures, on-road motor vehicle emission budgets, and general conformity emission budgets for McGuire Air Force Base and Lakehurst Naval Air Station. This SIP revision was subject to notice and comment by the public and the State addressed the comments received on the proposed SIPs before adopting the plans and submitting them for EPA review and approval into the SIP.

Only the attainment demonstration is evaluated in this proposal. EPA has evaluated and proposed action on the other portions of New Jersey's SIP in a separate **Federal Register** action. See 74 FR 2945, January 16, 2009.

## IV. EPA's Review and Technical Information

### *A. Attainment Demonstration*

1. What Are the Components of a Modeled Attainment Demonstration?

Section 110(a)(2)(k) of the Clean Air Act requires states to prepare air quality modeling to demonstrate how they will meet ambient air quality standards. EPA determined that states must use photochemical grid modeling, or any other analytical method determined by the Administrator to be at least as effective, to demonstrate attainment of the ozone health-based standard in areas classified as 'moderate' or above, and to do so by the required attainment date. *See* 40 CFR 51.908(c). In 40 CFR 51.903, EPA specified how areas would be classified with regard to the 8-hour ozone standard set by EPA in 1997. EPA followed these procedures and classified the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD and New York-Northern New Jersey-Long Island, NY-NJ-CT ozone nonattainment areas as moderate (69 FR 23858). Since the attainment date is June 2010 for moderate areas, these areas must achieve emission reductions by the beginning of the ozone season of 2009 in order for ozone concentrations to be reduced and meet the level of the standard during the last complete ozone season before the 2010 deadline. See 40 CFR 51.908(d).

EPA's photochemical modeling guidance is found at *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM2.5, and Regional Haze,* EPA–454/B–07–002, April 2007. The photochemical modeling guidance is divided into two parts. One part describes how to use a photochemical grid model for ozone to assess whether an area will come into attainment of the air quality standard. A second part describes how the user should perform supplemental analyses, using various analytical methods, to determine if the model overpredicts, underpredicts, or accurately predicts the air quality improvement projected to occur by the attainment date. The guidance indicates that states should review these supplemental analyses, in combination with the modeling analysis, in a ''weight of evidence'' assessment to determine whether each area is likely to achieve timely attainment.

New Jersey's SIP submittal (also referred to as the New Jersey SIP) addresses each of the elements of a modeling attainment demonstration. The submittal explains how on warm, sunny days, winds at the surface and aloft move emissions from sources of ozone-forming chemicals within and outside New Jersey to create high ozone concentrations in New Jersey. In addition, it indicates that emissions from large combustion sources are transported eastward by upper level winds to the east coast, adding to the ozone formed locally.

The Ozone Transport Commission's (OTC's) Modeling Committee developed a protocol for modeling the ozone problem in the northeastern United States. The OTC Modeling Committee coordinated preparing and running the photochemical grid model. It chose the Community Multi-scale Air Quality Model (CMAQ) as the photochemical grid model of choice. EPA concurs that this model is appropriate for modeling the formation and distribution of ozone. The model domain covered almost all of the eastern United States, with a high-resolution grid covering the states in the northeast ozone transport region, including New Jersey.

The OTC Modeling Committee used weather data for the entire 2002 ozone season in the CMAQ. 2002 was the base year for the attainment plans and the year of the emission inventory used in the base year modeling. Using a full ozone season covers many different weather conditions when ozone episodes occur and exceeds EPA's recommendations for episode selection. The OTC Modeling Committee used a Mesoscale Meteorological model, version five (MM5), a weather forecast model developed by Pennsylvania State University and the National Center for Atmospheric Research for the weather conditions used by the photochemical grid model. Details about how the states used the MM5 model are in Appendix D4 of New Jersey's SIP submittal.

States across the eastern United States provided emissions information from their sources to be used in the model. The Mid Atlantic Regional Air Management Association (MARAMA) collected and quality assured the states' emissions data and processed these data for the photochemical grid model to use. The states also included the control measures that were already adopted as well as the control measures that the state was committing to adopt from a list of ''Beyond On the Way'' (BOTW) control measures. The lists of control measures provided by the states to be included in the modeling are summarized in Table 1. Emissions data for the model from outside the Northeast was obtained from other regional planning organizations. States provided projected emissions for 2009 that account for emission changes due to regulations the states plan to implement by the beginning of the 2009 ozone season, as well as expected growth. The modeling uses these emissions to calculate ozone concentrations for the attainment ozone season of 2009.

TABLE 1—OZONE TRANSPORT REGION-WIDE MODELING ASSUMPTIONS FOR THE 2009 BOTW MODEL RUN

| | Consumer products 2005/2009 | PFC 2005/2009 | Asphalt paving | Adhesives & sealants | ICI boilers—area sources | | | ICI boilers—non-EGU point sources | | | | | Cement kilns | Glass furnaces | Asphalt plants |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | < 25 mmBtu/hr | 25–50 mmBtu/hr | 50–100 mmBtu/hr | < 25 mmBtu/hr | 25–50 mmBtu/hr | 50–100 mmBtu/hr | 100–250 mmBtu/hr | >250 mmBtu/hr | | | |
| NY NAA: | | | | | | | | | | | | | | | |
| Connecticut | X | X | X | X | X | X | X | X | X | X | X | | | | X |
| New Jersey | X | X | X | X | | X | X | X | | | X | | | | |
| New York | X | X | X | X | X | X | X | X | X | X | X | | X | X | X |
| Phila. NAA: | | | | | | | | | | | | | | | |
| Delaware | X | X | | X | | | | | | | X | | | | |
| Maryland | X | X | X | X | | | | | | | X | | X | X | |
| New Jersey | X | X | X | X | | X | X | X | | | X | | | | |
| Pennsylvania | X | X | | X | | | | | | | | | | X | |
| Other States: | | | | | | | | | | | | | | | |
| Maine | X | X | | X | | | | | | | | | X | | |
| New Hampshire | X | X | X | | | | | | X | X | X | | | | |
| Vermont | | | | | | | | | | | | | | | |
| Massachusetts | X | | X | X | | | | | | | | | | X | |
| Rhode Island | X | X | X | X | | | | | | | | | | | |
| DC | X | X | X | X | | | | | | | | | | | X |

**Source:* MACTEC. Development of Emission Projections for 2009, 2012, and 2018 for NonEGU Point, Area, and Nonroad Sources in the MANE–VU Region, Final TSD. Prepared for the Mid-Atlantic Regional Air Management Association by MACTEC Federal Programs, Inc., February 28, 2007.

The states that share nonattainment areas with New Jersey have chosen to adopt different sets of control strategies, as shown in Table 1. This Table does not include additional measures that New Jersey has labeled as ''quantifiable additional measures'' and ''unquantifiable additional measures.'' These additional measures, that New Jersey's SIP submittal indicates are necessary to show attainment of the ozone standard, were not included in the photochemical grid modeling. Some, but not all, of New Jersey's neighboring states are planning to implement these additional measures.

The performance of the CMAQ photochemical grid model in predicting ozone, and the chemicals that form ozone, met EPA's guidelines for model performance. The model outputs are generally consistent with the day-to-day patterns of observed data, with low bias and error. The OTC Modeling Committee noted that the modeling system tends to overpredict low concentrations and slightly underpredict peak concentrations. EPA concurs with New Jersey's assessment that the model was properly set up, met all EPA performance requirements and was appropriate for use in New Jersey's nonattainment areas.

For the attainment analysis, the states used the results from the photochemical

grid model in a relative sense, as recommended by EPA's photochemical modeling guidance, by calculating the difference between ozone predicted by the photochemical grid model in 2002 and ozone predicted using the emission controls New Jersey and other states planned to have in place by 2009.[2] To meet EPA's attainment test, when the difference in ozone from 2002 to 2009 is applied to the baseline air quality data centered in the base year of 2002, the resulting 2009 prediction must be that ozone is less than 85 parts per billion (ppb) at all monitoring stations.

In summary, the basic photochemical grid modeling used by New Jersey in its SIP submittal meets EPA's guidelines and, when used with the methods recommended in EPA's modeling guidance, is acceptable to EPA. When New Jersey applies EPA's methods to its data, using the photochemical grid model that includes the modeled emission reduction strategies prepared by New Jersey and the OTC states, it predicts that ozone levels in the attainment year would be 92 ppb in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD and 90 ppb in the New York-Northern New Jersey-Long Island, NY-NJ-CT ozone nonattainment areas. Thus, the photochemical model predicts New Jersey will not reach the 84 ppb concentration level that marks attainment of the ozone standard by the 2009 ozone season.

2. What Were the Results of the State's Weight of Evidence Analysis?

a. EPA Requirements for the Weight of Evidence Analysis

EPA's photochemical modeling guidance strongly recommends states complement the photochemical air quality modeling in situations where modeling predicts the area to be close to (within several parts per billion of) the ozone standard. While this is not the case in New Jersey where photochemical modeling predicts levels significantly greater than the ozone standard, New Jersey nevertheless chose to perform additional analyses to determine if attainment could be demonstrated. EPA can accept results of additional analyses to be used in a weight of evidence determination to show that attainment is likely in spite of photochemical modeling predictions to the contrary. However, the greater the difference between the ozone standard and the photochemical modeling predictions, the more compelling the additional evidence produced by these additional analyses needs to be. EPA notes in its guidance that if the concentration predicted by the photochemical model is 88 ppb or higher, it is far less likely that the more qualitative arguments made in a weight of evidence determination can be sufficiently convincing to conclude that the ozone standard will be attained. In New Jersey's case, the photochemical model predictions of 92 ppb in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD and 90 ppb in the New York-Northern New Jersey-Long Island, NY-NJ-CT ozone nonattainment areas exceed 88 ppb. Thus the evidence needed to show that these areas will actually attain the ozone standard, despite the model's predictions, must be very compelling for EPA to approve these attainment demonstrations.

b. State's Weight of Evidence Argument and EPA's Evaluation

The photochemical modeling results, used in accordance with EPA's guidelines, predict that New Jersey's nonattainment areas will not attain by a wide margin by the 2009 ozone season. New Jersey's SIP submittal uses alternatives to the EPA guideline methods to adjust for perceived flaws in the photochemical grid model and estimate the ozone reductions that may be produced by additional measures not included in the model. New Jersey supports their alternatives using data and scientific research to make the case that its nonattainment areas could attain the ozone standard by the 2009 ozone season.

EPA has carefully reviewed New Jersey's attainment demonstration including these supplementary data and research studies. EPA attempted to determine if the additional information provided by New Jersey is an acceptable supplement to the photochemical grid modeling and can be approved by EPA to meet the Clean Air Act requirement as ''* * * any other analytical method determined * * * to be at least as effective'' to supplement the photochemical grid modeling (40 CFR 51.908). EPA has evaluated the information provided by the State and other information relevant to whether or not New Jersey's ozone nonattainment areas will attain the ozone standard by 2009 and concludes that this information does not demonstrate that New Jersey will attain the ozone standard by 2009. We discuss the details of New Jersey's analyses and EPA's conclusions in the sections that follow.

New Jersey's weight of evidence assessment considers two approaches to ''adjust'' the photochemical model predictions in 2009. One approach predicts that neither of the two nonattainment areas in which New Jersey is located will attain the standard in 2009 based on modeling alone. The second approach predicts the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area could attain the standard in 2009 based on adjusted photochemical modeling predictions. New Jersey's SIP submittal, Table ES.1 (summarized in Table 2), provides the results of New Jersey's analyses of attainment of the ozone standard. The submittal summarizes New Jersey's attainment demonstration in these words: ''Table ES.1 presents the results for the two controlling monitors in the multi-state nonattainment areas associated with New Jersey. The results indicated that it is plausible for both areas to reach attainment by June 15, 2010.'' EPA draws attention to this statement since New Jersey's technical analysis does not assert that attainment is likely or that attainment is certain within some set of parameters.

TABLE 2—2009 OZONE DESIGN VALUES PREDICTED IN THE NEW JERSEY SIP

| Site name, county and state | Photochemical grid modeling result | Alternative baseline and maximum reduction (approach 1) | Adjusted for transport (approach 2) | Effect of emissions quantified but not modeled [1] | Estimated effect of emissions not quantified [2] |
|---|---|---|---|---|---|
| Stratford, Fairfield Co., CT [3] ..... | 90 ppb ..... | 83 ppb ..... | 85 ppb ..... | −0.2 to −2 ppb ... | −1 to −3 ppb. |
| Colliers Mills, Ocean Co., NJ [4] ..... | 92 ppb ..... | 86 ppb ..... | 85 ppb ..... | −0.3 to −4 ppb ... | −1 to −3 ppb. |

**Note:** Attainment of the ozone standard is 84 ppb or less.

[2] This action refers to the modeling predicting ozone in 2009 as a surrogate for attaining with the three-year design value, and is not a literal prediction for the 2009 ozone season. Since the attainment date is June 2010 for New Jersey's areas, these areas must achieve emission reductions by the beginning of the ozone season of 2009 in order for ozone concentrations to be reduced, and meet the level of the standard, during the last complete ozone season before the 2010 deadline. (*See* 40 CFR 51.908(d).)

[1] From New Jersey SIP submittal, Table 5.11 and Section 5.4.4.4.
[2] From New Jersey SIP submittal, Section 5.4.5.
[3] New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area.
[4] Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD nonattainment area.

In the case of the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD and New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment areas, represented in Table 2 by the Colliers Mills and Stratford monitoring sites, respectively, New Jersey notes that attainment is ''plausible'' if the modeled results are adjusted and if New Jersey accounts for the effects of implementing additional measures not considered in the photochemical modeling. While New Jersey's SIP submittal states it expects to implement these additional measures, New Jersey notes that they are not part of New Jersey's attainment demonstration SIP.

As noted previously, the second approach to adjusting the photochemical modeling predictions, which relies on adjustments to the base line data and amount of reduction predicted by the modeling, predicts 2009 concentrations to be less than the 85 ppb ozone standard only in the New York-Northern New Jersey-Long Island, NY-NJ-CT New York City ozone nonattainment area. See the results for the Stratford, CT receptor in Table 2. For the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD area, neither approach to adjusting the photochemical modeling demonstrates attainment. See the results for the Colliers Mills, NJ receptor in Table 2. New Jersey relies on additional emission control measures to argue that the NAAQS will be attained in 2009 in both of its nonattainment areas. New Jersey estimates these additional measures could reduce concentrations by anywhere from 1 ppb to 5 ppb at Colliers Mills and from less than 1 ppb to 2 ppb at Stratford. EPA's evaluation of these additional measures is discussed later in this action.

New Jersey's attainment demonstration relies on all of the following to demonstrate attainment by 2009 in both of its nonattainment areas:

(1) New Jersey uses an alternative to the modeling guidance method that provides a 2002 starting point closer to attainment and a larger ozone reduction than the modeling average,

(2) New Jersey includes specified attainment measures which are not yet implemented, but committed to in its SIP submittal, and

(3) New Jersey relies on the benefits from additional measures without specifically including them in the attainment demonstration.

Even if these adjustments and assumptions are acceptable, the additional measures not included in the modeling show attainment only with the upper limit of the estimated benefits.

The next step is to evaluate each of these assumptions in New Jersey's SIP submittal to determine if they help demonstrate that attainment by 2009 is likely.

Table 2 includes the 2009 predicted ozone concentrations from the photochemical grid modeling. Applying the methods recommended in EPA's modeling guideline to the output from the photochemical grid model results in predictions of ozone in 2009 to be 92 ppb for the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD and 90 ppb for the New York-Northern New Jersey-Long Island, NY-NJ-CT areas. The modeled concentrations in 2009 are significantly above the 84 ppb concentration used as the benchmark for attaining the ozone air quality standard. As previously noted, EPA does not rule out the use of alternative methods even when the photochemical grid modeling results demonstrate the areas are far from attaining the standard, but EPA's modeling guidance notes that more qualitative results are less likely to support a conclusion differing from the outcome of the modeled attainment test. The guidance notes that, in most cases, considerable amounts of precursor control (*e.g.*, 20–25 percent or more) would be needed to lower projected ozone design values even by 3 ppb.

• New Jersey's Adjustments to Modeled Results—Overview

New Jersey used several different methods to calculate the ozone for the attainment year, based on 2009's emissions—methods that differed from EPA's modeling guidance. In the first approach, New Jersey used alternative methods of calculating the base starting point design value and the amount of reduction predicted by the model. Combined, these two adjustments predict an attainment year ozone concentration of 86 ppb in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD nonattainment area and 83 ppb in the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area, therefore attaining the standard only in the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area.

The second approach used the results of scientific research to adjust the ozone concentration predicted by photochemical grid modeling. This approach predicts attainment year ozone concentrations of 85 ppb in both the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD and the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment areas. Using this approach, attainment is not reached without additional measures in either of New Jersey's nonattainment areas.

• New Jersey's Adjustments to Modeled Results—First Approach, Part 1

One of New Jersey's methods for adjusting the modeled results uses alternative ways of calculating the base air quality value for 2002. New Jersey's SIP submittal uses a straight five-year average of the fourth-highest design value from 2000 to 2004. EPA's modeling guidance recommends using an average of the three years of design value centered on 2002, which creates a weighted five-year average. While New Jersey's SIP submittal notes that EPA's method of providing a weighted average baseline value weights the base year of 2002 more heavily than other years, EPA intended this, so that the resulting value was influenced the most by the ozone data from the base year of the emission inventory. There are other ways of calculating a baseline value that the State did not use. For example, for the peak ozone site of the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD nonattainment area at Colliers Mills:

The EPA guideline method baseline is 105.7 ppb [3];

the New Jersey alternative baseline is 104 ppb;

the 2002 design value is 112 ppb; and

the 2003 designation design value, centered on 2002, is 106 ppb.

Various methods could result in 2002's base year ozone of two ppb lower than the modeling guidance method (New Jersey's five year average centered on 2002) or as much as 7 ppb higher than the guidance method (single design value from 2002). New Jersey relies on the lower end of the range of possible results, and this brings the modeling result closer to attainment. In addition,

[3] The 2002 base air quality value for the modeling base year is 106 ppb in New Jersey's SIP submittal. EPA's guideline method results in a value of 105.7 ppb.

the straight five-year average method used by New Jersey, while centered on 2002, is skewed by giving 2004 as much influence as other years. The ozone data from 2004 includes the effects of reductions made between the base year 2002 and the attainment year of 2009, when major reduction in nitrogen oxides ($NO_X$) occurred and are accounted for in the photochemical grid modeling. Specifically, EPA's $NO_X$ SIP Call and $NO_X$ Budget Trading Program produced significant reductions before the 2004 ozone season. The summer of 2004 was also a cooler than normal summer, possibly biasing the base value further downward toward attainment. In an unweighted five-year average, 2004 has as much influence on the result as each of the other four years, so it provides a significant bias toward attainment. Selecting only a method that is lower than the recommended method is not a balanced use of the weight of evidence analysis. In this case, there are equally plausible alternatives that produce higher values. EPA does not find New Jersey's selected method of adjusting the base design value to be sufficiently justified and cannot accept it as a supplemental method of demonstrating attainment.

• New Jersey's Adjustments to Modeled Results—First Approach, Part 2

In order to predict an ozone design value for the attainment year, 2009, it is important to know how much ozone will decrease from the base year to the attainment year. The modeling predicts ozone in 2002 and 2009 using each year's emissions and taking the difference between them. EPA's modeling guidance suggests using the average percent change in ozone at grid cells around a monitoring site.

For the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD nonattainment area the percent reduction in ozone between 2002 and 2009 was 9.5 percent at the peak monitor and varied across monitoring sites from 6.1 percent to 12.2 percent. New Jersey's SIP submittal uses the greatest reduction from all of the monitoring sites instead of using the site-specific value for each of the monitoring sites. Using the largest reduction from any site in the entire area may not be any more correct than using the least reduction from any site in the entire area. New Jersey's alternative method is not acceptable in the weight of evidence analysis because other methods can produce equally plausible changes in ozone that result in higher 2009 predicted ozone concentrations than New Jersey's alternative method. EPA does not find New Jersey's selection of this adjustment sufficiently justified and cannot accept it as a supplemental method of demonstrating attainment.

• New Jersey's Adjustments to Modeled Results—Second Approach—The Sensitivity of the Photochemical Grid Model to Changes in Emissions That Cause Ozone

New Jersey's SIP submittal includes analyses as to whether the photochemical grid model provides for too little ozone reduction for the emissions reductions used in the photochemical grid modeling (particularly long-range transport of ozone and ozone-forming chemical compounds). New Jersey makes the case that, if the model does not properly account for transport, future ozone would be lower than predicted by the photochemical grid model. Therefore, New Jersey proposes adjusting the modeling results downward by 5 ppb to 7 ppb. Thus, New Jersey projects 2009 ozone of 85 ppb in both the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD and New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment areas.

New Jersey's analysis relies on other studies that suggest the model underpredicts ozone transported aloft and which, if corrected, would result in lower predictions in the future. For example, New Jersey cites ambient data from sites that are strongly affected by transported ozone to support the proposition that the model may have a slight bias toward overprediction of the 2009 attainment year ozone. Some aircraft vertical soundings from 2002 show that modeled ozone is less than predicted by the model. This is important in the photochemical grid model since ozone is transported aloft from areas with high emissions of ozone-forming compounds—areas where large reductions in emissions are expected due to EPA's $NO_X$ SIP Call and $NO_X$ Budget Trading Program. New Jersey is concerned that the change in ozone from these areas may also be underpredicted. However, the same document also notes that ozone formed along the surface from local sources may be underestimated. EPA is concerned that New Jersey's SIP does not adequately allow for the possibility that the model is giving too much credit to these surface layer ozone reductions, which should be accounted for in New Jersey's submittal, if it desires to adjust the modeling results for a possible lack of credit from distant emission sources.

New Jersey's SIP submittal cites research on ozone concentrations during an electrical blackout in the recent past that suggests the model underpredicts the amount of ozone reduction that actually occurred during the electrical blackout. During the blackout, measured ozone in rural areas west of New Jersey was lower because some power plants and some other major sources of ozone-forming compounds were shut down. A study cited by New Jersey used a photochemical grid model to estimate the effect of the blackout by calculating the change in ozone with and without the sources that were shutdown during the blackout. Another study compared ozone on the blackout day with a past high ozone day with more typical emissions but with similar weather and wind patterns to the blackout day. New Jersey's concern was that the modeled change was less than the change in ozone between the more typical day and the blackout day. New Jersey concludes from this that the model is not responsive enough to reductions in transported emissions. However, no two days are the same and comparing two particular ozone episodes is never exact. The emissions of precursors that produce ozone and the meteorological patterns on the day of and the days preceding the blackout will never occur the same way twice. Another study that EPA finds persuasive shows that the ''typical'' day had winds coming from areas that were not the ones most affected by the blackout. So, EPA believes the comparison of the typical and blackout days is not convincing because the blackout and typical days have ozone precursors arriving from different areas. Also, these studies cited by New Jersey did not look at the effect of the blackout on air quality in the urban nonattainment areas like those in New Jersey. EPA concludes that while the blackout study provides some information as to the effectiveness of reducing emissions on ozone air quality, the blackout day and the more typical day used for comparison have ozone precursors from different areas and does not demonstrate that the model is not responsive enough to changes in ozone precursor emissions.

After careful review of these studies, EPA has found significant uncertainties in the SIP submittal's technical analysis and therefore does not accept New Jersey's conclusion that the modeling system underpredicts changes in ozone as emissions change. Arguments in New Jersey's SIP submittal that the model may not give full credit for emission reductions are supported by limited modeling work. The states have not tested their hypothesis with their own modeling. There are other studies and ambient data that suggest contradictory

conclusions. EPA believes any additional ozone reductions beyond the photochemical modeling are likely to be far less than the 5 to 7 ppb claimed in the New Jersey SIP submittal. Therefore, EPA concludes that New Jersey's adjustments to the photochemical grid modeling results are not supported by the information provided.

• New Jersey's Adjustments to Modeled Results—Evidence of Improvement Based on Air Quality Through 2006

New Jersey points out that measured design values in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD and New York-Northern New Jersey-Long Island, NY-NJ-CT areas in 2006 were close to the concentrations predicted by the photochemical grid model for 2009. With the passage of time since New Jersey submitted its SIP revision, EPA can use more recent air quality data to evaluate New Jersey's comparison of the modeled results to actual air quality. These more recent measurements, data from 2007 and preliminary air quality data from 2008, are significantly higher than the ozone standards. For example, when measured air quality data for 2007 are included, the design value remains the same or increases in New Jersey's ozone nonattainment areas. Ozone design values appear to be moving more slowly toward attainment from 2006 to 2008 because the design values in 2006 were biased low by the cooler-than-normal summer of 2004 and more recent design values are more indicative of typical air quality in New Jersey's nonattainment areas.

The observed 2007 design values are well above the values predicted by the photochemical grid modeling (using the EPA guideline methodology). These data contradict the argument that the modeling system is overpredicting ozone in the attainment year. Note that EPA is relying on air quality data only as a supporting argument for EPA's determination, discussed earlier, that New Jersey's nonattainment areas will not attain the ozone standard by the 2009 ozone season. Later in this action, EPA reviews the effect of more recent measured ozone data on the proposition that emission reductions expected in 2008 and 2009 will be enough to reduce ozone to attainment levels by 2009.

• Accounting for Additional Emission Reduction Measures Not in Modeled Results

New Jersey's weight of evidence analysis also attempts to quantify some emission reductions not included in the modeling. There are two kinds of additional reductions that were not included in the photochemical grid modeling: reductions that New Jersey can quantify and other reductions that are harder to quantify. The most effective way to predict changes in ozone is through air quality modeling; however, New Jersey did not perform additional modeling runs including these additional measures. The New Jersey weight of evidence analysis includes an attempt to project the effect of these measures. For the additional emission reductions New Jersey describes as ''quantifiable,'' New Jersey extrapolates data from modeling discussed in its SIP submittal. For the additional emission reductions New Jersey describes as ''unquantifiable,'' New Jersey uses previously modeled sensitivity studies of mobile source controls to estimate the impact of these unquantified emission reductions on air quality. Numerically, for the quantifiable measures, New Jersey uses extrapolation of the photochemical modeling results to predict that additional measures will reduce ozone by 0.3 to 4 ppb in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD area and 0.2 to 2 ppb in the New York-Northern New Jersey-Long Island, NY-NJ-CT area.

New Jersey's SIP submission indicates if the projected impact of these two sets of measures is combined and their peak effects occurred at the peak monitoring location, these additional measures could reduce 2009 ozone by 1 to 7 ppb for the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD area and 1 to 5 ppb for the New York-Northern New Jersey-Long Island, NY-NJ-CT area. The photochemical grid modeling predicted modeled air quality for 2009 to be above the standard by 8 ppb in Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD and above the standard by 6 ppb in New York-Northern New Jersey-Long Island, NY-NJ-CT. Even assuming these additional measures produced the largest amount of benefits estimated by New Jersey (which we believe would not be the appropriate level to consider) New Jersey's nonattainment areas are predicted not to attain the standard.

For measures New Jersey classifies as ''non-quantifiable,'' its SIP submittal notes that when the State of Maryland modeled reduced auto emissions from decreased auto use due to telecommute programs, reductions similar to those measures proposed by New Jersey as unquantifiable, modeled ozone decreased by 1 to 3 ppb. EPA notes that Maryland modeled a forty percent reduction in mobile source emissions for the State's telecommute strategy. Maryland modeled the emission reductions that would occur if forty percent of all drivers decided not to drive to work on high ozone days; the model predicted ozone would be reduced by 1 to 3 ppb.

The additional strategies proposed by New Jersey, both the quantifiable and the unquantifiable are not large enough to reduce emissions by the equivalent of a forty percent reduction in motor vehicle use. Consequently, there is no supporting information that New Jersey's additional measures will reduce ozone by more than a few parts per billion (and more likely, less), and certainly not by the 5 ppb to 7 ppb suggested by adding together the upper end of the estimates provided in New Jersey's SIP submittal.

New Jersey's attainment demonstration predicts attainment only if EPA accepts the upper range of these emission reductions not included in the modeling, plus adjustments to the model results. EPA does not find sufficient support for either of these alternative analyses.

While New Jersey has committed to adopt these additional measures (see page 5–47 of the New Jersey SIP submittal, Table 5.11 ''Additional Quantifiable Measures Not Included in the 2009 BOTW Modeling), New Jersey has specifically not included these measures as part of its attainment demonstration. Additionally, some of these measures are being used to meet the contingency requirement should a nonattainment area not attain by its attainment date. The State cannot rely on the measures both for purposes of its attainment demonstration and for contingency measures as contingency measures must be measures in addition to those relied on to demonstrate attainment. Furthermore, in order for a control measure's benefit to be creditable towards attainment, the measures must be enforceable by the state and EPA and included in the federally enforceable SIP. EPA allows for a limited exception for voluntary measures, but New Jersey's additional measures, even if they were included as part of New Jersey's attainment demonstration, exceed the level of reductions that EPA would consider for voluntary measures. Therefore, these measures cannot be relied upon to make-up the difference between the modeling projection and attainment.

• EPA's Analysis of the Impact of the Most Recent Air Quality Data on Assertions of Attainment by 2009

New Jersey did not have the 2007 air quality data when it submitted its ozone attainment SIP revision. The 2006 design value (based on 2004–2006 data)

included air quality data from the cool summer of 2004 that had sharply lower levels of ozone. Ozone data from 2007 appears to be more in line with recent ozone seasons and not like the lower ozone concentrations recorded during the cooler summer of 2004. While ozone concentrations have decreased substantially since 2002 even when the 2004 data are excluded, the use of data including the summer of 2004 leads to an overly optimistic assessment of the 2004 to 2006 ozone concentrations used in New Jersey's evaluation of the trend toward attainment.

EPA is concerned that the additional measures included in New Jersey's SIP submittal (but not relied on as part of the attainment demonstration by New Jersey) and other measures implemented between now and the 2009 ozone season will not be enough to reduce ozone from its 2007 levels of 93 ppb in both of New Jersey's nonattainment areas to the 84 ppb ozone standard in 2009. Ozone levels have decreased in the past five years, but would need to decrease another fifty percent or more over the 2007 and 2008 ozone seasons to reach attainment in 2009.

EPA estimates that the programs New Jersey says it will implement between 2007 and 2009 could reduce emissions by an additional 7 to 10 percent of nitrogen oxides and 6 to 7 percent of volatile organic compound emissions. This is less than half of the reductions that occurred between 2002 and 2007. Also, improvements in ozone air quality in the past five years were also assisted by reduced regional emissions from EPA's $NO_X$ SIP Call and $NO_X$ Budget Trading Program as well as local emission reductions in the northeast corridor. These measures produced a significant decrease in ozone. However, the reductions from the $NO_X$ SIP Call and $NO_X$ Budget Trading Program are completed, so further reductions in transported ozone are likely to be minimal. This is confirmed by data in EPA's 2007 Air Quality Trends Report, which shows little decrease in regional reductions. Thus, it is not likely that ozone will continue to decrease at the rate observed from 2002 to 2007 unless local emission reductions are expanded to amounts well beyond those in the present federally enforceable SIP.

The preliminary data from the 2008 ozone season [4] decreases EPA's confidence that New Jersey's nonattainment areas will be able to attain the ozone standard by 2009. Including 2008's preliminary data, the design values become 92 ppb in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD area and 89 ppb in the New York-Northern New Jersey-Long Island, NY-NJ-CT area. EPA is not encouraged that the additional measures being implemented by the states will bring ozone air quality to attainment by 2009.

Sections 172(a)(2)(C) and 181(a)(5) of the Act provide for the opportunity of up to two one-year extensions of the attainment date of 2010. EPA can grant an extension if all of the monitors in a nonattainment area have a 4th highest daily 8-hour average in 2009 of 84 ppb or less and the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan. The historical ozone monitoring trends for New Jersey's ozone nonattainment areas, supplemented with the preliminary fourth-highest concentrations in 2008, support the view that the area is unlikely to attain the ozone standard or even to have all monitors record a 4th-highest 8-hour ozone of 84 ppb or less in 2009.

In summary, recent ambient data also do not support the State's contention that the model is underpredicting ozone for 2009, because if this was the case, these areas would be closer to attainment based on 2007 and 2008 data. Additionally, there does not appear to be enough evidence that additional emissions reductions over the next year will achieve attainment or be sufficient to meet the air quality requirement for an attainment date extension.

Even including the preliminary data for 2008, air quality for the past few years does not show lower ozone concentrations consistent with attainment by the 2009 ozone season. These air quality data are similar to the photochemical grid modeling results obtained by following the methods in EPA's guidance, showing that adjustments to the modeling results are not needed. It is unlikely that New Jersey's nonattainment areas will attain the ozone standard by the attainment date.

c. Summary of Weight of Evidence Discussion

With New Jersey's photochemical grid modeling results predicting a 2009 projected design value well above the air quality health standard for New Jersey's nonattainment areas, the State has a heavy burden to provide a demonstration that these areas will attain the ozone standard by the attainment date. New Jersey needed to supply a substantial amount of evidence that the model is seriously overestimating future ozone concentrations. Modeling and air quality studies do not support an argument that the model overpredicts concentrations in 2009. Reductions anticipated to take effect between now and the beginning of the 2009 ozone season are also not enough to close this gap. New Jersey has suggested that it can adopt additional emission reduction strategies which will reduce ozone, but these reductions are not yet in place or are voluntary and mostly unquantifiable emission control plans. They are not likely to reduce ozone enough to reach the standard by 2009, even if they are implemented. EPA also cannot give much credence to additional measures that New Jersey says it will implement, but will not officially include as part of its attainment demonstration.

Ozone air quality concentrations through 2007 are far above the level needed for attainment and it is unlikely that New Jersey and the other states impacting these two nonattainment areas will be able to implement enough additional emission controls to reach the standard by 2009. This is supported by the lack of improvement shown in the preliminary air quality data from 2008. Also, the present air quality data does not support the hypothesis that the models are incorrect. If New Jersey's hypothesis was correct, present air quality concentrations would be closer to the standard if New Jersey's nonattainment areas were going to reach attainment in the upcoming 2009 ozone season, when attainment is due.

The information and calculations provided by New Jersey's SIP emphasizes methods or data that support their claims that the nonattainment areas could attain the standard by the deadline. EPA's review of the ''weight of evidence'' analyses must evaluate a spectrum of likely alternative calculations, not only those that tend to show the area will attain the ozone standard. As noted before, the method recommended by EPA's guidance and other reasonable variations on EPA's methods predict the area will not attain the ozone standard by 2009. New Jersey has provided considerable information in support of its ''weight of evidence.'' EPA has determined this information does not demonstrate that the proposed

[4] Region 2 is using the preliminary data from the Air Quality System or in some circumstances from the EPA-State real-time data reporting system. These data have not completed the states' quality assurance review. Certified 2008 ozone data were not available from the states at the time of this notice. EPA anticipates that the final data are not likely to change by more than one or two ppb from the preliminary data used in EPA's assessment. Changes of this amount would not change EPA's conclusions.

adjustments to the photochemical grid model's attainment year forecast will give a more accurate answer than the calculations based on EPA's recommendations in its modeling guidance.

3. What Is EPA's Evaluation?

The result of the photochemical grid modeling analysis using EPA's recommended methods predicts that New Jersey's nonattainment areas will not attain the standard by the attainment year of 2009. In response to this, New Jersey has offered a number of alternative methods for using the modeling information and additional control strategies that when taken together might plausibly demonstrate attainment.

EPA has carefully evaluated the information provided by New Jersey and other information it deems relevant to help predict whether ozone air quality is likely to be in attainment of the ozone standard after control measures are in place by the 2009 ozone season. Taking all this information together, EPA finds the argument that attainment is likely in 2009 is unconvincing, and EPA does not find the possibility that attainment is plausible enough to satisfy the Clean Air Act requirement that State Implementation Plans provide for attainment of the NAAQS by the applicable attainment date.

In general, EPA's conclusions can be summarized as follows:

- New Jersey's modeling, using an appropriate photochemical grid model and EPA's guidance methods, does not predict attainment in 2009.
- New Jersey's attainment demonstration greatly relied on adjustments to the baseline assumptions which formed the basis of the photochemical modeling analysis. These adjustments to the base year starting value and the amount of reduction in ozone from 2002 to 2009 differ from EPA's modeling guidance and, more importantly, are not sufficiently justified, and are biased toward a conclusion that New Jersey's nonattainment areas will attain the standard.
- New Jersey's attainment demonstration greatly relied on research which evaluated the impact of a widespread power blackout to develop an alternative approach to estimating anticipated air quality improvements from upwind power plants. While EPA believes that this approach provides some insight into the transport of ozone precursors, a critical review of all the research available to EPA and New Jersey leads EPA to disagree with the premise that the air quality modeling results should be adjusted using New Jersey's alternative approaches.
- New Jersey's attainment demonstration relies, in part, on emission reductions resulting from a commitment to adopt and implement a number of regulations prior to the start of the 2009 ozone season. Some of these were included in the photochemical grid modeling. These regulations would provide for additional reductions from boilers, refineries, power generation, consumer products and portable fuel containers. New Jersey's SIP submittal contains a schedule to adopt these regulations by May of 2008. While New Jersey has recently adopted two rule packages, the third has yet to be proposed. EPA must discount the effects of these relied-upon emission reductions since these emission reductions may not be achieved by the start of the 2009 ozone season.
- In order to insure attainment, New Jersey refers to additional measures that were not included in the original photochemical modeling analysis. New Jersey, however, has specifically not included these measures as part of its attainment demonstration. In order for a control measure's benefit to be creditable towards attainment, the measures must be enforceable by the State and be included in the federally enforceable SIP. As such, these additional measures cannot be relied upon to make-up the difference between what the modeling projects and what is needed for attainment.
- Some of New Jersey's additional measures can be quantified, others cannot. While EPA encourages New Jersey to continue to promote these worthwhile and important emission reduction programs, the amount of tangible air quality benefit is difficult to estimate with any degree of certainty. Even if these measures were adopted and implemented, the emissions reductions are not sufficient to meet the ozone standard in 2009 even by selecting the most favorable assumptions of the benefits associated with these control measures.
- New Jersey used measured ozone through 2006 to support its conclusion that the photochemical grid modeling was likely to be incorrect in its prediction that New Jersey's nonattainment areas would be far from attainment by 2009. However, when comparing more recent data from 2007 and preliminary data from 2008 with the results of the photochemical grid modeling using EPA's method, the photochemical grid model does not exhibit the magnitude of inaccuracies suggested in New Jersey's attainment demonstration.
- Regardless of the issues raised by New Jersey regarding the performance of EPA's recommended air quality models, the air quality measured during 2007 exceeded the ozone standard by a significant margin. Even a linear comparison of the percentage of additional emission reductions planned by the State with the needed improvement in air quality between 2007 and 2009 indicates it is unlikely that air quality will improve enough to meet the ozone standard by 2009. Preliminary air quality data from 2008 is sufficiently similar to 2007 air quality data to indicate that attainment by 2009 is now even less likely.
- New Jersey, along with the other states sharing its nonattainment areas, did not take sufficient steps as required by the section 182(j) of the Act to coordinate with each other on the implementation of SIP submittals applicable to the nonattainment areas. The SIPs submitted by each of the states which share New Jersey's nonattainment areas differ significantly in their level of emission controls, and, to a lesser extent, modeling demonstrations. In particular, for the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area, the three states did not agree on the basic issue of whether they will attain the ozone standard by the attainment date.

For these reasons, EPA proposes to disapprove the attainment demonstration portion of New Jersey's SIP submittal. The photochemical grid modeling, performed according to EPA's guidelines, predicts New Jersey's nonattainment areas will fall short of attaining the ozone standard by a substantial margin. New Jersey provides extensive information to argue that attainment is plausible if the modeled results are adjusted and if additional measures (not included in the modeling or the attainment demonstration) will be in place and are effective. New Jersey's demonstration does not provide the level of compelling evidence needed for EPA to have confidence that New Jersey's nonattainment areas will actually attain the NAAQS by the June 2010 deadline.

## V. What Are the Consequences of a Disapproved SIP?

This section explains the consequences of a disapproval of a SIP submittal under the Act. The Act provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if a state fails to submit a plan revision that corrects the deficiencies identified by EPA in its disapproval.

*A. What Are the Act's Provisions for Sanctions?*

If EPA disapproves a required SIP or component of a SIP, such as the Attainment Demonstration SIP, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP if a state fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the Act. If a state has still failed to submit a SIP revision for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to sanction a broader area, but is not proposing to take such action in today's rulemaking.

*B. What Federal Implementation Plan Provisions Apply if a State Fails To Submit an Approvable Plan?*

In addition to sanctions, if EPA finds that a state failed to submit the required SIP revision or disapproves the required SIP revision, or a portion thereof, EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected within that time period.

*C. What Are the Ramifications Regarding Conformity?*

One consequence of EPA's disapproval of a control strategy SIP is a conformity freeze whereby affected MPOs cannot make new conformity determinations on long range transportation plans and transportation improvement programs (TIPs). If we finalize the disapproval of the attainment demonstration SIP, a conformity freeze will be in place as of the effective date of the disapproval without a protective finding of the budget. (40 CFR 93.120(a)(2)) This means that no transportation plan, TIP, or project not in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of 40 CFR 93.104(f) during a 12-month lapse grace period [5] may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budgets are found adequate or the attainment demonstration is approved. In addition, if the highway funding sanction is implemented, the conformity status of the transportation plan and TIP will lapse on the date of implementation of the highway sanctions. During a conformity lapse, only projects that are exempt from transportation conformity (*e.g.,* road resurfacing, safety projects, reconstruction of bridges without adding travel lanes, bicycle and pedestrian facilities, etc.), transportation control measures that are in the approved SIP and project phases that were approved prior to the start of the lapse can proceed during the lapse. No new project-level approvals or conformity determinations can be made and no new transportation plan or TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate.

[5] Additional information on the implementation of the lapse grace period can be found in the final transportation conformity rule published on January 24, 2008. (73 FR 4423–4425)

## VI. What Are EPA's Conclusions?

EPA is proposing to disapprove New Jersey's attainment demonstrations for the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone moderate nonattainment areas because New Jersey's demonstration does not provide the level of compelling evidence for EPA to have confidence that New Jersey's nonattainment areas will attain the NAAQS by the June 2010 deadline.

## VII. Statutory and Executive Order Reviews

*A. Executive Order 12866, Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined 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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (*e.g.,* higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal

governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132, Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. 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 Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that VCS this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

**List of Subjects in 40 CFR Part 52**

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

Dated: April 28, 2009.

**George Pavlou,**

*Acting Regional Administrator, Region 2.*

[FR Doc. E9–10663 Filed 5–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2008–0929; FRL–8901–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Maryland; Attainment Demonstration for the Philadelphia-Wilmington-Atlantic City Moderate 8-Hour Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove the ozone attainment demonstration portion of a comprehensive State Implementation Plan (SIP) revision submitted by the State of Maryland to meet Clean Air Act (CAA) requirements for attaining the 8-hour ozone national ambient air quality standard (NAAQS) for Cecil County, which is the Maryland portion of the Philadelphia-Wilmington-Atlantic City moderate nonattainment area (Philadelphia Area). EPA is proposing to disapprove Maryland's attainment demonstration of the 8-hour ozone NAAQS for the Philadelphia Area because EPA has determined that the photochemical modeling does not demonstrate attainment, and the weight of evidence (WOE) analysis that Maryland uses to support the attainment demonstration does not provide the

sufficient evidence that Cecil County will attain the NAAQS by the June 2010 deadline.

**DATES:** Written comments must be received on or before June 8, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0929 by one of the following methods:

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

B. *E-mail*: *fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2008–0929, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, 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–2008–0929. 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 Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Maria A. Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. What Action Is EPA Proposing?

EPA is proposing to disapprove the SIP revision consisting of the 8-hour ozone attainment demonstration plan for Cecil County, which is the Maryland portion of the Philadelphia-Wilmington-Atlantic City moderate nonattainment area, submitted by the Maryland Department of the Environment (MDE) on June 4, 2007.

EPA is proposing to disapprove Cecil County's 8-hour ozone attainment demonstration plan because EPA has determined that the photochemical modeling does not demonstrate attainment, and the weight of evidence analysis that Maryland uses to support the attainment demonstration does not provide the sufficient evidence that Cecil County will attain the NAAQS by the June 2010 deadline.

EPA's analysis and findings are discussed in this proposed rulemaking and a more detailed discussion is contained in the Technical Support Document (TSD) for this proposal which is available on line at *www.regulations.gov*, Docket number EPA–R03–OAR–2008–0929.

## II. What Are the CAA Requirements for a Moderate 8-Hour Ozone Nonattainment Area?

### *A. History and Time Frame for the State's Attainment Demonstration SIP*

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame (''8-hour ozone standard'').[1] EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations, and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. In addition, EPA promulgated its Phase 1 Rule for implementation of the 8-hour standard, which provided how areas designated nonattainment for the 8-hour ozone standard would be classified. April 30,

[1] In 2008, EPA promulgated a more stringent 8-hour standard of 0.075 ppm. 73 FR 16436 (March 27, 2008). All references to the 8-hour ozone standard in this rulemaking refer to the 8-hour standard promulgated in 1997.

2004 (69 FR 23951). Among those nonattainment areas is the Philadelphia Area. The Philadelphia Area includes three counties in Delaware, five counties in eastern Pennsylvania, one county in Maryland, and eight counties in southern New Jersey. The Maryland portion of the Philadelphia Area consists of Cecil County. EPA's Phase 2 8-hour ozone implementation rule, published on November 29, 2005 (70 FR 71612) specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. *See,* 40 CFR 51.908(a).

*B. CAA Requirements*

Pursuant to Phase 1 of the 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951), an area was classified under subpart 2 of Title I of the CAA based on its 8-hour design value if it had a 1-hour design value at or above 0.121 ppm. Based on this criterion, the Philadelphia Area was classified under subpart 2 as a moderate nonattainment area. On November 29, 2005 (70 FR 71612), EPA published Phase 2 of the 8-hour ozone implementation rule in which it addresses the control obligations that apply to areas classified under subpart 2. Among other things, the Phase 1 and 2 rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment.

## III. What Was Included in Maryland's SIP Submittals?

On June 4, 2007, Maryland submitted a comprehensive 8-hour ozone SIP for Cecil County. The SIP submittal included an attainment demonstration plan, a reasonable further progress (RFP) plan, reasonably available control measures analysis, contingency measures, on-road motor vehicle emission budgets, and the 2002 base year emissions inventory. These SIP revisions were subject to notice and comment by the public. The State did not receive any comments on the proposed SIP revisions. Only the attainment demonstration sections of this SIP submittal are the subject in this rulemaking. The other sections of this SIP submittal will be addressed in a separate rulemaking.

## IV. What Is EPA's Review of Maryland's Modeled Attainment Demonstration and Weight of Evidence Analysis for the Maryland Portion of the Philadelphia Area?

Section 110(a)(2)(K) of the Clean Air Act requires states to prepare air quality modeling to show how they will meet ambient air quality standards. EPA determined that states must use photochemical grid modeling, or any other analytical method determined by the Administrator to be at least as effective, to demonstrate attainment of the ozone health-based standard in areas classified as 'moderate' or above, and to do so by the required attainment date. *See,* 40 CFR 51.908(c). EPA specified how areas would be classified with regard to the 8-hour ozone standard set by EPA in 1997. *See,* 40 CFR 51.903. EPA followed these procedures and the Philadelphia Area was classified by EPA as being in moderate nonattainment of the 8-hour ozone NAAQS. *See,* 69 FR 23858 (April 30, 2004). The attainment date is June 2010 for moderate areas; therefore, states must achieve emission reductions by the ozone season of 2009 in order for ozone concentrations to be reduced, and attainment achieved during the last complete ozone season before the 2010 deadline.

As more fully described in the TSD, the basic photochemical grid modeling used by Maryland in the Cecil County SIP meets EPA's guidelines, and when used with the methods recommended in EPA's modeling guidance, is acceptable to EPA. EPA's photochemical modeling guidance is found at *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*, EPA–454/B–07–002, April 2007. Using EPA's methods, the photochemical grid model, containing the modeled emission reduction strategies prepared by Maryland and the Ozone Transport Commission states, predicts that the 2009 ozone design value in the Philadelphia Area would be 91 parts per billion (ppb). Thus, the photochemical model predicts the Philadelphia Area will not reach the 84 ppb concentration level needed to show attainment of the ozone standard by the 2009 ozone season.

EPA's photochemical modeling guidance is divided into two parts. One part describes how to use a photochemical grid model for ozone to assess whether an area will come into attainment of the air quality standard. The second part of EPA's photochemical modeling guidance strongly recommends states complement the photochemical air quality modeling with additional analyses (WOE analyses) in situations where modeling predicts the Philadelphia Area to be close to (within several parts per billion of) the ozone standard. A WOE analysis is any set of alternative methods or analyses that, when considered together, and in combination with the modeling analysis, supports the conclusion that the NAAQS has been attained, even in instances when the modeling results alone do not predict attainment. EPA notes in Section 2.3 of its guidance that if the concentration predicted by the photochemical model is 88 ppb or higher, it is ''far less likely that the more qualitative arguments made in a weight of evidence determination can be sufficiently convincing to conclude that the NAAQS will be attained.''

In the Philadelphia Area, the photochemical model predicts a 2009 ozone design value of 91 ppb which exceeds the modeling guidance threshold of 88 ppb. As stated above, EPA's photochemical modeling guidance indicates that it is difficult to make a convincing argument to show that ozone will be less than 84 ppb when model predicted concentrations are greater than 88 ppb. Thus the evidence needed to demonstrate that the Philadelphia Area will actually attain the ozone standard should be ''sufficiently convincing'' if EPA is to approve Maryland's attainment demonstration for Cecil County.

As discussed at length in the TSD at pages 7 through 18, Maryland provided a WOE analysis that EPA has determined falls short of the goal of convincing us that the Philadelphia Area will attain the ozone NAAQS despite the modeling results to the contrary.

Maryland's WOE approach is essentially two-pronged. The first prong attempts to persuade that the photochemical grid model overestimates the future ozone concentrations for the Philadelphia Area. The second prong is an argument that there are additional emission reduction strategies that were not incorporated into the modeling, and which will reduce ozone in the Philadelphia Area, although many of these reductions are (a) voluntary and (b) are not yet implementable. As set forth in the TSD, EPA is not persuaded by either prong of Maryland's WOE either alone or in combination.

With respect to the first prong, the modeling and air quality studies cited by Maryland do not support an argument that the photochemical grid model used by Maryland over-predicts ozone concentrations in 2009. Air quality data through 2007 are far above the level needed for attainment. As shown in Table 3 of the TSD, the 2007 monitored design values in the Philadelphia Area range from 88 to 93 ppb, with the design value at the Fairhill monitor in Cecil County, MD at 93 ppb. Additionally, the present air quality (2007 design value 93 ppb, 2008 preliminary design value 92 ppb) also

does not support the hypothesis presented in Maryland WOE analysis that the models are incorrect. Present air quality concentrations should be closer to the standard since the Philadelphia Area is only two years away from its attainment deadline.

The WOE analysis presented in the Maryland SIP revision for the Philadelphia Area includes the following:

- An analysis of ambient air monitoring measurements and trends;
- An analysis of the regional nature of ozone transport;
- An analysis of model sensitivity to emission changes; and
- An analysis of the potential benefits of alternative control strategies (e.g., an aggressive telecommuting strategy).

The basic premise of most all of the WOE arguments in the Maryland SIP revision for the Philadelphia Area is that the Community Multi-scale Air Quality Model version 4.4 (CMAQ), when applied according to EPA guidance, under-predicts the reduction in ozone that can be expected from the emission control strategies contained in the SIP.

For example, the Maryland SIP revision cites a study of the 2003 Northeast Blackout (Marufu et al., 2004) that suggests the model under-predicts the amount of ozone reduction that actually occurred during the electrical blackout. During the blackout, measured ozone was lower than expected because some power plants and some other major sources of ozone-forming compounds were shut down. There are at least two ways to determine what ozone concentrations would have been if the major sources of ozone-forming compounds operated on that day. One way is to model the changes with the power plants operating, and with the power plants not operating and comparing the results. The other is by comparing the blackout day with a past high ozone day with similar weather and wind patterns, when the power plants operated. The research cited by Maryland compared the blackout episode with days in the past with ostensibly similar meteorology, when the sources were operating. However, EPA concludes that the past episode when the power plants operated is not similar enough to the blackout day to draw a valid comparison. The comparison day had winds coming from areas that were not the ones most affected by the blackout, so the comparison is not convincing. There may be other days that were more similar to the meteorological patterns on the blackout day, but the fact remains that no two days are the same. The emissions precursors, ozone, and meteorological patterns on the day of and the days preceding the blackout will never occur the same way twice.

Maryland cited the work of other researchers (Hu et al., 2006) who ran a photochemical grid model on the blackout day with and without the blacked-out emissions. Based on this work and the work cited above (Marufu et al., 2004) Maryland observed the modeled change in ozone was smaller than the change in ozone measured between the comparison day and the blackout day. As a result, Maryland then concluded that the model did not reduce ozone as much between the blackout and non-blackout emissions. Thus, this may be a sign that the model is not responsive enough to emission reductions. However, the differences between the modeled change and the change between monitored days may be because a sufficiently similar day was not found to determine how much ozone was really reduced on the blackout day. Another point is that these studies did not look at the effect of the blackout on air quality in the urban nonattainment areas like those featured in this notice. There is no comparison using modeling of these blackout days and similar days with the goal of determining the effect of blacked out sources on ozone in the northeast corridor's urban areas or other studies that would have attempted to explain and perhaps quantify the extent of the transport issue in the states' application of the photochemical grid model.

After careful review of these studies, EPA has determined that there are significant uncertainties in the Maryland SIP revision technical analysis and therefore does not accept Maryland's conclusion that the modeling system under-predicts changes in ozone as emissions change. Arguments in Maryland SIP revision that the model may not give full credit for emission reductions are supported by limited modeling work. Maryland has not tested their hypothesis with their own modeling. EPA believes any additional ozone reduction, beyond what is predicted by the photochemical modeling, is likely to be far less than the 5 to 7 ppb claimed in the Maryland SIP revision. Therefore, EPA believes that Maryland's adjustment to the photochemical grid modeling results is not supported by the information provided.

With respect to the second prong and putative reductions from voluntary measures, EPA does not believe these are likely to reduce ozone enough to reach the standard by 2010. Furthermore, Maryland has not committed to implement the voluntary measures by the 2009 ozone season. Consequently, EPA cannot attribute much in the way of reduction to these measures. This issue is discussed further in the TSD, in the section entitled ''Benefits of Alternative/Voluntary Control Strategies.''

The overarching reason why EPA is not persuaded that the WOE results are robust enough to predict that the Philadelphia Area will attain the standard is that the information and calculations provided in the Maryland SIP revision selectively emphasize methods or data that support the claim that the nonattainment areas could attain the standard by the deadline, while ignoring equally legitimate methods that would tend to support the modeling results that do not predict attainment. The ''sufficiently convincing'' WOE analysis our guidance suggests is needed when an area's design value is above 88 ppb, should not be based on a one-sided consideration of only those alternatives that tend to show that and area will attain the ozone standard. To be ''sufficiently convincing,'' the WOE should evaluate other reasonable variations on EPA's methods that reinforce the modeling results that predict the Philadelphia Area will not attain the ozone standard by 2010. Although Maryland has provided a WOE analysis it supports its case of attainment in 2010, EPA's evaluation, as set forth at length in the TSD, concludes that the WOE does not demonstrate that the proposed adjustments to the photochemical grid model's attainment year forecast will give a more accurate answer than the calculations based on EPA's recommendations in Sections 2.3 and 7.2 of its modeling guidance.

In general, EPA's conclusions concerning the modeled attainment demonstration and WOE analysis provided in the Maryland SIP revision for Cecil County can be summarized from the TSD as follows:

- The modeling used in the Philadelphia Area applies an appropriate photochemical grid model and follows EPA's guidance methods, but does not predict attainment in June 2010.
- Regardless of the issues raised by Maryland regarding the performance of EPA's recommended air quality models, the air quality measured during 2007 exceeded the ozone standard by a significant margin. Even a linear comparison of the percentage of additional emission reductions planned by the state with the needed improvement in air quality between 2007 and 2009 indicates it is unlikely

that air quality will improve enough to meet the ozone standard by 2010. Preliminary data from the 2008 ozone season also does not support demonstration of attainment by 2010.

- When comparing the measured ozone concentrations in 2007 and (preliminary) 2008 data to concentrations predicted for 2009, using EPA's recommended application of the photochemical grid modeling, the photochemical grid model does not exhibit the magnitude of inaccuracies suggested in the Maryland SIP revision.
- In order to insure attainment, Maryland suggested that there are additional measures that can achieve emission reductions which were not included in the original photochemical modeling analysis. However, the amount of potential air quality benefit from these measures is difficult to estimate with any degree of certainty. Based on EPA's evaluation of the potential ozone benefits these additional measures may provide for the Philadelphia Area, attainment of the ozone standard in 2010 cannot be achieved through the adoption of these measures.
- The Philadelphia Area modeling greatly relied on research which evaluated the impact of a widespread power blackout to develop an alternative approach to estimating anticipated air quality improvements from upwind power plants. While EPA believes that this approach provides some insight into the transport of ozone precursors, a critical review of all the research available to EPA leads EPA to disagree with Maryland's premise that the 2009 modeled design values should be adjusted downward for alleged model under-predictions of ozone concentration reductions from emission reductions.

A detailed discussion of the EPA's evaluation of the modeled attainment demonstration and WOE analysis contained in Maryland SIP revision for Cecil County is located in the TSD entitled, *Technical Support Document For the Modeling and Weight of Evidence (WOE) Portions of the Document Entitled ''Cecil County, Maryland 8–Hour Ozone State Implementation Plan and Base Year Inventory SIP Revision: 07–05 June 15, 2007.''*

EPA has carefully evaluated the information provided by Maryland and other information it deems relevant to help predict what the air quality is likely to be by the 2009 ozone season. After careful consideration of all the relevant information, EPA finds that there is not sufficiently convincing evidence that the Philadelphia Area will attain the 8-hour ozone NAAQS in 2010. The Maryland SIP revision for Cecil County does not satisfy the Clean Air Act requirement that State Implementation Plans provide for attainment of the NAAQS by the applicable attainment date of June 2010.

## V. What Are the Consequences of a Disapproved SIP?

This section explains the consequences of a disapproval of a SIP under the CAA. The CAA provides for the imposition of sanctions and the promulgation of a Federal Implementation Plan if states fail to submit a plan that corrects any deficiencies identified by EPA in its disapproval.

### *A. What Are the CAA Provisions for Sanctions?*

If EPA disapproves a required SIP or component of a SIP for an area designated nonattainment, such as the Attainment Demonstration SIP, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP if a State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds.

### *B. What Are the CAA's FIP Ramifications if a State Fails To Submit an Approvable Plan?*

In addition to sanctions, if EPA finds that a State failed to submit the required SIP revision or disapproves the required SIP revision, or a portion thereof, EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected within that time period.

### *C. What Are the Ramifications Regarding Conformity?*

One consequence of EPA's disapproval of a control strategy SIP is a conformity freeze whereby affected Metropolitan Planning Organizations (MPOs) cannot make new conformity determinations on long range transportation plans and transportation improvement programs (TIPs). If we finalize the disapproval of the attainment demonstration SIP, a conformity freeze will be in place as of the effective date of the disapproval without a protective finding of the budget. *See,* 40 CFR 93.120(a)(2). This means that no transportation plan, TIP, or project not in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of 40 CFR 93.104(f) during a 12-month lapse grace period [2] may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budgets are found adequate or the attainment demonstration is approved. In addition, if the highway funding sanction is implemented, the conformity status of the transportation plan and TIP will lapse on the date of implementation of the highway sanctions. During a conformity lapse, only projects that are exempt from transportation conformity (e.g., road resurfacing, safety projects, reconstruction of bridges without adding travel lanes, bicycle and pedestrian facilities, etc.), transportation control measures that are in the approved SIP and project phases that were approved prior to the start of the lapse can proceed during the lapse. No new project-level approvals or conformity determinations can be made and no new transportation plan or TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate.

## VI. What Is EPA's Conclusion?

EPA is proposing to disapprove the 8-hour ozone attainment demonstration plan for Cecil County, which is the Maryland portion of the Philadelphia Area submitted by MDE on June 4, 2007, because Maryland's attainment demonstration (modeling results and WOE) for Cecil County does not demonstrate with sufficiently convincing evidence that the Philadelphia Area will attain the NAAQS by the June 2010 deadline. EPA is deferring action at this time on other SIP elements submitted by Maryland that are related to the attainment demonstration, specifically, the RFP plan, reasonably available control measures analysis, contingency measures, on-road motor vehicle emission budgets, and the 2002 base year emissions inventory, which will be addressed in separate rulemakings. EPA

[2] Additional information on the implementation of the lapse grace period can be found in the final transportation conformity rule published on January 24, 2008, (73 FR 4423–4425).

is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## VII. Statutory and Executive Order Reviews

### *A. Executive Order 12866, Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined 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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

### *D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector.'' EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *E. Executive Order 13132, Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. 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 Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

### *H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 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. NTTAA directs EPA to provide

Congress, through the Office of Management and Budget explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

In addition, this proposed rule pertaining to the Cecil County 8-hour ozone attainment demonstration plan 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, Carbon monoxide, Nitrogen dioxide, Ozone, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 28, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. E9–10677 Filed 5–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2008–0931; FRL–8901–7]**

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Attainment Demonstration for the Baltimore 8-Hour Ozone Moderate Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove the ozone attainment demonstration portion of a comprehensive State Implementation Plan (SIP) revision submitted by the State of Maryland to meet the Clean Air Act (CAA) requirements for attaining the 8-hour ozone national ambient air quality standard (NAAQS) for the Baltimore moderate nonattainment area (Baltimore Area). The Baltimore Area comprises Baltimore City and the surrounding Counties of Baltimore, Carroll, Anne Arundel, Howard, and Harford. EPA is proposing to disapprove Maryland's attainment demonstration of the 8-hour ozone NAAQS for the Baltimore Area because EPA has determined that the photochemical modeling does not demonstrate attainment, and the weight of evidence (WOE) analysis that Maryland uses to support the attainment demonstration does not provide the sufficient evidence that Baltimore will attain the NAAQS by the June 2010 deadline.

**DATES:** Written comments must be received on or before June 8, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0931 by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0931, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, 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–2008–0931. 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 Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

**FOR FURTHER INFORMATION CONTACT:** Maria Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

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## I. What Action Is EPA Proposing?

EPA is proposing to disapprove the SIP revision consisting of the 8-hour ozone attainment demonstration plan for the Baltimore Area, which comprises Baltimore City and the surrounding Counties of Baltimore, Carroll, Anne Arundel, Howard, and Harford. This SIP revision was submitted by the Maryland Department of the Environment (MDE) on June 4, 2007.

EPA is proposing to disapprove Maryland's 8-hour ozone attainment demonstration plan for the Baltimore Area because EPA has determined that the photochemical modeling does not demonstrate attainment, and the weight of evidence analysis that Maryland uses to support the attainment demonstration does not provide the sufficient evidence that Baltimore will attain the NAAQS by the June 2010 deadline.

EPA's analysis and findings are discussed in this proposed rulemaking and a more detailed discussion is contained in the Technical Support Document (TSD) for this proposal which is available online at *www.regulations.gov*, Docket number EPA–R03–OAR–2008–0931.

## II. What Are the CAA Requirements for a Moderate 8-Hour Ozone Nonattainment Area?

### *A. History and Time Frame for the State's Attainment Demonstration SIP*

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame (''8-hour ozone standard'').[1] EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations, and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. In addition, EPA promulgated its Phase 1 Rule for implementation of the 8-hour standard, which provided how areas designated nonattainment for the 8-hour ozone standard would be classified. April 30, 2004 (69 FR 23951). Among those nonattainment areas is the SIP revision consisting of the 8-hour ozone attainment demonstration plan for the Baltimore Area. EPA's Phase 2 8-hour ozone implementation rule, published on November 29, 2005 (70 FR 71612) specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. *See,* 40 CFR 51.908(a).

### *B. CAA Requirements*

Pursuant to Phase 1 of the 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951), an area was classified under subpart 2 of Title I of the CAA based on its 8-hour design value if it had a 1-hour design value at or above 0.121 ppm. Based on this criterion, the Baltimore 8-hour ozone nonattainment area was classified under subpart 2 as a moderate nonattainment area. On November 29, 2005 (70 FR 71612), EPA published Phase 2 of the 8-hour ozone implementation rule in which it addresses the control obligations that apply to areas classified under subpart 2. Among other things, the Phase 1 and 2 rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment.

## III. What Was Included in Maryland's SIP Submittals?

On June 4, 2007, Maryland submitted a comprehensive 8-hour ozone SIP for Baltimore. The SIP submittal included an attainment demonstration plan, a reasonable further progress (RFP) plan, reasonably available control measures analysis, contingency measures, on-road motor vehicle emission budgets, and the 2002 base year emissions inventory. These SIP revisions were subject to notice and comment by the public. The State did not receive any comments on the proposed SIP revisions. Only the attainment demonstration sections of this SIP submittal are the subject in this rulemaking. The other sections of this SIP submittal will be addressed in a separate rulemaking.

## IV. What Is EPA's Review of Maryland's Modeled Attainment Demonstration and Weight of Evidence Analysis for the Baltimore Area?

Section 110(a)(2)(K) of the Clean Air Act requires states to prepare air quality modeling to show how they will meet ambient air quality standards. EPA determined that states must use photochemical grid modeling, or any other analytical method determined by the Administrator to be at least as effective, to demonstrate attainment of the ozone health-based standard in areas classified as 'moderate' or above, and to do so by the required attainment date. *See,* 40 CFR 51.908(c). EPA specified how areas would be classified with regard to the 8-hour ozone standard set by EPA in 1997. *See,* 40 CFR 51.903. EPA followed these procedures and classified the Baltimore Area as moderate. *See,* 69 FR 23858 (April 30, 2004). The attainment date is June 2010 for moderate areas; therefore states must achieve emission reductions by the ozone season of 2009 in order for ozone concentrations to be reduced, and attainment achieved during the last complete ozone season before the 2010 deadline.

As more fully described in the TSD, the basic photochemical grid modeling

[1] In 2008, EPA promulgated a more stringent 8-hour standard of 0.075 ppm. 73 FR 16436 (March 27, 2008). All references to the 8-hour ozone standard in this rulemaking refer to the 8-hour standard promulgated in 1997.

used by Maryland in the Baltimore Area SIP meets EPA's guidelines, and when used with the methods recommended in EPA's modeling guidance, is acceptable to EPA. EPA's photochemical modeling guidance is found at *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*, EPA–454/B–07–002, April 2007. Using EPA's methods, the photochemical grid model, containing the modeled emission reduction strategies prepared by Maryland and the Ozone Transport Commission states, predicts that the 2009 ozone design value in the Baltimore Area to be 85 parts per billion (ppb). Thus, the photochemical model predicts the Baltimore Area will not reach the 84 ppb concentration level needed to show attainment of the ozone standard by the 2009 ozone season.

EPA's photochemical modeling guidance is divided into two parts. One part describes how to use a photochemical grid model for ozone to assess whether an area will come into attainment of the air quality standard. The second part of EPA's photochemical modeling guidance recommends that states complement the photochemical air quality modeling with ''aggregate supplemental analyses,'' i.e., WOE analyses, if the modeling results predict the area to be close to (within several parts per billion either above or below) the ozone standard. A WOE analysis is any set of alternative methods or analyses that, when considered together, and in combination with the modeling analysis, supports the conclusion that the NAAQS has been attained, even in instances when the modeling results alone do not predict attainment.

The Baltimore Area photochemical grid modeling predicts a 2009 projected design value just above the air quality health standard (85 ppb vs. 84 ppb). Because the modeling alone did not predict attainment by the applicable deadline, Maryland would need to provide a WOE analysis that in the aggregate provides evidence that the model is overestimating future ozone concentrations. As set forth at length in the TSD at pages 8 through 13, the modeling and air quality studies cited by Maryland do not support claims that the model over-predicts concentrations in 2009. Maryland has suggested that additional emission reduction strategies that were not included in the modeling may reduce ozone in the Baltimore Area, but many of these reductions are not yet in place or are voluntary and mostly unquantifiable. EPA does not believe these are likely to reduce ozone enough to reach the standard by June 2010. Furthermore, Maryland has not committed to implement the voluntary measures by the 2009 ozone season. Consequently, EPA cannot attribute much in the way of reduction to these measures. This issue is discussed further in the TSD, in the section entitled ''Benefits of Alternative/Voluntary Control Strategies.''

Air quality data through 2007 are far above the level needed for attainment and it is unlikely Maryland will be able to implement enough emission controls to reach the standard by 2010. The present air quality (2007 design value 94 ppb, 2008 preliminary design value 91 ppb) also does not support the hypothesis presented in the Maryland WOE analysis that the models are over-predicting the 2009 ozone design values. Present air quality concentrations should be closer to the standard since the Baltimore Area is only two years from when it should be attaining the standard.

The WOE analysis presented in the Maryland SIP revision for the Baltimore Area includes the following:

- An analysis of ambient air monitoring measurements and trends;
- An analysis of the regional nature of ozone transport;
- An analysis of model sensitivity to emission changes; and
- An analysis of the potential benefits of alternative control strategies (e.g., an aggressive telecommuting strategy).

The information and calculations provided in the Baltimore Area SIP emphasizes methods or data that support the claim that the nonattainment area could attain the standard by the deadline. EPA's review of the WOE analyses must evaluate a spectrum of likely alternative calculations, not only those that tend to show the area will attain the ozone standard. The method recommended by EPA's guidance and other reasonable variations on EPA's methods predict the area will not attain the ozone standard by 2010.

Maryland has provided considerable information in their WOE analysis they believe supports their case that attainment of the ozone standard in 2010. For example, the Maryland SIP revision cites a study of the 2003 Northeast Blackout (Marufu et al., 2004) that suggests the model under-predicts the amount of ozone reduction that actually occurred during the electrical blackout. During the blackout, measured ozone was lower than expected because some power plants and some other major sources of ozone-forming compounds were shut down. There are at least two ways to determine what ozone concentrations would have been if the major sources of ozone-forming compounds operated on that day. One way is to model the changes with the power plants operating, and with the power plants not operating and comparing the results. The other is by comparing the blackout day with a past high ozone day with similar weather and wind patterns, when the power plants operated. The research cited by Maryland compared the blackout episode with days in the past with ostensibly similar meteorology, when the sources were operating. However, EPA concludes that the past episode when the power plants operated is not similar enough to the blackout day to draw a valid comparison. The comparison day had winds coming from areas that were not the ones most affected by the blackout, so the comparison is not convincing. There may be other days that were more similar to the meteorological patterns on the blackout day, but the fact remains that no two days are the same.

The emissions precursors, ozone, and meteorological patterns on the day of and the days preceding the blackout will never occur the same way twice.

Maryland cited the work of other researchers (Hu et al., 2006) who ran a photochemical grid model on the blackout day with and without the blacked-out emissions. Based on this work and the work cited above (Marufu et al., 2004) Maryland observed the modeled change in ozone was smaller than the change in ozone measured between the comparison day and the blackout day. As a result, Maryland then concluded that the model did not reduce ozone as much between the blackout and non-blackout emissions. Thus, this may be a sign that the model is not responsive enough to emission reductions. However, the differences between the modeled change and the change between monitored days may be because a sufficiently similar day was not found to determine how much ozone was really reduced on the blackout day. Another point is that these studies did not look at the effect of the blackout on air quality in the urban nonattainment areas like those featured in this notice. There is no comparison using modeling of these blackout days and similar days with the goal of determining the effect of blacked out sources on ozone in the northeast corridor's urban areas or other studies that would have attempted to explain and perhaps quantify the extent of the transport issue in the states' application of the photochemical grid model.

After careful review of these studies, EPA has determined that there are significant uncertainties in the

Maryland SIP revision technical analysis and therefore does not accept Maryland's conclusion that the modeling system under-predicts changes in ozone as emissions change. Arguments in the Maryland SIP revision that the model may not give full credit for emission reductions are supported by limited modeling work. Maryland has not tested this hypothesis with its own modeling. EPA believes any additional ozone reduction, beyond what is predicted by the photochemical modeling, is likely to be far less than the 6 to 8 ppb claimed in the Maryland SIP revision. Therefore, EPA believes that Maryland's adjustment to the photochemical grid modeling results is not supported by the information provided.

EPA has determined this information does not demonstrate that the proposed adjustments to the photochemical grid model's attainment year forecast will give a more accurate answer than the calculations based on EPA's recommendations in its modeling guidance. Monitored air quality data seem to indicate that the model is under-predicting the 2009 ozone design value for the Baltimore Area.

The result of the photochemical grid modeling analysis using EPA's recommended methods predicts that Baltimore Area will not attain the standard in the attainment year of 2009. In response to this, Maryland has offered a number of alternative methods of using the modeling information and additional control strategies that when taken together might plausibly demonstrate attainment.

In general, EPA's conclusions concerning the modeled attainment demonstration and WOE analysis provided in the Baltimore Area SIP can be summarized as follows:

- The Baltimore Area modeling applies an appropriate photochemical grid model and follows EPA's guidance methods, but does not predict attainment in June 2010.
- Regardless of the issues raised by Maryland regarding the performance of EPA's recommended air quality models, the air quality measured during 2007 exceeded the ozone standard by a significant margin. Even a linear comparison of the percentage of additional emission reductions planned by the state with the needed improvement in air quality between 2007 and 2009 indicates it is unlikely that air quality will improve enough to meet the ozone standard by 2010. Additionally, preliminary air quality data from the 2008 ozone season does not support demonstration of attainment by 2010.
- When comparing the measured ozone concentrations in 2007 and (preliminary) 2008 data to concentrations predicted for 2009, using EPA's recommended application of the photochemical grid modeling, the photochemical grid model does not exhibit the magnitude of inaccuracies suggested in the Baltimore Area attainment demonstration.
- In order to insure attainment, Maryland suggests that there are additional measures that will achieve emission reductions which were not included in the original photochemical modeling analysis. These measures are mainly voluntary and are not committed to by Maryland as part of its attainment demonstration. The amount of potential air quality benefit from these measures is difficult to estimate with any degree of certainty. Based on EPA's and Maryland's evaluation of the potential ozone benefits these additional measures may provide for the Baltimore Area, attainment of the ozone standard in 2010 cannot be achieved through the adoption of these measures.
- The Baltimore Area attainment demonstration greatly relied on research which evaluated the impact of a widespread power blackout to develop an alternative approach to estimating anticipated air quality improvements from upwind power plants. While EPA believes that this approach provides some insight into the transport of ozone precursors, a critical review of all the research available to EPA leads EPA to disagree with Maryland's premise that the 2009 modeled design values should be adjusted downward for alleged model under-predictions of ozone concentration reductions from emission reductions.

A detailed discussion of the EPA's evaluation of the modeled attainment demonstration and WOE analysis contained in the Maryland SIP revision for the Baltimore Area is located in the TSD entitled ''Technical Support Document for the Modeling and Weight of Evidence (WOE) Portions of the Document Entitled *Baltimore Nonattainment Area 8-Hour Ground Level Ozone State Implementation Plan (SIP) and Base Year Inventory, June 15, 2007*.''

EPA has carefully evaluated the information provided by Maryland and other information it deems relevant to help predict what the air quality is likely to be by the 2009 ozone season. After careful consideration of all the relevant information, EPA finds that there is not sufficiently convincing evidence that the Baltimore Area will attain the 8-hour ozone NAAQS in 2010. The Maryland SIP revision for the Baltimore Area does not satisfy the Clean Air Act requirement that State Implementation Plans provide for attainment of the NAAQS by the applicable attainment date of June 2010.

## V. What Are the Consequences of a Disapproved SIP?

This section explains the consequences of a disapproval of a SIP under the CAA. The CAA provides for the imposition of sanctions and the promulgation of a Federal Implementation Plan if states fail to submit a plan that corrects any deficiencies identified by EPA in its disapproval.

### *A. What Are the CAA Provisions for Sanctions?*

If EPA disapproves a required SIP or component of a SIP for an area designated nonattainment, such as the Attainment Demonstration SIP, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP if a State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds.

### *B. What Are the CAA's FIP Ramifications if a State Fails To Submit an Approvable Plan?*

In addition to sanctions, if EPA finds that a State failed to submit the required SIP revision or disapproves the required SIP revision, or a portion thereof, EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected within that time period.

### *C. What Are the Ramifications Regarding Conformity?*

One consequence of EPA's disapproval of a control strategy SIP is a conformity freeze whereby affected Metropolitan Planning Organizations (MPOs) cannot make new conformity determinations on long range transportation plans and transportation improvement programs (TIPs). If we finalize the disapproval of the attainment demonstration SIP, a

conformity freeze will be in place as of the effective date of the disapproval without a protective finding of the budget. *See,* 40 CFR 93.120(a)(2). This means that no transportation plan, TIP, or project not in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of 40 CFR 93.104(f) during a 12-month lapse grace period [2] may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budgets are found adequate or the attainment demonstration is approved. In addition, if the highway funding sanction is implemented, the conformity status of the transportation plan and TIP will lapse on the date of implementation of the highway sanctions. During a conformity lapse, only projects that are exempt from transportation conformity (e.g., road resurfacing, safety projects, reconstruction of bridges without adding travel lanes, bicycle and pedestrian facilities, etc.), transportation control measures that are in the approved SIP and project phases that were approved prior to the start of the lapse can proceed during the lapse. No new project-level approvals or conformity determinations can be made and no new transportation plan or TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate.

## VI. What Is EPA's Conclusion?

EPA is proposing to disapprove the 8-hour ozone attainment demonstration plan for the Baltimore moderate nonattainment area submitted by MDE on June 4, 2007, because Baltimore's demonstration does not in the aggregate provide sufficient evidence for EPA to conclude that the Baltimore Area will attain the NAAQS by the June 2010 deadline in spite of modeling results that do not predict attainment. EPA is deferring action at this time on other SIP elements submitted by Maryland that are related to the attainment demonstration, specifically, the RFP plan, reasonably available control measures analysis, contingency measures, on-road motor vehicle emission budgets, and the 2002 base year emissions inventory, which will be addressed in separate rulemakings. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

[2] Additional information on the implementation of the lapse grace period can be found in the final transportation conformity rule published on January 24, 2008 (73 FR 4423–4425).

## VII. Statutory and Executive Order Reviews

### *A. Executive Order 12866, Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in and of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined 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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in and of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

### *D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 ''for State, local, or tribal governments or the private sector.'' EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *E. Executive Order 13132, Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. 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 Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or

the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks*

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in and of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 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. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in and of itself create any new requirements. Accordingly, it 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.

In addition, this proposed rule pertaining to the Baltimore 8-hour ozone attainment demonstration plan 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, Carbon monoxide, Nitrogen dioxide, Ozone, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 28, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. E9–10682 Filed 5–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2008–0930; FRL–8901–6]**

### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Attainment Demonstration for the Philadelphia-Wilmington-Atlantic City Moderate 8-Hour Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove the ozone attainment demonstration portion of a comprehensive State Implementation Plan (SIP) revision submitted by the State of Delaware to meet the Clean Air Act (CAA) requirements for attaining the 8-hour ozone national ambient air quality standard (NAAQS) for the Delaware portion of the Philadelphia-Wilmington-Atlantic City moderate nonattainment area (Philadelphia Area). EPA is proposing to disapprove Delaware's attainment demonstration of the 8-hour ozone NAAQS for the Philadelphia Area because EPA has determined that the photochemical modeling does not demonstrate attainment, and the weight of evidence analysis that Delaware uses to support the attainment demonstration does not provide the sufficient evidence that the Delaware portion of the Philadelphia nonattainment area will attain the NAAQS by the June 2010 deadline.

**DATES:** Written comments must be received on or before June 8, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0930 by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0930, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, 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–2008–0930. 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 Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

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## I. What Action Is EPA Proposing?

EPA is proposing to disapprove the SIP revision consisting of the 8-hour ozone attainment demonstration plan for the Philadelphia-Wilmington-Atlantic City moderate nonattainment area, submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on June 13, 2007.

EPA is proposing to disapprove Delaware's 8-hour ozone attainment demonstration plan because EPA has determined that the photochemical modeling does not demonstrate attainment, and the weight of evidence analysis that Delaware uses to support the attainment demonstration does not provide the sufficient evidence that the Delaware portion of the Philadelphia nonattainment area will attain the NAAQS by the June 2010 deadline.

EPA's analysis and findings are discussed in this proposed rulemaking and a more detailed discussion is contained in the Technical Support Document (TSD) for this proposal which is available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2008–0930.

## II. What Are the CAA Requirements for a Moderate 8-Hour Ozone Nonattainment Area?

### *A. History and Time Frame for the State's Attainment Demonstration SIP*

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame (''8-hour ozone standard'').[1] EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations, and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. In addition, EPA promulgated its Phase 1 Rule for implementation of the 8-hour standard, which provided how areas designated nonattainment for the 8-hour ozone standard would be classified. April 30, 2004 (69 FR 23951). Among those nonattainment areas is the Philadelphia Area. The Philadelphia Area includes three counties in Delaware, five counties in eastern Pennsylvania, one county in Maryland, and eight counties in southern New Jersey. The Delaware portion of the NAA consists of the following counties: New Castle, Kent and Sussex. EPA's Phase 2 8-hour ozone implementation rule, published on November 29, 2005 (70 FR 71612) specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. *See,* 40 CFR 51.908(a).

[1] In 2008, EPA promulgated a more stringent 8-hour standard of 0.075 ppm. 73 FR 16436 (March 27, 2008). All references to the 8-hour ozone standard in this rulemaking refer to the 8-hour standard promulgated in 1997.

*B. CAA Requirements*

Pursuant to Phase 1 of the 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951), an area was classified under subpart 2 of Title I of the CAA based on its 8-hour design value if it had a 1-hour design value at or above 0.121 ppm. Based on this criterion, the Philadelphia Area was classified under subpart 2 as moderate nonattainment areas. On November 29, 2005 (70 FR 71612), EPA published Phase 2 of the 8-hour ozone implementation rule in which it addresses the control obligations that apply to areas classified under subpart 2. Among other things, the Phase 1 and 2 rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment.

**III. What Was Included in Delaware's SIP Submittals?**

On June 13, 2007, Delaware submitted a comprehensive 8-hour ozone SIP. The SIP submittal included an attainment demonstration plan, a reasonable further progress (RFP) plan, reasonably available control measures analysis, contingency measures, on-road motor vehicle emission budgets, and the 2002 base year emissions inventory. These SIP revisions were subject to notice and comment by the public. The State did not receive any comments on the proposed SIP revisions. Only the attainment demonstration sections of this SIP submittal are the subject in this rulemaking. The other sections of this SIP submittal will be addressed in a separate rulemaking.

**IV. What Is EPA's Review of Delaware's Modeled Attainment Demonstration and Weight of Evidence (WOE) Analysis for the Delaware Portion of the Philadelphia Area?**

Section 110(a)(2)(K) of the Clean Air Act requires states to prepare air quality modeling to show how they will meet ambient air quality standards. EPA determined that states must use photochemical grid modeling, or any other analytical method determined by the Administrator to be at least as effective, to demonstrate attainment of the ozone health-based standard in areas classified as 'moderate' or above, and to do so by the required attainment date. *See,* 40 CFR 51.908(c). EPA specified how areas would be classified with regard to the 8-hour ozone standard set by EPA in 1997. *See,* 40 CFR 51.903. EPA followed these procedures and the Philadelphia Area was classified by EPA as being in moderate nonattainment of the 8-hour ozone NAAQS. *See,* 69 FR 23858 (April 30, 2004). The attainment date is June 2010 for moderate areas; therefore, states must achieve emission reductions by the ozone season of 2009 in order for ozone concentrations to be reduced, and attainment achieved during the last complete ozone season before the 2010 deadline.

As more fully described in the TSD, the basic photochemical grid modeling used by Delaware in the Delaware SIP meets EPA's guidelines, and when used with the methods recommended in EPA's modeling guidance, is acceptable to EPA. EPA's photochemical modeling guidance is found at *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ and Regional Haze*, EPA–454/B–07–002, April 2007. Using EPA's methods, the photochemical grid model, containing the modeled emission reduction strategies prepared by Delaware and the Ozone Transport Commission states, predicts that the 2009 ozone design value in the Philadelphia Area would be 91 parts per billion (ppb). Thus, the photochemical model predicts the Philadelphia Area will not reach the 84 ppb concentration level needed to show attainment of the ozone standard by the 2009 ozone season.

EPA's photochemical modeling guidance is divided into two parts. One part describes how to use a photochemical grid model for ozone to assess whether an area will come into attainment of the air quality standard. The second part of EPA's photochemical modeling guidance strongly recommends states complement the photochemical air quality modeling with additional analyses (WOE analyses) in situations where modeling predicts the Philadelphia Area to be close to (within several parts per billion of) the ozone standard. A WOE analysis is any set of alternative methods or analyses that, when considered together, and in combination with the modeling analysis, supports the conclusion that the NAAQS has been attained, even in instances when the modeling results alone do not predict attainment. EPA notes in Section 2.3 of its guidance that if the concentration predicted by the photochemical model is 88 ppb or higher, it is ''far less likely that the more qualitative arguments made in a weight of evidence determination can be sufficiently convincing to conclude that the NAAQS will be attained.''

The Philadelphia Area photochemical grid modeling predicts a 2009 projected design value well above the air quality health standard (91 ppb vs. 84 ppb). As stated above, EPA's photochemical modeling guidance indicates that it is difficult to make a convincing argument to show that ozone will be less than 84 ppb when model predicted concentrations are greater than 88 ppb.

Delaware needed to supply a substantial amount of evidence that the model is seriously overestimating future ozone concentrations. As discussed in detail in the TSD at pages 8 through 17, EPA believes that modeling and air quality studies do not support an argument that the attainment will be reached by the June 2010 attainment date.

Additionally, the present air quality (2007 design value 93 ppb, 2008 preliminary design value 92 ppb) also does not support the hypothesis presented in Delaware's WOE analysis that the models are incorrect. Present air quality concentrations should be closer to the standard since the Philadelphia Area is only two years away from its attainment deadline.

The WOE analysis presented in the Delaware SIP revision for the Philadelphia Area includes the following:

- A comparison of predicted 2009 ozone design values and current projected design values for 2006;
- An analysis of recent ozone trends in the Philadelphia Area;
- Alternative methods for calculating the 2009 ozone design value;
- An analysis of model-predicted regional transport; and
- An analysis of model sensitivity to emission changes.

The basic premise of all of the WOE arguments in the Delaware SIP revision for the Philadelphia Area is that the Community Multi-scale Air Quality Model version 4.4 (CMAQ), when applied according to EPA guidance, under-predicts the reduction in ozone that can be expected from the emission control strategies contained in the SIP.

The overarching reason why EPA is not persuaded that the WOE results are robust enough to predict that the Philadelphia Area will attain the standard is that the information and calculations provided in the Delaware SIP revision selectively emphasize methods or data that support the claim that the nonattainment areas could attain the standard by the deadline, while ignoring equally legitimate methods that would tend to support the modeling results that do not predict attainment. For example, one of Delaware's methods of adjusting the modeled results uses alternative ways of calculating the base air quality value for 2002. The Delaware SIP revision for the Philadelphia Area uses a straight five-year average of the fourth-highest design

value from 2000 to 2004. EPA's modeling guidance recommends using an average of the three years of design value centered on 2002, which creates a weighted five-year average. While Delaware's SIP revision notes that EPA's method of providing a weighted average baseline value weights the base year of 2002 more heavily than other years, EPA intended this, so that the resulting value was influenced the most by the ozone data from the base year of the emission inventory. There are other ways of calculating a baseline value that the State did not use. For example, for the peak ozone site of the Philadelphia Area at Colliers Mills:

- The EPA guideline method baseline is 105.7 ppb;
- The Delaware alternative baseline is 104 ppb;
- The 2002 design value is 112 ppb; and
- The 2003 designation design value, centered on 2002, is 105.7 ppb.

Various methods could result in 2002's base year ozone of two ppb lower than the modeling guidance method (Delaware's five year average centered on 2002) or as much as 7 ppb higher than the guidance method (single design value from 2002). Delaware relies on the lower end of the range of possible results, and this brings the modeling result closer to attainment.

The ''sufficiently convincing'' WOE analysis our guidance suggests is needed when an area's design value is above 88 ppb, should not be based on a one-sided consideration of only those alternatives that tend to show that and area will attain the ozone standard. To be ''sufficiently convincing,'' the WOE should evaluate other reasonable variations on EPA's methods that reinforce the modeling results that predict the Philadelphia Area will not attain the ozone standard by 2010. Although Delaware has provided a WOE analysis it believes supports its case of attainment in 2010, EPA's evaluation, as set forth at length in the TSD, concludes that the WOE does not demonstrate that the proposed adjustments to the photochemical grid model's attainment year forecast will give a more accurate answer than the calculations based on EPA's recommendations in Section 2.3 and 7.2 of its modeling guidance.

In general, EPA's conclusions concerning the modeled attainment demonstration and WOE analysis provided in the Delaware SIP revision for its portion of the Philadelphia Area can be summarized from the TSD as follows:

- The modeling used in the Philadelphia Area applies an appropriate photochemical grid model and follows EPA's guidance methods, but does not predict attainment in June 2010.
- Regardless of the issues raised by Delaware regarding the performance of EPA's recommended air quality models, the air quality measured during 2007 exceeded the ozone standard by a significant margin. Even a linear comparison of the percentage of additional emission reductions planned by the state with the needed improvement in air quality between 2007 and 2009 indicates it is unlikely that air quality will improve enough to meet the ozone standard by 2010. Preliminary data from the 2008 ozone season also does not support demonstration of attainment by June 2010.
- When comparing the measured ozone concentrations in 2007 and (preliminary) 2008 data to concentrations predicted for 2009, using EPA's recommended application of the photochemical grid modeling, the photochemical grid model does not exhibit the magnitude of inaccuracies suggested in the Delaware SIP revision.
- In order to insure attainment, Delaware suggests that there are additional measures that can achieve emission reductions which were not included in the original photochemical modeling analysis. However, the amount of potential air quality benefit from these measures is difficult to estimate with any degree of certainty. Based on EPA's evaluation of the potential ozone benefits these additional measures may provide for the Philadelphia Area, attainment of the ozone standard in 2010 cannot be achieved through the adoption of these measures.
- The Philadelphia Area attainment demonstration greatly relied on adjustments to the baseline assumptions which formed the basis of the photochemical modeling analysis. These adjustments to the base year starting value and the amount of reduction in ozone from 2002 to 2009 differ from EPA's modeling guidance, and, more importantly, are not sufficiently justified and are weighted toward a conclusion that Philadelphia Area will attain the standard.
- The Philadelphia Area attainment demonstration greatly relied on research which evaluated the impact of a widespread power blackout to develop an alternative approach to estimating anticipated air quality improvements from upwind power plants. While EPA believes that this approach provides some insight into the transport of ozone precursors, a critical review of all the research available to EPA leads EPA to disagree with Delaware's premise that the 2009 modeled design values should be adjusted downward for alleged model under-predictions of ozone concentration reductions from emission reductions.

A detailed discussion of the EPA's evaluation of the modeled attainment demonstration and WOE analysis contained in the Delaware SIP for the Philadelphia Area is located in the TSD entitled, *Technical Support Document for the Modeling and Weight of Evidence (WOE) Portions of the State of Delaware's Ozone State Implementation Plan (SIP) Entitled ''Delaware State Implementation Plan for Attainment of the 8-Hour Ozone National Ambient Air Quality Standard Reasonable Further Progress and Attainment Demonstration, June 2007.''*

EPA has carefully evaluated the information provided by Delaware and other information it deems relevant to help predict what the air quality is likely to be by the 2009 ozone season. After careful consideration of all the relevant information, EPA finds that there is not sufficiently convincing evidence that the Philadelphia Area will attain the 8-hour ozone NAAQS in 2010. The Delaware SIP revision for the Delaware portion of the Philadelphia Area does not satisfy the Clean Air Act requirement that State Implementation Plans provide for attainment of the NAAQS by the applicable attainment date of June 2010.

## V. What Are the Consequences of a Disapproved SIP?

This section explains the consequences of a disapproval of a SIP under the CAA. The CAA provides for the imposition of sanctions and the promulgation of a Federal Implementation Plan (FIP) if states fail to submit a plan that corrects any deficiencies identified by EPA in its disapproval.

### *A. What Are the CAA Provisions for Sanctions?*

If EPA disapproves a required SIP or component of a SIP for an area designated nonattainment, such as the Attainment Demonstration SIP, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP if a State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for

sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds.

*B. What Are the CAA's FIP Ramifications if a State Fails To Submit an Approvable Plan?*

In addition to sanctions, if EPA finds that a State failed to submit the required SIP revision or disapproves the required SIP revision, or a portion thereof, EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected within that time period.

*C. What Are the Ramifications Regarding Conformity?*

One consequence of EPA's disapproval of a control strategy SIP is a conformity freeze whereby affected Metropolitan Planning Organizations (MPOs) cannot make new conformity determinations on long range transportation plans and transportation improvement programs (TIPs). If we finalize the disapproval of the attainment demonstration SIP, a conformity freeze will be in place as of the effective date of the disapproval without a protective finding of the budget. *See,* 40 CFR 93.120(a)(2). This means that no transportation plan, TIP, or project not in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of 40 CFR 93.104(f) during a 12-month lapse grace period [2] may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budgets are found adequate or the attainment demonstration is approved. In addition, if the highway funding sanction is implemented, the conformity status of the transportation plan and TIP will lapse on the date of implementation of the highway sanctions. During a conformity lapse, only projects that are exempt from transportation conformity (e.g., road resurfacing, safety projects, reconstruction of bridges without adding travel lanes, bicycle and pedestrian facilities, etc.), transportation control measures that are in the approved SIP and project phases that were approved prior to the start of the lapse can proceed during the lapse. No new project-level approvals or conformity determinations can be made and no new transportation plan or TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate.

[2] Additional information on the implementation of the lapse grace period can be found in the final transportation conformity rule published on January 24, 2008 (73 FR 4423–4425).

## VI. What Is EPA's Conclusion?

EPA is proposing to disapprove the 8-hour ozone attainment demonstration plan for the Delaware portion of the Philadelphia Area submitted by Delaware on June 13, 2007, because Delaware's attainment demonstration (modeling results and WOE) for the Delaware portion of the Philadelphia Area does not demonstrate with sufficiently convincing evidence that the Philadelphia Area will attain the NAAQS by the June 2010 deadline. EPA is deferring action at this time on other SIP elements submitted by Delaware that are related to the attainment demonstration, specifically, the RFP plan, reasonably available control measures analysis, contingency measures, on-road motor vehicle emission budgets, and the 2002 base year emissions inventory, which will be addressed in separate rulemakings. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## VII. Statutory and Executive Order Reviews

*A. Executive Order 12866, Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in and of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA's) 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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in and of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 ''for State, local, or tribal governments or the private sector.'' EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132, Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. 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 Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in and of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 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. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in and of itself create any new requirements. Accordingly, it 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.

In addition, this proposed rule pertaining to the Delaware 8-hour ozone attainment demonstration plan 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, Carbon monoxide, Nitrogen dioxide, Ozone, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 28, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. E9–10680 Filed 5–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2008–0928; FRL–8901–4]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Attainment Demonstration for the Philadelphia-Wilmington-Atlantic City Moderate 8-Hour Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove the ozone attainment demonstration portion of a comprehensive State Implementation Plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP) to meet the Clean Air Act (CAA) requirements for attaining the 8-hour ozone national ambient air quality standard (NAAQS) for the five-county Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City moderate nonattainment area

(Philadelphia Area). The five-county Pennsylvania portion of the Philadelphia Area comprises Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. EPA is proposing to disapprove Pennsylvania's 8-hour ozone attainment demonstration plan for its portion of the Philadelphia Area because EPA has determined that the photochemical modeling does not demonstrate attainment, and the weight of evidence analysis that Pennsylvania uses to support the attainment demonstration, does not provide the sufficient evidence that the Philadelphia Area, will attain the NAAQS by the June 2010 deadline.

**DATES:** Written comments must be received on or before June 8, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0928 by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2008–0928, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, 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–2008–0928. 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, (215) 814–2176, or by e-mail at *rehn.brian@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

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## I. What Action is EPA Proposing?

EPA is proposing to disapprove the SIP revision consisting of the 8-hour ozone attainment demonstration for the five-county Pennsylvania portion of the Philadelphia Area. The Pennsylvania portion of the Philadelphia Area comprises Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. This SIP revision was submitted by PADEP on August 29, 2007.

EPA is proposing to disapprove Pennsylvania's 8-hour ozone attainment demonstration plan for its portion of the Philadelphia Area because EPA has determined that the photochemical modeling does not demonstrate attainment, and the weight of evidence analysis that Pennsylvania uses to support the attainment demonstration, does not provide the sufficient evidence that the Philadelphia Area, will attain the NAAQS by the June 2010 deadline.

EPA's analysis and findings are discussed in this proposed rulemaking and a more detailed discussion is contained in the Technical Support Document (TSD) for this proposal which is available on line at *www.regulations.gov*, docket number EPA–R03–OAR–2008–0928.

## II. What Are the CAA Requirements for a Moderate 8-Hour Ozone Nonattainment Area?

### *A. History and Time Frame for the State's Attainment Demonstration SIP*

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame (''8-hour ozone standard'').[1] EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations, and over longer periods

[1] In 2008, EPA promulgated a more stringent 8-hour standard of 0.075 ppm. 73 FR 16436 (March 27, 2008). All references to the 8-hour ozone standard in this rulemaking refer to the 8-hour standard promulgated in 1997.

of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. In addition, EPA promulgated its Phase 1 Rule for implementation of the 8-hour standard, which provided how areas designated nonattainment for the 8-hour ozone standard would be classified. April 30, 2004 (69 FR 23951). Among those nonattainment areas is the Philadelphia Area. The Philadelphia Area includes three counties in Delaware, five counties in eastern Pennsylvania, one county in Maryland and eight counties in southern New Jersey. The Pennsylvania portion of the Philadelphia Area consists of the following counties: Bucks, Chester, Delaware, Montgomery, and Philadelphia. EPA's Phase 2 8-hour ozone implementation rule, published on November 29, 2005 (70 FR 71612) specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. *See,* 40 CFR 51.908(a).

*B. CAA Requirements*

Pursuant to Phase 1 of the 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951), an area was classified under subpart 2 of Title I of the CAA based on its 8-hour design value if it had a 1-hour design value at or above 0.121 ppm. Based on this criterion, the Philadelphia Area was classified under subpart 2 as a moderate nonattainment area. On November 29, 2005 (70 FR 71612), EPA published the Phase 2 of the 8-hour ozone implementation rule in which it addresses the control obligations that apply to areas classified under subpart 2. Among other things, the Phase 1 and 2 rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment.

## III. What Was Included in Pennsylvania's SIP Submittals?

On August 29, 2007, PADEP submitted a comprehensive 8-hour ozone SIP. The SIP submittal included an attainment demonstration plan, a reasonable further progress (RFP) plan, reasonably available control measures analysis, contingency measures, on-road motor vehicle emission budgets, and 2002 base year emissions inventory for the five-county Pennsylvania portion of the Philadelphia Area. These SIP revisions were subject to notice and comment by the public and the State addressed the comments received on the proposed SIPs. Only the attainment demonstration sections of this SIP submittal are the subject in this rulemaking. The other sections of this SIP submittal will be addressed in a separate rulemaking.

## IV. What Is EPA's Review of Pennsylvania's Modeled Attainment Demonstration and Weight of Evidence (WOE) Analysis for the Pennsylvania Portion of the Philadelphia Area?

Section 110(a)(2)(K) of the Clean Air Act requires states to prepare air quality modeling to show how they will meet ambient air quality standards. EPA determined that states must use photochemical grid modeling, or any other analytical method determined by the Administrator to be at least as effective, to demonstrate attainment of the ozone health-based standard in areas classified as 'moderate' or above, and to do so by the required attainment date. *See,* 40 CFR 51.908(c). EPA specified how areas would be classified with regard to the 8-hour ozone standard set by EPA in 1997. *See,* 40 CFR 51.903. EPA followed these procedures and the Philadelphia Area was classified by EPA as being in moderate nonattainment of the 8-hour ozone NAAQS. *See,* 69 FR 23858 (April 30, 2004). The attainment date is June 2010 for moderate areas; therefore, states must achieve emission reductions by the ozone season of 2009 in order for ozone concentrations to be reduced, and attainment achieved during the last complete ozone season before the 2010 deadline.

As more fully described in the TSD, the basic photochemical grid modeling used by Pennsylvania in the Philadelphia Area SIP meets EPA's guidelines, and when used with the methods recommended in EPA's modeling guidance, is acceptable to EPA. EPA's photochemical modeling guidance is found at *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone,* $PM_{2.5,}$ and Regional Haze, EPA–454/B–07–002, April 2007. Using EPA's methods, the photochemical grid model, containing the modeled emission reduction strategies prepared by Pennsylvania and the Ozone Transport Commission states, predicts that the 2009 ozone design value in the Philadelphia Area would be 91 parts per billion (ppb). Thus, the photochemical model predicts the Philadelphia Area will not reach the 84 ppb concentration level needed to show attainment of the ozone standard by the 2009 ozone season.

EPA's photochemical modeling guidance is divided into two parts. One part describes how to use a photochemical grid model for ozone to assess whether an area will come into attainment of the air quality standard. The second part of EPA's photochemical modeling guidance strongly recommends that states complement the photochemical air quality modeling with additional analyses (WOE analyses) in situations where modeling predicts the Philadelphia Area to be close to (within several parts per billion of) the ozone standard. A WOE analysis is any set of alternative methods or analyses that, when considered together, and in combination with the modeling analysis, supports the conclusion that the NAAQS has been attained, even in instances when the modeling results alone do not predict attainment. EPA notes in Section 2.3 of its guidance that if the concentration predicted by the photochemical model is 88 ppb or higher, it is ''far less likely that the more qualitative arguments made in a weight of evidence determination can be sufficiently convincing to conclude that the NAAQS will be attained.''

The Philadelphia Area photochemical grid modeling predicts a 2009 projected design value well above the air quality health standard (91 ppb vs. 84 ppb). As stated above, EPA's photochemical modeling guidance indicates that it is difficult to make a convincing argument to show that ozone will be less than 84 ppb when model predicted concentrations are greater than 88 ppb. As discussed in detail in the TSD at pages 8 through 14, EPA believes that modeling and air quality studies do not support an argument that the attainment will be reached by the June 2010 attainment date.

Additionally, the present air quality (2007 design value 93 ppb, 2008 preliminary design value 92 ppb) also does not support the hypothesis presented in Pennsylvania's WOE analysis that the models are incorrect. Present air quality concentrations should be closer to the standard since the Philadelphia Area is only two years away from its attainment deadline.

The WOE analysis presented in the Pennsylvania SIP revision for the Philadelphia Area includes the following:

- A comparison of predicted 2009 ozone design values and current projected design values for 2006;

• An analysis of recent ozone trends in the Philadelphia Area;
• Alternative methods for calculating the 2009 ozone design value;
• An analysis of model-predicted regional transport; and
• An analysis of model sensitivity to emission changes.

The basic premise of all of the WOE arguments in the Pennsylvania SIP revision for the Philadelphia Area is that the Community Multi-scale Air Quality Model version 4.4 (CMAQ), when applied according to EPA guidance, under-predicts the reduction in ozone that can be expected from the emission control strategies contained in the SIP.

The overarching reason why EPA is not persuaded that the WOE results are robust enough to predict that the Philadelphia Area will attain the standard is that the information and calculations provided in the Pennsylvania SIP revision selectively emphasize methods or data that support the claim that the nonattainment areas could attain the standard by the deadline, while ignoring equally legitimate methods that would tend to support the modeling results, which do not predict attainment. For example, one of Pennsylvania's methods of adjusting the modeled results uses alternative ways of calculating the base air quality value for 2002. The Pennsylvania SIP revision for the Philadelphia Area uses a straight five-year average of the fourth-highest design value from 2000 to 2004. EPA's modeling guidance recommends using an average of the three years of design value centered on 2002, which creates a weighted five-year average. While Pennsylvania's SIP revision notes that EPA's method of providing a weighted average baseline value weights the base year of 2002 more heavily than other years, EPA intended this, so that the resulting value was influenced the most by the ozone data from the base year of the emission inventory. There are other ways of calculating a baseline value that the State did not use. For example, for the peak ozone site of the Philadelphia Area at Colliers Mills:

• The EPA guideline method baseline is 105.7 ppb;
• The Pennsylvania alternative baseline is 104 ppb;
• The 2002 design value is 112 ppb; and
• The 2003 designation design value, centered on 2002, is 105.7 ppb.

Various methods could result in 2002's base year ozone of two ppb lower than the modeling guidance method (Pennsylvania's five year average centered on 2002) or as much as 7 ppb higher than the guidance method (single design value from 2002). Pennsylvania relies on the lower end of the range of possible results, and this brings the modeling result closer to attainment.

The ''sufficiently convincing'' WOE analysis our guidance suggests is needed when an area's design value is above 88 ppb, should not be based on a one-sided consideration of only those alternatives that tend to show that and area will attain the ozone standard. To be ''sufficiently convincing,'' the WOE should evaluate other reasonable variations on EPA's methods that reinforce the modeling results that predict the Philadelphia Area will not attain the ozone standard by 2010. Although Pennsylvania has provided a WOE analysis it believes supports its case of attainment in 2010, EPA's evaluation, as set forth at length in the TSD, concludes that the WOE does not demonstrate that the proposed adjustments to the photochemical grid model's attainment year forecast will give a more accurate answer than the calculations based on EPA's recommendations in Sections 2.3 and 7.2 of its modeling guidance.

In general, EPA's conclusions concerning the modeled attainment demonstration and WOE analysis provided in the Pennsylvania SIP revision for the Philadelphia Area can be summarized from the TSD as follows:

• The modeling used in the Philadelphia Area applies an appropriate photochemical grid model and follows EPA's guidance methods, but does not predict attainment in 2010.
• Regardless of the issues raised by Pennsylvania regarding the performance of EPA's recommended air quality models, the air quality measured during 2007 exceeded the ozone standard by a significant margin. Even a linear comparison of the percentage of additional emission reductions planned by the state with the needed improvement in air quality between 2007 and 2009 indicates it is unlikely that air quality will improve enough to meet the ozone standard by June 2010. Preliminary data from the 2008 ozone season also does not support demonstration of attainment by June 2010.
• When comparing the measured ozone concentrations in 2007 and (preliminary) 2008 data to concentrations predicted for 2009, using EPA's recommended application of the photochemical grid modeling, the photochemical grid model does not exhibit the magnitude of inaccuracies suggested in the Pennsylvania SIP revision.
• In order to insure attainment, Pennsylvania suggests that there area additional measures that can achieve emission reductions which were not included in the original photochemical modeling analysis. However, the amount of potential air quality benefit from these measures is difficult to estimate with any degree of certainty. Based on EPA's evaluation of the potential ozone benefits these additional measures may provide for the Philadelphia Area, attainment of the ozone standard in June 2010 cannot be achieved through the adoption of these measures.
• The Philadelphia Area attainment demonstration greatly relied on adjustments to the baseline assumptions which formed the basis of the photochemical modeling analysis. These adjustments to the base year starting value and the amount of reduction in ozone from 2002 to 2009 differ from EPA's modeling guidance, and, more importantly, are not sufficiently justified and are weighted toward a conclusion that Philadelphia Area will attain the standard.
• The Philadelphia Area attainment demonstration greatly relied on research which evaluated the impact of a widespread power blackout to develop an alternative approach to estimating anticipated air quality improvements from upwind power plants. While EPA believes that this approach provides some insight into the transport of ozone precursors, a critical review of all the research available to EPA leads EPA to disagree with Pennsylvania's premise that the 2009 modeled design values should be adjusted downward for alleged model under-predictions of ozone concentration reductions from emission reductions.

A detailed discussion of the EPA's evaluation of the modeled attainment demonstration and WOE analysis contained in the Pennsylvania SIP revision for the Philadelphia Area is located in the TSD entitled, *Technical Support Document for the Modeling and Weight of Evidence Portions of the Commonwealth of Pennsylvania's Ozone State Implementation Plan (SIP) Entitled ''Commonwealth of Pennsylvania Department of Environmental Protection State Implementation Plan Revision: Attainment Plan and Base Year Inventory Bucks, Chester, Delaware, Montgomery and Philadelphia Counties located in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE Eight-Hour Ozone Nonattainment Area, July 2007.''*

EPA has carefully evaluated the information provided by Pennsylvania

and other information it deems relevant to help predict what the air quality is likely to be by the 2009 ozone season. After careful consideration of all the relevant information, EPA finds that there is not sufficiently convincing evidence that the Philadelphia Area will attain the 8-hour ozone NAAQS in June 2010. The Pennsylvania SIP revision for the Pennsylvania portion of the Philadelphia Area does not satisfy the Clean Air Act requirement that State Implementation Plans provide for attainment of the NAAQS by the applicable attainment date of June 2010.

## V. What Are the Consequences of a Disapproved SIP?

This section explains the consequences of a disapproval of a SIP under the CAA. The CAA provides for the imposition of sanctions and the promulgation of a Federal Implementation Plan if states fail to submit a plan that corrects any deficiencies identified by EPA in its disapproval.

### *A. What Are the CAA Provisions for Sanctions?*

If EPA disapproves a required SIP or component of a SIP for an area designated nonattainment, such as the Attainment Demonstration SIP, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP if a State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds.

### *B. What Are the CAA's FIP Ramifications if a State Fails To Submit an Approvable Plan?*

In addition to sanctions, if EPA finds that a State failed to submit the required SIP revision or disapproves the required SIP revision, or a portion thereof, EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected within that time period.

### *C. What Are the Ramifications Regarding Conformity?*

One consequence of EPA's disapproval of a control strategy SIP is a conformity freeze whereby affected Metropolitan Planning Organizations (MPOs) cannot make new conformity determinations on long range transportation plans and transportation improvement programs (TIPs). If we finalize the disapproval of the attainment demonstration SIP, a conformity freeze will be in place as of the effective date of the disapproval without a protective finding of the budget. *See,* 40 CFR 93.120(a)(2). This means that no transportation plan, TIP, or project not in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of 40 CFR 93.104(f) during a 12-month lapse grace period [2] may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budgets are found adequate or the attainment demonstration is approved. In addition, if the highway funding sanction is implemented, the conformity status of the transportation plan and TIP will lapse on the date of implementation of the highway sanctions. During a conformity lapse, only projects that are exempt from transportation conformity (e.g., road resurfacing, safety projects, reconstruction of bridges without adding travel lanes, bicycle and pedestrian facilities, etc.), transportation control measures that are in the approved SIP and project phases that were approved prior to the start of the lapse can proceed during the lapse. No new project-level approvals or conformity determinations can be made and no new transportation plan or TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate.

## VI. What Is EPA's Conclusion?

EPA is proposing to disapprove the 8-hour ozone attainment demonstration (modeling results and WOE) for the Pennsylvania portion of the Philadelphia Area does not demonstrate with sufficiently convincing evidence that the Philadelphia Area will attain the NAAQS by the June 2010 deadline. EPA is deferring action at this time on other SIP elements submitted by Pennsylvania that are related to the attainment demonstration, specifically, the RFP plan, reasonably available control measures analysis, contingency measures, on-road motor vehicle emission budgets, and 2002 base year emissions inventory for the five-county Pennsylvania portion of the Philadelphia Area, which will be addressed in separate rulemakings. The five-county Pennsylvania portion of the Philadelphia Area comprises of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. This SIP revision was submitted by the Pennsylvania Department of Environmental Protection on August 29, 2007. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## VII. Statutory and Executive Order Reviews

### *A. Executive Order 12866, Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined 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; and (3) a small organization that is any not-for-profit enterprise which is independently

[2] Additional information on the implementation of the lapse grace period can be found in the final transportation conformity rule published on January 24, 2008, (73 FR 4423–4425).

owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector.'' EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132, Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. 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 Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 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. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

In addition, this proposed rule pertaining to the 8-hour ozone attainment demonstration plan of the

five-county Pennsylvania portion of the Philadelphia Area 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, Carbon monoxide, Nitrogen dioxide, Ozone, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 28, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. E9–10675 Filed 5–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 50

### 45 CFR Part 94

**[Docket No. NIH–2008–0002]**

**RIN 0925–AA53**

## Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service Funding Is Sought and Responsible Prospective Contractors; Request for Comments

**AGENCY:** Department of Health and Human Services.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** On behalf of the Department of Health and Human Services (HHS) and the Public Health Service (PHS), a component of the HHS, the National Institutes of Health (NIH) seeks comments from the public on whether the HHS should amend its regulations on the responsibility of applicants for promoting objectivity in research for which phs funding is sought and on responsible prospective. We are interested particularly in receiving comments on the issues presented below from the general public, individual Investigators, scientific societies and associations, Members of Congress, other Federal agencies that support or conduct research, and institutions that receive PHS funds to conduct or support biomedical or behavioral research.

**DATES:** To assure consideration, comments must be received by July 7, 2009.

**ADDRESSES:** Individuals and organizations interested in submitting comments, identified by RIN 0925–AA53 and Docket Number NIH–2008–0002, may do so by any of the following methods:

*Electronic Submissions*

You may submit electronic comments in the following way:

- *The Regulations.gov portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

To ensure timelier processing of comments, NIH is no longer accepting comments submitted to the agency by e-mail. The NIH encourages you to continue to submit electronic comments by using the Regulations.gov portal: *http://www.regulations.gov.*

*Written Submissions*

You may send written submissions in the following ways:

- *Fax:* 301–402–0169.
- *Mail: Attention:* Jerry Moore, NIH Regulations Officer, NIH, Office of Management Assessment, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852–7669.
- *Hand Delivery/Courier (for paper, disk, or CD–ROM submissions):* Attention: Jerry Moore, 6011 Executive Boulevard, Suite 601, Rockville, MD 20852–7669.

*Docket*

For access to the docket to read background documents or comments received, go to the Regulations.gov portal and insert the docket number provided in brackets in the heading on page one of this document into the ''Search'' box and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Jerry Moore at the address above, or telephone 301–496–4607 (not a toll-free number) concerning questions about the rulemaking process; and Sally J. Rockey, PhD, Deputy Director, Office of Extramural Research, One Center Drive, Building 1, Room 142, Bethesda, MD 20892, e-mail *FCOI-ANPRM@NIH.GOV* concerning programmatic questions.

**SUPPLEMENTARY INFORMATION:** Proper stewardship of Federal funds includes ensuring objectivity of results by protecting federally funded research from compromise by financial conflicts of interest (FCOI).

In 1995, the PHS and the Office of the Secretary of Health and Human Services published the regulations at 42 CFR Part 50 Subpart F and 45 CFR Part 94, designed to promote objectivity in PHS-funded research.[1] The regulations are applicable to Institutions[2] that apply for PHS funding for research (except for Small Business Innovation Research (SBIR)/Small Business Technology Transfer Research (STTR) Phase I applications/proposals) and, through implementation of the regulations by these Institutions, to each Investigator[3] participating in the research. Generally, under the regulations:

- The Institution is responsible for complying with the regulations, including developing and maintaining a written and enforced policy; managing, reducing, or eliminating identified conflicts; and reporting identified conflicts to the PHS funding component. The reports denote the existence of a conflict and assure that it has been managed, reduced, or eliminated.
- The participating Investigators are responsible for complying with their Institution's written Financial Conflict of Interest (FCOI) policy and for disclosing their Significant Financial Interests[4] (SFI) to their Institution.

[1] 48 CFR Subpart 9.1, ''Responsible Prospective Contractors,'' and 48 CFR Subpart 9.5, ''Organizational and Consultant Conflicts of Interest,'' also address conflicts of interest in Federally-funded projects. These provisions apply only to acquisitions, not to grants or cooperative agreements.

[2] An ''Institution'' is defined under 42 CFR Part 50, Subpart F, as any domestic or foreign, public or private, entity or organization (excluding a Federal agency), and under 45 CFR Part 94 as any public or private entity or organization (excluding a Federal agency) that (1) submits a proposal for a research contract whether in response to a solicitation from the PHS or otherwise, or (2) that assumes the legal obligation to carry out the research required under the contract. See 42 CFR 50.603; 45 CFR 94.3.

[3] An ''Investigator'' is defined under the regulations as the principal investigator and any other person who is responsible for the design, conduct, or reporting of research funded by PHS, or proposed for such funding. For purposes of the regulatory requirements relating to financial interests, the term ''Investigator'' includes the Investigator's spouse and dependent children. See 42 CFR 50.603; 45 CFR 94.3.

[4] A ''Significant Financial Interest'' is defined under the regulation as anything of monetary value, including but not limited to (1) Salary or other payments for services (e.g., consulting fees or honoraria); (2) equity interests (e.g., stocks, stock options or other ownership interests); and (3) intellectual property rights (e.g., patents, copyrights and royalties from such rights). The term does not include (1) Salary, royalties, or other remuneration from the institution; (2) any ownership interests in the institution, if the institution is an applicant under the SBIR program; (3) income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities; (4) income from service on advisory committees or review panels for public or nonprofit entities; (5) an equity interest that, when aggregated for the investigator and the investigator's spouse and dependent children, does not exceed $10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a five percent ownership

• The PHS funding components are responsible for overseeing Institutional compliance with the regulations.

Ensuring objectivity in research requires a commitment from Institutions and their Investigators to complete disclosure, appropriate review, and robust management of identified conflicts consistent with the level of risk presented. The existing regulations were designed to provide standards to ensure that the design, conduct, or and reporting of PHS-funded research is not biased by any FCOI.

In the intervening years since the publication of these regulations, the pace of translation of new discoveries from the research bench into effective treatment of patients has significantly accelerated. As a result, the biomedical research enterprise in the United States is extensive and growing in size and complexity. Researchers frequently work in multidisciplinary teams to develop new strategies and approaches for translating basic research into clinical application. In addition, these newer translational strategies often involve complex collaborations between investigators and the private sector. Together, these factors may generate an increased potential of investigators to hold financial interests in multiple sources which, if not reported and appropriately managed, reduced, or eliminated, could introduce bias into the conduct of their research. Recognition of the growing complexity of biomedical research, the increased interaction between Government and the private sector in meeting common public health goals, and recent public scrutiny have raised the question of whether a more rigorous approach to Investigator disclosure, management of conflicts, and Federal oversight is required.

Ensuring the objectivity of research results requires a commitment to uphold the following principles:

1. Research must be conducted with transparency and the highest scientific and ethical standards in a manner that promotes and respects the rights, safety, and welfare of all human research participants.

2. Appropriate interactions and relationships between government, academia, and industry, which do not compromise objectivity in research, frequently have beneficial outcomes and should be encouraged.

3. The integrity of the scientific record is critical to the conduct of science.

4. Risk management is essential in evaluating and managing conflict of interest; risk management should be commensurate with the level of risk of the research.

5. Complete and timely disclosure of financial interests and effective management of conflicts of interest are essential to ensuring objectivity in research.

For the reasons cited above, we are considering whether to revise the current regulations to provide Institutions with a more comprehensive set of guidelines based on these five principles. The complex and controversial issues surrounding FCOI warrant a carefully considered, open dialogue with all affected parties. Consequently, we invite public comments on all aspects of potential regulation in this area, and particularly on the following issues:

**I. Expanding the Scope of the Regulation & Disclosure of Interests**

The regulations are applicable to Institutions that apply for PHS funding for research and, through implementation of the regulations by each Institution, to each Investigator participating in such research. However, the regulations do not apply to Phase I SBIR/STTR applications (42 CFR 50.602, 45 CFR 94.2).

The regulations require that Investigators disclose to the Institution only those Significant Financial Interests (SFI) (1) that would reasonably appear to be affected by the research for which funding is sought from the PHS; and (2) in entities whose financial interests would reasonably appear to be affected by the research (42CFR 50.604(c)(1); 45 CFR 94.4(c)(1)).

a. Should the regulations be expanded so that they also apply to Phase I SBIR/STTR research applications/proposals for PHS funding?

b. In May 2004, HHS issued a guidance document entitled, ''Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection'' that raises points to consider in determining whether specific financial interests, including Institutional financial interests, in research affect the rights and welfare of human subjects and if so, what actions could be considered to protect those subjects. In February 2008, the Association of American Medical Colleges (AAMC) and the Association of American Universities (AAU) Advisory Committee on Financial Conflicts of Interest in Human Subjects Research issued a report, ''Protecting Patients, Preserving Integrity, Advancing Health: Accelerating the Implementation of COI Policies in Human Subjects Research,'' which offered a number of recommendations designed to enhance Institutional conflict of interest policies. One recommendation was that investigators conducting human subjects research should be required to report all of their outside financial interests directly or indirectly related to their professional responsibilities to their Institution, regardless of dollar amount and regardless of whether or not the investigator believes that the reported financial interests might reasonably appear to be affected by his or her current or anticipated research. In light of the above, should Investigators be required to disclose to their Institutions all Significant Financial Interests that are related to their Institutional responsibilities? Would this expanded disclosure allow the Institution to better determine which of these Significant Financial Interests constitute a FCOI?

**II. Definition of ''Significant Financial Interest''**

A ''Significant Financial Interest'' is defined by the current regulations as anything of monetary value, including but not limited to:

• Salary or other payments for services (e.g., consulting fees or honoraria);

• Equity interests (e.g., stocks, stock options or other ownership interests);

• Intellectual property rights (e.g., patents, copyrights and royalties from such rights).

The term does not include the following types of financial interests:

• Salary, royalties, or other remuneration from the Institution;

• Any ownership interests in the Institution, if the Institution is an applicant under the SBIR/STTR program;

• Income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities;

• Income from service on advisory committees or review panels for public or nonprofit entities;

• An equity interest that, when aggregated for the Investigator and the Investigator's spouse and dependent children, does not exceed $10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a five percent ownership interest in any single entity;

• Salary, royalties or other payments that when aggregated for the Investigator and the Investigator's spouse and dependent children over the next twelve

interest in any single entity; and (6) salary, royalties, or other payments that when aggregated for the investigator and the investigator's spouse and dependent children over the next twelve months are not expected to exceed $10,000. 42 CFR 50.603; 45 CFR 94.3.

months, are not expected to exceed $10,000. (42 CFR 50.603; 45 CFR 94.3).

a. Should the current exemptions be maintained?

• If so, are the current de minimis thresholds ($10,000 and 5 percent ownership interest in any single entity) reasonable? If not, how should the de minimis thresholds be changed? Should these thresholds be the same for all types of research?

• If not, which exemptions should be reconsidered, and why?

b. Should certain Significant Financial Interests (i.e., Significant Financial Interests received from specific sources or related to certain types of research) automatically be considered a FCOI under the regulations? If so, what types of Significant Financial Interests?

**III. Identification and Management of Conflicts by Institutions**

The regulations require that an official(s) designated by the Institution review all financial disclosures; determine whether a financial conflict of interest exists; and, if so, determine what actions the Institution should take to manage, reduce, or eliminate the conflict of interest (42 CFR. 50.605; 45 CFR 94.5). The regulations provide that a conflict of interest exists when the designated official(s) reasonably determines that a Significant Financial Interest could directly and significantly affect the design, conduct, or reporting of the research funded by the PHS (42 CFR 50.605; 45 CFR 94.5). The regulations currently do not define the term ''designated Institutional official(s)'', or mandate specific actions that Institutions must take to manage, reduce or eliminate particular types of FCOIs.

a. Should large Institutions (defined as greater than 50 employees) be required to establish an independent committee to review financial disclosures, and require that committee to report to an organizational level within the Institution that is not conflicted by the short-term financial interests of the Investigator or Institution? Would a 50 employee threshold reasonably balance the risk of a more relaxed requirement for smaller Institutions against the burden imposed by requiring an independent panel for these evaluations?

b. For certain types of research, should the Institution be required to develop a conflict management plan when the Institution decides to manage or reduce, rather than eliminate, the conflict? If so, for which types of research? Should there be prescribed standards for the conflict management plans? Should the Institution be required to submit this plan to the PHS funding component when it reports the existence of a conflict to the component?

c. Should Investigators who are involved in participant selection, the informed consent process, and clinical management of a trial, be prohibited from having a Significant Financial Interest in any company whose interests could be affected by their research or clinical trial? If so, what special circumstances would justify waiving this condition, if any?

d. Should the regulations prescribe specific approaches for the management, reduction, or elimination of particular types of FCOI? If so, for which types of FCOI? Which approaches?

e. Should specific requirements related to the identification, management, and reporting of FCOI be established for subrecipients (i.e., subgrantees, contractors, subcontractors, collaborators)?

f. Should amounts received by Investigators from certain kinds of organizations be limited to certain maximum thresholds if an Investigator is supported with PHS research funds? If so, which kinds of organizations? At what thresholds?

**IV. Assuring Institutional Compliance**

Under the current regulations, the PHS funding component may at any time inquire into the Institutional procedures and actions regarding conflicting financial interests in PHS-funded research, including a requirement for submission, or review on site, of all records pertinent to compliance with the regulation (42 CFR 50.606; 45 CFR 94.6). On the basis of its review of records and/or other information that may be available, the PHS funding component may decide that a particular conflict of interest will bias the objectivity of the research it funds to such an extent that further corrective action is needed or that the Institution has not managed, reduced, or eliminated the conflict of interest in accordance with the regulation(s) (42 CFR 50.606; 45 CFR 94.6). The PHS funding component may determine that suspension of funding/the issuance of a Stop Work order is necessary until the matter is resolved(42 CFR 50.606; 45 CFR 94.6).

a. Should the regulations enhance existing enforcement options in the event of noncompliance?

b. Should Investigators be required under the regulations to complete routine FCOI training?

c. Should independent confirmation of an Institution's compliance with the regulation be required? If so, what should this confirmation look like (e.g., accreditation by an outside body, an independent audit)?

**V. Requiring Institutions to Provide Additional Information to the PHS**

Under the current regulations, prior to spending any funds under an award, the Institution must report to the PHS funding component the existence of any conflicting financial interest found by the Institution and assure that the interest has been managed, reduced, or eliminated in accordance with the regulation(s) (42 CFR 50.604(g)(2), 45 CFR 94.4(g)(2)). The regulations do not require the Institution to report to PHS officials the nature of the interest or other details (42 CFR 50.604(g)(2), 45 CFR 94.4(g)(2)).

a. Should Institutions be required to submit to the PHS funding component additional information on any identified conflict? If they should not be required to submit additional information for all identified conflicts, should they be required to submit additional information for identified conflicts involving certain types of research? If so, for which types of research? What kind of information would provide valuable data to the PHS funding component in evaluating these reports and the potential risk of bias in conduct of research?

**VI. Institutional Conflict of Interest**

Institutional conflict of interest is currently not addressed by the regulations, although there has been movement in the research community toward incorporating Institutional standards in conflict of interest policies (see, for example, the February 2008 AAMC/AAU report, ''*Protecting Patients, Preserving Integrity, Advancing Health: Accelerating the Implementation of COI Policies in Human Subjects Research''*), and some Institutions have adopted such standards. This is an area of increasing concern. If the regulation were to be amended to address Institutional conflict of interest, how should it address the following issues?

a. How would Institutional conflict of interest be defined?

b. What would an Institutional conflict of Interest policy address in order to assure the PHS of objectivity in research?

Dated: February 2, 2009.

**Raynard S. Kington,**

*Acting Director, National Institutes of Health.*

Approved: April 9, 2009.

**Charles E. Johnson,**

*Acting Secretary.*

[FR Doc. E9–10666 Filed 5–7–09; 8:45 am]

**BILLING CODE 4140–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

**[DA 09–904; WT Docket No. 08–61, WT Docket No. 03–187]**

### Petition for Expedited Rulemaking and Other Relief on Behalf of American Bird Conservancy, Defenders of Wildlife and National Audubon Society

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, comment is sought on a petition for Expedited Rulemaking and Other Relief on Behalf of American Bird Conservancy, Defenders of Wildlife and National Audubon Society (Petitioners). Petitioners request that the Commission adopt new rules on an expedited basis to comply with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Migratory Bird Treaty Act (MBTA), and their implementing regulations, and to carry out the mandate of the U.S. Court of Appeals for the District of Columbia Circuit in *American Bird Conservancy, Inc.* v. *FCC*, 516 F.3d 1027 (DC Cir. 2008).

**DATES:** Interested parties may file comments on or before May 29, 2009, and reply comments on or before June 15, 2009.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 08–61 and WT Docket 03–187, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov* or *phone:* 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Aaron Goldschmidt, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau at (202) 418–7146 or *Aaron.Goldschmidt@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's public notice released on April 29, 2009. The full text of the public notice is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.* Copies of the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 08–61 or WT Docket No. 03–187. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

On April 14, 2009, American Bird Conservancy, Defenders of Wildlife and National Audubon Society (Petitioners) filed a petition requesting that the Federal Communications Commission (Commission) adopt new rules on an expedited basis to comply with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Migratory Bird Treaty Act (MBTA), and their implementing regulations, and to carry out the mandate of the U.S. Court of Appeals for the District of Columbia Circuit in *American Bird Conservancy, Inc.* v. *FCC,* 516 F.3d 1027 (DC Cir. 2008).[1]

Specifically, Petitioners request that the FCC undertake the following actions: Amend the Commission's regulations that implement NEPA, ''consistent with Council on Environmental Quality regulations and guidance,'' to ''cure deficiencies'' and to ensure that only Commission actions that have no significant environmental effects individually or cumulatively are categorically excluded; Prepare a programmatic environmental impact statement addressing the environmental consequences of its Antenna Structure Registration (ASR) program on migratory birds, their habitats, and the environment; Promulgate rules to clarify the roles, responsibilities and obligations of the Commission, applicants, and non-federal representatives in complying with the ESA; Consult with the U.S. Fish and Wildlife Service on the ASR program regarding all effects of towers and antenna structures on endangered and threatened species; and complete the proposed rulemaking in WT Docket No. 03–187 to adopt measures to reduce migratory bird deaths in compliance with the MBTA.[2]

*Procedural Matters:* This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules.[3] Parties making oral ex parte presentations in this proceeding are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.[4] More than a one- or two-sentence description of the views and arguments presented is generally required.[5]

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 29, 2009 and reply comments on or before June 15, 2009. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

*Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/*or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions

[1] In the Matter of Amendment of Part 1 of the Commission's Rules Regarding Environmental Compliance Procedures for Processing Antenna Structure Registration Applications, WT Docket No. 08–61, filed April 14, 2009 (Petition).

[2] Petition at iv–v.

[3] *See* 47 CFR 1.1200(a), 1.1206.

[4] *See* Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, Public Notice, 15 FCC Rcd 19945 (2000).

[5] *See* 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are also set forth in 1.1206(b). *See* 47 CFR 1.1206(b).

provided on the Web site for submitting comments.

For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

*Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Parties shall send one copy of their comments and reply comments to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, e-mail *FCC@BCPIWEB.com.* Comments filed in response to this document will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 08–165. The comments may also be purchased from Best Copy and Printing, Inc., telephone (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.*

Federal Communications Commission.

**James D. Schlichting,**

*Acting Chief, Wireless Telecommunications Bureau.*

[FR Doc. E9–10815 Filed 5–7–09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[FWS–R7–ES–2008–0105; 92210–1117–0000–B4]**

**RIN 1018–AV92**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Southwest Alaska Distinct Population Segment of the Northern Sea Otter (Enhydra lutris kenyoni)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of public comment period; notice of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our proposal to designate critical habitat for the southwest Alaska Distinct Population Segment (DPS) of the northern sea otter (*Enhydra lutris kenyoni*) under the Endangered Species Act of 1973, as amended (Act). This action will provide all interested parties with an additional opportunity to submit written comments on our December 16, 2008, proposed rule to designate approximately 15,225 square kilometers (km$^2$) (5,879 square miles (mi$^2$)) as critical habitat.

**DATES:** We are reopening the comment period until July 1, 2009. For more information, *see* Public Comments Solicited section below.

**ADDRESSES:**

*Public Comments:* You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R7–ES–2008–0105; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

*Public Hearing:* We will hold one public hearing on June 18, 2009, at the Z.J. Loussac Library in Anchorage, Alaska. There will be an informational meeting with a questions and answer session from 7 p.m. to 7:30 p.m. and we will accept public comments verbally from 7:30 p.m. to 9:30 p.m. In addition to having the opportunity to provide oral comments in person, telephone access will be provided for this hearing. Contact the Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**) for more information about this public hearing.

We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments Solicited section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Douglas M. Burn, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; telephone 907/786–3800; facsimile 907/786–3816. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 16, 2008, we published a proposed rule to designate approximately 15,225 square kilometers (km$^2$) (5,879 square miles (mi$^2$)) as critical habitat for the southwest Alaska DPS of the northern sea otter (73 FR 76454). We accepted public comments on this proposed rule for 60 days, ending on February 17, 2009. During that period, we received 15 submissions from various individuals, communities, and organizations. Recognizing that the original public comment period partially overlapped with the holiday season, we are reopening the public comment period to provide additional time for concerned individuals to provide input on the proposed designation.

We intend that any final action resulting from this proposal will be as

accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

• The amount and distribution of habitat of the southwest Alaska DPS of the northern sea otter,

• What areas occupied at the time of listing and that contain features essential for the conservation of the species we should include in the designation and why, and

• What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(5) Any areas that might be appropriate for exclusion from the final designation under section 4(b)(2) of the Act.

(6) Special management considerations or protections that the proposed critical habitat may require.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

We are also in the process of preparing a draft Economic Analysis of the proposed critical habitat designation, which will be made available for public review and comment. We will publish a separate Notice of Availability for the draft Economic Analysis.

## Public Comments Solicited

We will accept written comments and information we receive on or before July 1, 2009. You may submit comments and materials concerning the proposed rule by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including your personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.* Comments previously submitted on the December 16, 2008 proposed rule (73 FR 76454) need not be resubmitted, as they have been incorporated into the public record and will be fully considered in preparation of the final rule. Comments submitted during this reopened comment period also will be incorporated into the public record and will be fully considered in the final rule.

Comments and materials we receive, as well as supporting documentation we used in preparing this notice, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov,* or by mail from the Marine Mammals Management Office in Anchorage, Alaska.

## Author

The primary author of this package is the Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

## Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 29, 2009.

**Will Shafroth,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E9–10715 Filed 5–7–09; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 300

**[Docket No. 090223227–9691–01]**

**RIN 0648–AX63**

## Electronic Filing of Trade Documents for Fishery Products

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

**ACTION:** Advance notice of proposed rulemaking; request for comments.

**SUMMARY:** NMFS issues this advance notice of proposed rulemaking to announce that it is revising procedures to file import and export documentation for certain fishery products to meet requirements of the SAFE Port Act of 2006, the Magnuson–Stevens Fishery Conservation and Management Act, other applicable statutes, and obligations that arise from U.S. participation in regional fishery management organizations. Specifically, NMFS intends to integrate the collection of trade documentation within the government–wide International Trade Data System and require electronic information collection through the automated internet portal maintained by the United States Customs and Border Protection. NMFS is seeking advance public comment on the feasibility of electronic reporting by parties involved in an import or export transaction for applicable seafood products.

**DATES:** Written comments must be received by August 6, 2009.

**ADDRESSES:** Written comments on this action and requests for background information should be addressed to Christopher Rogers, Trade and Marine Stewardship Division, Office of International Affairs, NMFS. Comments and requests, identified by 0648–AX63, may be submitted by any of the following methods:

• Federal e–Rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• Mail: Christopher Rogers, Trade and Marine Stewardship Division, Office of International Affairs, NMFS, 1315 East–West Highway, Room 12657, Silver Spring, MD 20910.

• Fax: 301–713–9106, Attn: Christopher Rogers.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change.

All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Christopher Rogers (phone:301–713–9090, fax:301–713–9106, e–mail: *christopher.rogers@noaa.gov*).

**SUPPLEMENTARY INFORMATION:**

## Background

The Security and Accountability For Every Port Act of 2006 (SAFE Port Act, Public Law 109–347) requires all Federal agencies with a role in admissibility decisions for imports to collect information electronically through the international trade data system (ITDS). The Department of the Treasury has the lead on ITDS development and Federal agency integration. The U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has developed the Automated Commercial Environment (ACE) as the internet–based portal for the collection and dissemination of information for ITDS. The Office of Management and Budget, through its e–government initiative, has oversight regarding Federal agency participation in ITDS, with a focus on reducing duplicate reporting across agencies and migrating paper based reporting systems to electronic information collection.

Numerous Federal agencies are involved in the regulation of international trade and many of these agencies participate in the import, export and transportation related decision–making process. Agencies also use trade data to monitor and report on trade activity. ITDS is an integrated, government–wide system for the electronic collection, use, and dissemination of the international trade and transportation data Federal agencies need to perform their missions. ITDS is a ''single window'' concept: a single internet portal (ACE) for the trade community to submit all the required standardized commodity and transportation data pertaining to an import or export transaction. Data from ITDS is transmitted to all government agencies legally authorized to receive such information. Detailed information on ITDS and the ACE portal is available at: *http://www.itds.gov*.

NMFS has become a participating government agency in the ITDS project because of its role in monitoring the imports of certain fishery products. NMFS is working with CBP to determine the extent to which current seafood import documentation programs can be adapted to collect required data through the ACE portal. Electronic collection of seafood trade data through the ACE portal will reduce the public reporting burden, reduce the agency's data collection costs, improve the timeliness and accuracy of admissibility decisions, and increase the effectiveness of applicable trade restrictive measures.

## Authorities for Trade Measures

The Magnuson–Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Public Law 109–479), amended the High Seas Driftnet Moratorium Protection Act (Public Law 104–43) to require U.S. actions to address illegal, unregulated and unreported (IUU) fishing activity and bycatch of protected living marine resources (PLMR). Specifically, the amendments require the Secretary of Commerce (Secretary) to identify in a biennial report to Congress those foreign nations whose vessels are engaged in IUU fishing or fishing that results in bycatch of PLMR. The Secretary is also required to establish procedures to certify whether nations identified in the biennial report are taking appropriate corrective actions to address IUU fishing or bycatch of PLMR by its fishing vessels (74 FR 2019, January 14, 2009). Based upon the outcome of the certification procedure, these nations could be subject to import prohibitions under the authority provided in the High Seas Driftnet Fisheries Enforcement Act (codified at 16 U.S.C. 1826a).

Additionally, there are identification and/or certification procedures in other statutes, including the Pelly Amendment to the Fishermen's Protective Act (codified at 22 U.S.C. 1978) and the Atlantic Tunas Convention Act (codified at 16 U.S.C. 971). These procedures may result in trade restrictive measures for a certified country for those fishery products associated with the activity that resulted in the certification. Further, import prohibitions for certain fishery products could also be applied under provisions of the Tariff Act (codified at 19 U.S.C. 1323), Marine Mammal Protection Act (codified at 16 U.S.C. 1371), Lacey Act (codified at 16 U.S.C. 3371) and other statutes, depending on the circumstances of the fish harvest and the conservation concerns of the United States. Trade monitoring authority is also provided by the Dolphin Protection Consumer Information Act (codified at 16 U.S.C. 1385) which specifies the conditions under which tuna products may be imported into the United States with a dolphin–safe label.

Multilateral efforts to combat IUU fishing may also result in trade action. The United States is a contracting party to several regional fishery management organizations (RFMOs). Many of these RFMOs have established procedures to identify nations and/or vessels whose fishing activities undermine the effectiveness of the conservation and management measures adopted by the organization. Fishery products exported by such nations or harvested by such vessels may be subject to import prohibitions specified by the RFMO as a means to address the activity of concern. In these cases, the United States is obligated to deny entry of the designated products into its markets.

## Trade Monitoring and Documentation Programs

As a result of unilateral authorities and/or multilateral agreements, NMFS has implemented a number of monitoring programs to collect information from the trade regarding the origin of certain fishery products. The purpose of these programs is to determine the admissibility of the products in accordance with the specific criteria of the trade measure or documentation requirement in effect. NMFS trade monitoring programs cover tunas, swordfish, billfish, shark fins, toothfish, krill and certain other fishery products under the authority of the High Seas Driftnet Fisheries Enforcement Act (refer to *http://swr.nmfs.noaa.gov/fmd/italy.htm* for an exhaustive list.) Generally, these trade monitoring programs require importers to obtain a blanket permit, to obtain from exporters documentation on the authorization for the harvest by the flag nation, and to submit this information to NMFS for review and approval. Depending on the commodity, specific information may be required on the flag state of the harvesting vessel, the ocean area of catch, the fishing gear used, and details of landing, transshipment and export.

In most cases, these monitoring programs require the importer to provide paper documents to NMFS, while other relevant information on the inbound shipments is provided by the shipper, carrier, or customs broker to CBP by electronic means. NMFS reconciles the information reported by importers with the information obtained from CBP to determine if the

admissibility requirements have been satisfied. If documentation is incomplete, fraudulent or missing, or if the shipment is not admissible given its ocean area of origin, flag nation, harvesting vessel or the circumstances under which it was harvested, entry into U.S. commerce is prohibited for that shipment.

As a participating government agency, access to the ACE portal has improved NMFS' ability to evaluate trends and potential problems with seafood imports including real time information on ports of entry, potential cases of tariff code misspecification, or indications of lack of proper documentation. It has helped NMFS communicate with the trade community to educate importers and brokers on the documentation requirements. It has also helped NMFS target enforcement resources by taking a risk management approach. NMFS anticipates that ITDS integration will result in reduced reporting burden for the trade community, reduced data processing time for government, increased compliance with product admissibility requirements, and quicker response time on admissibility decisions.

**Information Collection and Respondents**

This advance notice of proposed rulemaking solicits public input on the development of electronic information collection procedures for the purposes of determining which shipments of seafood products are eligible for entry into the United States. Timely information is critical to making accurate and effective admissibility decisions. However, NMFS is aware that many different parties serve different roles in the trade process, and it is important to identify the correct party who can supply the required information at any particular point in the transaction. Potential sources of information on an inbound shipment could be the foreign exporter, freight forwarder/consolidator, shipper, carrier, customs broker, importer or ultimate consignee. Specific information is available to some or all of these parties and could be supplied to NMFS at various points in the trade process. Certain information may be available on a pre–arrival basis, while other information might not be available until arrival, upon the start of the entry process or even post–release.

In order to establish an electronic reporting system that meets NMFS' statutory requirements for admissibility without imposing an undue burden on the trade community, NMFS seeks input from the public on the following questions:

As an importer, do you rely on brokers for customs clearance or file customs entries on your own?

What CBP electronic reporting systems does your business use (e.g., Automated Commercial System, Automated Broker Interface, Customs Automated Manifest Interface Requirements, Customs and Trade Automated Interface Requirements)?

Does your business (importer, customs broker, shipper, carrier) currently maintain an ACE portal user account?

Does another business entity file CBP–required information on your behalf? Does that business have cross account access for you within CBP reporting systems?

Does your business (importer, customs broker, shipper, carrier) currently have a blanket (annual) permit from NMFS for importing/exporting tuna, swordfish, shark fins or Antarctic resources (krill, toothfish)?

Does another business entity with a NMFS blanket permit submit NMFS–required information on your behalf?

As an importer, how would your business be affected if you are required to obtain a blanket permit (e.g., annual) prior to importing your product?

Is your business (importer, customs broker, shipper, carrier) currently registered with the Dun and Bradstreet Universal Numbering Service (DUNS Number)? Could this registration number serve as a unique identifier for your business with regard to reporting obligations to CBP, NOAA and other agencies? Does your business have one or more importer of record numbers registered with CBP?

What are the principal ports of import, the predominant product form (fresh, frozen or in airtight containers), and the usual transportation mode (ocean, air, truck, rail) for the import transactions of your business?

How would your business practices be affected if NMFS required imports only through a limited number of designated ports of entry?

Which established government or private sector product identifiers are generally used in your business transactions (e.g., FDA, USDA, HTSUS, UPC, GTIN, GDSN)?

What paper documents (manifest, invoice, bill of lading, harvesting or exporting government authorization, certificate of eligibility, catch document) are available to your business and at what point in trade transaction (pre–arrival, arrival, post–release)?

What problems, if any, have you encountered with the existing paper document systems for NMFS trade monitoring programs? Could these problems be resolved by electronic reporting?

When you have questions on documentation requirements or encounter problems with release of shipments, how do you contact NMFS (telephone, email, internet, office visit)? Have you had difficulties in contacting NMFS to get answers to your questions?

What concerns do you have about timely release of perishable seafood shipments? In your view, could electronic reporting expedite the submission of information to CBP to obtain release? How would your business be affected if information collection requirements cause a delay in release of shipments?

How does your business currently meet prior notice requirements of the Food and Drug Administration (FDA) for inbound shipments of food products? Specifically, what FDA reporting system do you use?

How would your business be affected if NMFS required pre–approval for all inbound seafood shipments that are subject to documentation requirements? That is, what costs and risks would you face if all documentation must be provided prior to arrival and the shipment cannot be released until NMFS verifies the information?

As an importer, do you serve as a U.S. agent for foreign entities? If so, what trade documents are available to you prior to the arrival of the shipment?

As a foreign entity, do you use a U.S. agent to facilitate the import process into the U.S. market? If so, what trade documents do you supply to your U.S. agent prior to arrival of the shipment?

As an importer or customs broker, do you have knowledge of the ultimate consignee and or final U.S. destination at time of entry filing? Do you have this information prior to arrival or release?

As an importer, do you also re–export seafood to a destination outside of the United States?

As a re–exporter, do you move product after processing or repacking in the United States? If so, what types of processing or repacking occur and at what locations (airport, seaport, warehouse)?

What entry types are typical for your business (consumption, warehouse, foreign trade zone, informal entries)? As an importer or customs broker, do you use bonded warehouses or foreign trade zones to hold product prior to filing entry for consumption?

Do you serve as a U.S. agent to facilitate transportation and export entries for foreign firms who use U.S.

transit links to get seafood products to overseas markets?

What other Federal or state agencies, if any, require documentation or declarations for the seafood products that you import?

What industry groups or trade associations represent your business interests? Does your business maintain a membership in any associations (e.g., National Fisheries Institute, Trade Support Network, National Customs Brokers and Forwarders Association of America)?

**Submitting Public Comment**

You may submit information and comments concerning this advanced notice of proposed rulemaking by any one of several methods (see **ADDRESSES**). Information related to current programs to monitor international trade in fisheries products can be found on the NMFS Web site at *http://www.nmfs.noaa.gov/*. NMFS will consider all comments and information received during the advance notice comment period in preparing a proposed rule.

**Classification**

This advance notice of proposed rulemaking has been determined to be not significant for the purposes of Executive Order 12866.

**Authority:** 16 U.S.C. 1826d–1826k; 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 1371; 16 U.S.C. 1385; 16 U.S.C. 3371.

Dated: May 4, 2009.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. E9–10820 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–22–S**

# Notices

Federal Register
Vol. 74, No. 88
Friday, May 8, 2009

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

May 5, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* National Animal Health Laboratory Network.

*OMB Control Number:* 0579–NEW.

*Summary of Collection:* The Animal and Plant Health Inspection Service (APHIS) is proposing to add a new database, entitled National Animal Health Laboratory Network (NAHLN), which will be used to support activities conducted by the agency and maintain records pursuant to its missions and responsibilities authorized by the Animal Health Protection Act (7 U.S.C. 8301–8317); Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 116 Stat. 674–678 (Pub. L. 107–188); Homeland Security Presidential Directive-7 (HSPD–7); and Homeland Security Presidential Directive-9 (HSPD–9). These requirements include the development of a national laboratory network for veterinary health that integrates existing Federal and State laboratory resources, are interconnected, and utilize standardized diagnostic protocols and procedures.

*Need and Use of the Information:* The purpose of NAHLN is to coordinate and network Federal laboratory capacity with the capacity and extensive infrastructure (facilities, professional expertise, and support) of State and university laboratories. APHIS uses the system to enhance early detection of foreign animal disease agents and newly emerging diseases, to better respond to animal health emergencies (including bioterrorist events) that threaten the nation's food supply and public health, and to assist in assessing the nation's animal health status through targeted surveillance and shared animal health diagnostic data.

*Description of Respondents:* State, Local or Tribal Government.

*Number of Respondents:* 89.

*Frequency of Responses: Reporting:* On occasion.

*Total Burden Hours:* 8,056.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E9–10771 Filed 5–7–09; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Models of SNAP-Ed and Evaluation Study

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

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed collection of data for the Models of SNAP-Ed and Evaluation Study. This is a NEW information collection. The goal of Supplemental Nutrition Assistance Program Education (SNAP-Ed) is to improve the likelihood that SNAP participants and eligibles will make healthy choices within a limited budget and choose active lifestyles consistent with the current Dietary Guidelines for Americans and the USDA Food Guidance System. With limited resources, SNAP-Ed nutrition educators attempt to tailor their messages to fit the varying needs of differing populations and evaluate the extent to which their efforts result in positive, voluntary changes in nutrition behaviors.

The Models of SNAP-Ed and Evaluation Study will conduct rigorous, independent evaluations of four SNAP-Ed demonstration projects. Each of the demonstration projects will also conduct an impact evaluation assessment which will be compared to FNS's more rigorous, independent evaluation. The Models of SNAP-Ed and Evaluation Study will provide FNS with sound, independent estimates of the effectiveness of four SNAP-Ed approaches, and will provide SNAP-Ed educators with examples of evaluation designs that are both feasible and scientifically robust.

**DATES:** Written comments must be submitted on or before July 7, 2009.

**ADDRESSES:** Comments are invited on (a) Whether the proposed data collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of

the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Comments may be sent to:* Steven Carlson, Director, Office of Research and Analysis, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at 703–305–2576 or via email to *Steve.Carslon@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at Room 1014, 3101 Park Center Drive, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Steven Carlson on 703–305–2017.

**SUPPLEMENTARY INFORMATION:**

*Title:* Models of SNAP-Ed and Evaluation.

*OMB Number:* [not assigned].

*Expiration Date:* [not assigned].

*Type of Request:* New collection.

*Abstract:* The purposes of the Models of SNAP-Ed and Evaluation Study are to (1) demonstrate that nutrition education through SNAP can bring about meaningful behavioral change, and (2) show that nutrition education implementers can mount meaningful intervention outcome evaluations.

In fiscal year 2009, four nutrition education interventions were selected to participate as demonstration projects for this study. The four demonstration projects that will be approved under their States' Annual SNAP-Ed Plan are:

The University of Nevada at Reno's ''All 4 Kids'' intervention in Head Start Childcare Centers. FNS will employ an experimental evaluation design through which pre and post-intervention assessments will be conducted at 12 Head Start Centers with 6 serving as treatment sites and 6 as controls. Parents will be asked to report on the eating behaviors of their children. Additionally, educators at treatment sites will be interviewed for their impressions of the effectiveness of the intervention and their recommendations for improvement.

The Chickasaw Nation Nutrition Service ''Eagle Play'' intervention, tailored for Native American children. The FNS evaluation will use a quasi-experimental design in which 6 Pontotoc County, Oklahoma elementary schools will be demographically matched to the 6 schools selected to take part in the intervention. Pre and post-intervention assessments will be conducted at both treatment and control schools. Parents will be surveyed about the fruit and vegetable consumption of their children. Educators at treatment sites will be interviewed for their impressions of the effectiveness of the intervention and their recommendations for improvement.

The Pennsylvania State University's ''Eating Competencies'' web-based nutrition education intervention for SNAP eligible women, ages 18–45. Using a randomized control design, FNS will monitor the impact of the intervention on fruit and vegetable consumption as reported by participants and control subjects. The Pennsylvania State University nutrition educators will be informally interviewed for their impressions of the practicality of the intervention and their recommendations for improvement.

The New York State Department of Health's intervention, ''Eat Well, Play Hard'' in Child and Adult Care Food Program Centers. The quasi-experimental FNS evaluation will compare pre and post-intervention responses at 18 treatment and 18 control centers. Parents will be asked about the availability of fruits, vegetables and low-fat dairy at home, and their children's willingness to consume them. Educators and Dietitians at treatment sites will be interviewed for their impressions of the effectiveness of the intervention and their recommendations for improvement.

*Affected Public:* Individuals or Households and State, Local or Tribal Government: Respondent Type—Parents, educators and dietitians in New York State; and Parents and educators in Potontoc County, Oklahoma, and Clark County, Nevada. Low-income women, ages 18–45, and educators in Pennsylvania.

*Estimated Number of Respondents:* 5,489 (4,717 for parents; 772 for educators/dietitians). 600 parents of Head Start pre-school students and 80 educators in Clark County, Nevada; 1,377 parents of pre-K through 3rd grade children and 90 educators in Pontotoc County, Oklahoma; 580 women, ages 18–45, and 12 educators in Pennsylvania; 2,160 parents of 3–4 year old children and 590 educators and dietitians in New York Child and Adult Care Food Program centers.

See the table, below.

*Estimated Number of Responses per Respondent:* 2 for parents; 1 for educators/dietitians.

*Estimated Total Annual Responses:* 10,206.

*Hours per Response:* 0.25 for parents; 0.50 for educators/dietitians.

*Estimated Total Annual Burden on Respondents:* 2,744.50 (2,358.5 hours for parents; 386 for educators/dietitians).

| Respondent | Estimated number of respondents | Responses annually per respondent | Total annual responses | Estimated avg. number of hours per response | Estimated total hours |
|---|---|---|---|---|---|
| **Reporting Burden, University of Nevada at Reno, ''All 4 Kids''** | | | | | |
| Parent survey | 600 | 2 | 1,200 | 0.25 | 300.00 |
| Educator interviews | 80 | 1 | 80 | 0.50 | 40.00 |
| **Reporting Burden, Chickasaw Nation Nutrition Service, ''Eagle Play''** | | | | | |
| Parent survey | 1,377 | 2 | 2,754 | 0.25 | 688.50 |
| Educator interviews | 90 | 1 | 90 | 0.50 | 45.00 |

| Respondent | Estimated number of respondents | Responses annually per respondent | Total annual responses | Estimated avg. number of hours per response | Estimated total hours |
|---|---|---|---|---|---|
| **Reporting Burden, Pennsylvania State University, ''Eating Competencies''** | | | | | |
| Participant survey | 580 | 2 | 1,160 | 0.25 | 290.00 |
| Educator interviews | 12 | 1 | 12 | 0.50 | 6.00 |
| **Reporting Burden, New York State Dept. of Health, ''Eat Well, Play Hard''** | | | | | |
| Parent survey | 2,160 | 2 | 4,320 | 0.25 | 1,080.00 |
| Educator/Dietitian interviews | 590 | 1 | 590 | 0.50 | 295.00 |
| Total Reporting Burden | 5,489 | | 10,206 | | 2,744.50 |

Dated: May 4, 2009.

**E. Enrique Gomez,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. E9–10745 Filed 5–7–09; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Deschutes Provincial Advisory Committee (DPAC)

**AGENCY:** Forest Service, Department of Agriculture.

**ACTION:** Notice of meeting.

**SUMMARY:** The Deschutes Provincial Advisory Committee will meet on May 27, 2009, starting at 8 a.m. at the Deschutes National Forest Supervisor's Office, 1001 SW., Emkay Drive, Bend, Oregon. There will be a 1-hour office meeting to brief members on the mapping effort for application of The Nature Conservancy/Fire Learning Network restoration principles. Then, members will go to the field to the Bend-Ft. Rock Ranger District to view areas where principles are being implemented. PAC members will help identify and prioritize areas for future restoration. The trip is scheduled to end at 4:30 p.m. All Deschutes Province Advisory Committee Meetings are open to the public and an open public forum is scheduled from 8:30 to 9 a.m.

**FOR FURTHER INFORMATION CONTACT:** Chris Mickle, Province Liaison, Crescent Ranger District, Highway 97, Crescent, Oregon 97733, Phone (541) 433–3216.

**John Allen,**

*Deschutes National Forest Supervisor.*

[FR Doc. E9–10135 Filed 5–7–09; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Meeting

**AGENCY:** Notice of Resource Advisory Committee, Custer, SD, USDA Forest Service.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to authorities in the Federal Advisory Committee Act (Law 92–463) and Public Law 110–343, enacted on October 3, 2008, reauthorizing and amending the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393), the Black Hills National Forest Custer County Resource Advisory Committee will meet on Wednesday, May 13, 2009 in Custer, South Dakota. The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** The meeting on May 13, 2009 will begin at 5:30 p.m. at the Black Hills National Forest Supervisor's Office at 25041 North Highway 16, Custer, South Dakota. Agenda topics will be Project status update and general business.

**FOR FURTHER INFORMATION CONTACT:** Lynn Kolund, Hell Canyon District Ranger and Designated Federal Official, at 605–673–4853.

**Lynn Kolund,**

*District Ranger.*

[FR Doc. E9–10604 Filed 5–7–09; 8:45 am]

**BILLING CODE M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Mendocino Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Mendocino County Resource Advisory Committee will meet May 15, 2009 (RAC), in Willits, California. Agenda items to be covered include: (1) Approval of minutes (2) Handout Discussion (3) Public Comment (4) Financial Report (5) Sub-committees (6) Matters before the group (7) Discussion—approval of projects (8) Next agenda and meeting date.

**DATES:** The meeting will be held on May 15, 2009, from 9 a.m. until 12 noon.

**ADDRESSES:** The meeting will be held at the Mendocino Willits Environmental Center, 630 South Main, Willits, California.

**FOR FURTHER INFORMATION CONTACT:** Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428. (707) 983–6658; e-mail *windmill@willitsonline.com.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by May 14, 2009. Public comment will have the opportunity to address the committee at the meeting.

Dated: April 29, 2009.

**Lee Johnson,**

*Designated Federal Official.*

[FR Doc. E9–10527 Filed 5–7–09; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 20–2009]**

### Foreign-Trade Zone 29—Louisville, KY; Application for Subzone; Dow Corning Corporation (Silicones); Carrollton, Elizabethtown and Shepherdsville, KY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of FTZ 29, requesting special-purpose

subzone status for the silicone manufacturing facilities of Dow Corning Corporation (Dow Corning), located in Carrollton, Elizabethtown and Shepherdsville, Kentucky. 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 May 1, 2009.

The Dow Corning facilities (860 employees, 385,000 metric ton capacity) consist of four sites on 768 acres in Kentucky: *Site 1* (650 acres) is located at 4770 US Highway 42 East, Carrollton, Carroll County; *Site 2* (88 acres) is located at 760 Hodgenville Road, Elizabethtown, Hardin County; *Site 3* (9 acres) is located at 907 Peterson Drive, Elizabethtown, Hardin County; and *Site 4* (21 acres) is located at 270 Omega Parkway, Suite 200, Shepherdsville, Bullitt County. The facilities are used for the manufacturing and warehousing of silanes, siloxane and silicones, primarily silicone fluids and sealants. Components and materials sourced from abroad (representing 30–35% of the value of the finished product) include: Silicon metal, methanol, silica fillers, cuprous chloride powder, methyl chloride, derivatives containing only sulfo groups, surface active agents, catalysts, organofunctional silanes and blends, acrylic polymers, polyacetal co-polymers, silicone polymers, methyl cellulose, hydrocarbons, fillers, silicates, alcohol, ketones, esters, sulfuric acid esters, acyclic amides, organo-sulfur compounds, caulking compounds, prepared binders, and silicone polymers (duty rate ranges from duty-free to 7%). The application indicates that any inputs that fall under HTSUS Headings 3204, 3206 and 3212 of the HTSUS will be admitted to the subzone in privileged foreign (PF) status (19 CFR 146.41). In addition, it is noted that Section 400.33 of the Board's regulations requires that any inputs subject to antidumping or countervailing duties, such as silicon metal, be admitted to the subzone in PF status.

FTZ procedures could exempt Dow Corning from customs duty payments on the foreign components used in export production. The company anticipates that some 20 percent of the plant's shipments will be exported. On its domestic sales, Dow Corning would be able to choose the duty rates during customs entry procedures that apply to the finished silicone products (duty rate ranges from duty-free to 6.5%) for the foreign inputs noted above. FTZ designation would further allow Dow Corning to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to investigate the application and report 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 July 7, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 22, 2009.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth_Whiteman@ita.doc.*gov or (202) 482–0473.

Dated: May 1, 2009.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E9–10814 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1617]**

### Approval for Expanded Manufacturing Authority; Foreign-Trade Subzone 222A; Hyundai Motor Manufacturing Alabama, LLC (Motor Vehicles and Engines); Montgomery, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Montgomery Area Chamber of Commerce, grantee of Foreign-Trade Zone 222, has requested authority on behalf of Hyundai Motor Manufacturing Alabama, LLC (HMMA), to expand the scope of manufacturing authority (additional engine capacity) conducted under zone procedures within Subzone 222A at the HMMA facility in Montgomery, Alabama (FTZ Docket 34–2008, filed 5–21–2008);

*Whereas,* notice inviting public comment has been given in the **Federal Register** (73 FR 31432, 6–2–2008) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore,* the Board hereby orders:

The application to expand the scope of manufacturing authority under zone procedures within Subzone 222A, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 24th day of April 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E9–10779 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1613]**

### Designation of New Grantee Foreign-Trade Zone 57, Charlotte, North Carolina Area Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The Foreign-Trade Zones (FTZ) Board (the Board) has considered the application (filed 07/23/2008) submitted by the North Carolina Department of Commerce (NCDOC), grantee of FTZ 57, Charlotte, North Carolina, requesting reissuance of the grant of authority for said zone to the Charlotte Regional Partnership, Inc. (CRP), a non-profit organization, which has accepted such reissuance subject to approval by the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest.

Therefore, the Board approves the application and recognizes the Charlotte

Regional Partnership, Inc. (CRP) as the new grantee of Foreign Trade Zone 57, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 24th day of April 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary of Commerce for Import Administration Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. E9–10800 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1612]**

### Grant of Authority for Subzone Status; STIHL Incorporated (Outdoor Power Products Manufacturing); Virginia Beach, VA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

*Whereas,* the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas,* the Virginia Port Authority, grantee of Foreign-Trade Zone 20, has made application to the Board for authority to establish a special-purpose subzone at the outdoor power products manufacturing and distribution facilities of STIHL Incorporated, located in Virginia Beach, Virginia (FTZ Docket 56–2008, filed 10/3/08);

*Whereas,* notice inviting public comment was given in the **Federal Register** (73 FR 60677–60678, 10/14/08); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore,* the Board hereby grants authority for subzone status for activity related to outdoor power product manufacturing at the facilities of STIHL Incorporated, located in Virginia Beach, Virginia (Subzone 20E), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 24th day of April 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E9–10805 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1610]**

### Grant of Authority for Subzone Status; Marinette Marine Corporation (Shipbuilding); Marinette, WI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

*Whereas,* the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas,* Brown County, Wisconsin, grantee of FTZ 167, has made application for authority to establish special-purpose subzone status at the shipbuilding facility of Marinette Marine Corporation (MMC), located in Marinette, Wisconsin (FTZ Docket 33–2008, filed 5–12–2008);

*Whereas,* notice inviting public comment was given in the **Federal Register** (73 FR 28430, 5–16–2008); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were given subject to the standard shipyard restriction on foreign steel mill products;

*Now, therefore,* the Board hereby grants authority for subzone status for activity related to shipbuilding and repair at the shipyard of Marinette Marine Corporation in Marinette, Wisconsin (Subzone 167D), at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28, and subject to the following special conditions:

1. Any foreign steel mill product admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill.

2. MMC shall meet its obligation under 15 CFR 400.28(a)(3) by annually advising the Board's Executive Secretary as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the zone primarily because of FTZ procedures and whether the Board should consider requiring customs duties to be paid on such items.

Signed at Washington, DC, this 24th day of April 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E9–10811 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1616]**

### Reorganization/Expansion of Foreign-Trade Zone 202; Los Angeles, CA, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Board of Harbor Commissioners of the City of Los Angeles, grantee of Foreign-Trade Zone 202, submitted an application to the

Board for authority to reorganize and expand its zone by removing acreage from four existing sites (Sites 4, 16, 19 and 20); deleting existing Site 5 in its entirety; combining existing Sites 8 and 10 into one site (Site 10); expanding three existing sites (Sites 9, 11 and 19) to include additional acreage; and, by adding a new site to the zone project, adjacent to the Los Angeles Customs and Border Protection port of entry (FTZ Docket 52–2007, filed 12/17/07);

*Whereas,* notice inviting public comment was given in the **Federal Register** (73 FR 1318, 1/8/08) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore,* the Board hereby orders:

The application to reorganize and expand FTZ 202 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a sunset provision that would terminate authority on April 30, 2014, for the new site if no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 24th day of April 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E9–10808 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1616]**

### Reorganization/Expansion of Foreign-Trade Zone 202; Los Angeles, CA, Area

*Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:*

*Whereas,* the Board of Harbor Commissioners of the City of Los Angeles, grantee of Foreign-Trade Zone 202, submitted an application to the Board for authority to reorganize and expand its zone by removing acreage from four existing sites (Sites 4, 16, 19 and 20); deleting existing Site 5 in its entirety; combining existing Sites 8 and 10 into one site (Site 10); expanding three existing sites (Sites 9, 11 and 19) to include additional acreage; and, by adding a new site to the zone project, adjacent to the Los Angeles Customs and Border Protection port of entry (FTZ Docket 52–2007, filed 12/17/07);

*Whereas,* notice inviting public comment was given in the **Federal Register** (73 FR 1318, 1/8/08) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore,* the Board hereby orders:

The application to reorganize and expand FTZ 202 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a sunset provision that would terminate authority on April 30, 2014, for the new site if no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 24th day of April 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary of Commerce for Import Administration Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. E9–10780 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### National Fire Codes: Request for Comments on NFPA Technical Committee Reports

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** Since 1896, the National Fire Protection Association (NFPA) has accomplished its mission by advocating scientifically based consensus codes and standards, research, and education for safety related issues. NFPA's *National Fire Codes*®, which hold over 290 documents, are administered by more than 238 Technical Committees comprised of approximately 7,200 volunteers and are adopted and used throughout the world. NFPA is a nonprofit membership organization with approximately 80,000 members from over 70 nations, all working together to fulfill the Association's mission.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and that take approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The Code Revision Process contains five basic steps that are followed for developing new documents as well as revising existing documents: Call for Proposals; Report on Proposals (ROP); Call for Comments on the Committee's Disposition of the Proposals and publication of these Comments in the Report on Comments (ROC); the Association Technical Meeting at the NFPA Conference & Expo; and finally, the Standards Council Consideration and Issuance of documents.

**Note:** NFPA rules state that anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal his or her intention by submitting a Notice of Intent to Make a Motion by the Deadline of 5 p.m. EST/EDST on or before April 9, 2010. Certified motions will be posted by May 7, 2010. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the Annual 2010 Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance at its June 1, 2010 meeting.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Web site at *www.nfpa.org,* or contact NFPA Codes and Standards Administration.

The purpose of this notice is to request comments on the technical reports that will be presented at NFPA's 2010 Annual Revision Cycle. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

**DATES:** Twenty-four reports are published in the 2010 Annual Cycle Report on Proposals and will be

available on June 26, 2009. Comments received by 5 p.m. EST/EDST on or before September 4, 2009 will be considered by the respective NFPA Committees before final action is taken on the proposals.

**ADDRESSES:** The 2010 Annual Revision Cycle Report on Proposals is available and downloadable from NFPA's Web site at *www/nfpa.org,* or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, Massachusetts 02322. Comments on the report should be submitted to Amy Beasley Spencer, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

**FOR FURTHER INFORMATION CONTACT:** Amy Beasley Spencer, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471, (617) 770–3000.

**SUPPLEMENTARY INFORMATION:**

**Background**

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

**Request for Comments**

Interested persons may participate in these revisions by submitting written data, views, or arguments, to Amy Beasley Spencer, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received by 5 p.m. EST/EDST on or before September 4, 2009 for the 2010 Annual Cycle Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2010 Annual Cycle Report on Comments by February 26, 2010. A copy of the Report on Comments will be sent automatically to each commenter. Reports of the Technical Committees on documents that do not receive a Notice of Intent to Make a Motion will automatically be forwarded to the Standards Council for action on issuance. Action on the reports of the Technical Committees on documents that do receive a Notice of Intent to Make a Motion will be taken at the Association Technical Meeting, which is held at the NFPA Conference & Expo, June 6–10, 2010 in Las Vegas, Nevada, by the NFPA membership.

2010 ANNUAL MEETING—REPORT ON PROPOSALS

[P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete revision]

| | | |
|---|---|---|
| NFPA 25 | Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems | P |
| NFPA 30B | Code for the Manufacture and Storage of Aerosol Products | P |
| NFPA 33 | Standard for Spray Application Using Flammable or Combustible Materials | P |
| NFPA 34 | Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids | P |
| NFPA 40 | Standard for the Storage and Handling of Cellulose Nitrate Film | R |
| NFPA 58 | Liquefied Petroleum Gas Code | P |
| NFPA 70 | National Electrical Code® | P |
| NFPA 73 | Electrical Inspection Code for Existing Dwellings | P |
| NFPA 86 | Standard for Ovens and Furnaces | P |
| NFPA 87 | Recommended Practice for Fluid Heaters | N |
| NFPA 88A | Standard for Parking Structures | P |
| NFPA 96 | Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations | P |
| NFPA 160 | Standard for the Use of Flame Effects Before an Audience | P |
| NFPA 303 | Fire Protection Standard for Marinas and Boatyards | P |
| NFPA 307 | Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves | P |
| NFPA 312 | Standard for Fire Protection of Vessels During Construction, Conversion, Repair, and Lay-Up | P |
| NFPA 502 | Standard for Road Tunnels, Bridges, and Other Limited Access Highways | P |
| NFPA 556 | Guide on Methods for Evaluating Fire Hazard to Occupants of Passenger Road Vehicles | N |
| NFPA 654 | Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids. | P |
| NFPA 780 | Standard for the Installation of Lightning Protection Systems | P |
| NFPA 1000 | Standard for Fire Service Professional Qualifications Accreditation and Certification Systems | P |
| NFPA 1071 | Standard for Emergency Vehicle Technician Professional Qualifications | C |
| NFPA 1126 | Standard for the Use of Pyrotechnics Before a Proximate Audience | P |
| NFPA 1145 | Guide for the Use of Class A Foams in Manual Structural Fire Fighting | P |

Dated: May 4, 2009.

**Patrick Gallagher,**

*Deputy Director.*

[FR Doc. E9–10767 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### National Fire Codes: Request for Comments on NFPA Technical Committee Reports

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** Since 1896, the National Fire Protection Association (NFPA) has accomplished its mission by advocating scientifically based consensus codes and standards, research, and education for safety related issues. NFPA's *National Fire Codes®,* which hold over 290 documents, are administered by more than 238 Technical Committees comprised of approximately 7,200 volunteers and are adopted and used throughout the world. NFPA is a nonprofit membership organization

with approximately 80,000 members from over 70 nations, all working together to fulfill the Association's mission.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and that take approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The Code Revision Process contains five basic steps that are followed for developing new documents as well as revising existing documents: Call for Proposals; Report on Proposals (ROP); Call for Comments on the Committee's Disposition of the Proposals and publication of these Comments in the Report on Comments (ROC); the Association Technical Meeting at the NFPA Conference & Expo; and finally, the Standards Council Consideration and Issuance of documents.

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The purpose of this notice is to request comments on the technical reports that will be presented at NFPA's 2010 Annual Revision Cycle. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

**DATES:** Twenty-four reports are published in the 2010 Annual Cycle Report on Proposals and will be available on June 26, 2009. Comments received by 5 p.m. EST/EDST on or before September 4, 2009 will be considered by the respective NFPA Committees before final action is taken on the proposals.

**ADDRESSES:** The 2010 Annual Revision Cycle Report on Proposals is available and downloadable from NFPA's Web site at *http://www/nfpa.org*, or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, Massachusetts 02322. Comments on the report should be submitted to Amy Beasley Spencer, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

**FOR FURTHER INFORMATION CONTACT:** Amy Beasley Spencer, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471, (617) 770–3000.

**SUPPLEMENTARY INFORMATION:**

## Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

## Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments, to Amy Beasley Spencer, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received by 5 p.m. EST/EDST on or before September 4, 2009 for the 2010 Annual Cycle Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2010 Annual Cycle Report on Comments by February 26, 2010. A copy of the Report on Comments will be sent automatically to each commenter. Reports of the Technical Committees on documents that do not receive a Notice of Intent to Make a Motion will automatically be forwarded to the Standards Council for action on issuance. Action on the reports of the Technical Committees on documents that do receive a Notice of Intent to Make a Motion will be taken at the Association Technical Meeting, which is held at the NFPA Conference & Expo, June 6–10, 2010 in Las Vegas, Nevada, by the NFPA membership.

2010 Annual Meeting—Report on Proposals

[P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete revision]

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| NFPA 25 | Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems | P |
| NFPA 30B | Code for the Manufacture and Storage of Aerosol Products | P |
| NFPA 33 | Standard for Spray Application Using Flammable or Combustible Materials | P |
| NFPA 34 | Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids | P |
| NFPA 40 | Standard for the Storage and Handling of Cellulose Nitrate Film | R |
| NFPA 58 | Liquefied Petroleum Gas Code | P |
| NFPA 70 | National Electrical Code® | P |
| NFPA 73 | Electrical Inspection Code for Existing Dwellings | P |
| NFPA 86 | Standard for Ovens and Furnaces | P |
| NFPA 87 | Recommended Practice for Fluid Heaters | N |
| NFPA 88A | Standard for Parking Structures | P |
| NFPA 96 | Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations | P |
| NFPA 160 | Standard for the Use of Flame Effects Before an Audience | P |
| NFPA 303 | Fire Protection Standard for Marinas and Boatyards | P |
| NFPA 307 | Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves | P |
| NFPA 312 | Standard for Fire Protection of Vessels During Construction, Conversion, Repair, and Lay-Up | P |
| NFPA 502 | Standard for Road Tunnels, Bridges, and Other Limited Access Highways | P |
| NFPA 556 | Guide on Methods for Evaluating Fire Hazard to Occupants of Passenger Road Vehicles | N |

2010 ANNUAL MEETING—REPORT ON PROPOSALS—Continued

[P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete revision]

| | | |
|---|---|---|
| NFPA 654 | Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids. | P |
| NFPA 780 | Standard for the Installation of Lightning Protection Systems | P |
| NFPA 1000 | Standard for Fire Service Professional Qualifications Accreditation and Certification Systems | P |
| NFPA 1071 | Standard for Emergency Vehicle Technician Professional Qualifications | C |
| NFPA 1126 | Standard for the Use of Pyrotechnics Before a Proximate Audience | P |
| NFPA 1145 | Guide for the Use of Class A Foams in Manual Structural Fire Fighting | P |

Dated: May 4, 2009.

**Patrick Gallagher,**

*Deputy Director.*

[FR Doc. E9–10766 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XP04**

### Notice of Intent To Prepare an Environmental Impact Statement for Sea Turtle Conservation and Recovery in Relation to the Atlantic Ocean and Gulf of Mexico Trawl Fisheries and To Conduct Public Scoping Meetings

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

**ACTION:** Notice of intent to prepare an Environmental Impact Statement and conduct public scoping meetings.

**SUMMARY:** NMFS intends to prepare an Environmental Impact Statement (EIS) and to conduct public scoping meetings to comply with the National Environmental Policy Act (NEPA) by assessing potential impacts resulting from the proposed implementation of new sea turtle regulations in the Atlantic and Gulf of Mexico trawl fisheries. These requirements are proposed to protect threatened and endangered sea turtles in the western Atlantic Ocean and Gulf of Mexico from incidental capture, and would be implemented under the Endangered Species Act (ESA). NMFS announced consideration of rulemaking for these new sea turtle regulations February 15, 2007 in an Advance Notice of Public Rulemaking.

**DATES:** The public scoping period starts May 8, 2009 and will continue until July 10, 2009. NMFS will consider all written comments received or postmarked by July 10, 2009, in defining the scope of the EIS. Comments received or postmarked after that date will be considered to the extent practicable. Verbal comments will be accepted at the NMFS scoping meetings as specified below.

**ADDRESSES:** NMFS will hold public scoping meetings to provide the public with an opportunity to present verbal comments on the scope of the EIS and to learn more about the proposed action from NMFS officials. Where practical, NMFS will hold scoping meetings in conjunction with Council/Commission meetings. Scoping meetings will be held at the following locations:

1. Silver Spring—NOAA Science Center, 1301 East West Highway, Silver Spring, MD 20910.

2. New York—Mid-Atlantic Fishery Management Council meeting, Radisson Martinique on Broadway, 49 West 32nd Street, New York, NY 10001.

3. Brunswick—Georgia Department of Natural Resources Coastal Division Headquarters, Conservation Way, Brunswick, GA 31520.

4. Manteo—Roanoke Festival Park, Small Auditorium, One Festival Park, Manteo, NC 27954.

5. Portland—New England Fishery Management Council meeting, Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101.

The meeting dates are:

1. May 15, 2009, 10 a.m. to 12 p.m., Silver Spring, MD.

2. June 9, 2009, 7 p.m. to 9 p.m., New York, NY.

3. June 15, 2009, 7 p.m. to 9 p.m., Brunswick, GA.

4. June 20, 2009, 2 p.m. to 4 p.m., Manteo, NC.

5. June 23, 2009, 7 p.m. to 4 p.m., Portland, ME.

In addition to the five scoping meetings, NMFS will also present the Scoping document to the four Atlantic Regional Fishery Management Councils (FMCs) (New England, Mid-Atlantic, South Atlantic and Gulf of Mexico FMCs) and the Atlantic States Marine Fisheries Commissions. Please see the Councils' and Commission's May and June meeting notices for agenda, dates, times and locations.

Written comments on the scope of the EIS should be sent to *Alexis.Gutierrez@noaa.gov*, 1315 East West Highway, Silver Spring, MD 20910; 301–713–2322 or fax 301–713–4060. Additional information, including the Scoping document, can be found at: *http://www.nmfs.noaa.gov/pr/species/turtles/regulations.htm*.

All comments, whether offered verbally in person at the scoping meetings or in writing as described above, will be considered.

**FOR FURTHER INFORMATION CONTACT:** Dennis Klemm (ph. 727–824–5312, fax 727–824–5309, email *Dennis.Klemm@noaa.gov*), Pasquale Scida (ph. 978–281–9208, fax 978–281–9394, email *Pasquale.Scida@noaa.gov*), Alexis Gutierrez (ph. 301–713–2322, fax 301–713–4060, email *Alexis.Gutierrez@noaa.gov*).

**SUPPLEMENTARY INFORMATION:**

#### Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish these green turtle populations away from the nesting beach, green turtles are considered endangered wherever they occur in United States waters. Incidental capture (bycatch) of sea turtles in fisheries is a primary factor hampering the recovery of sea turtles in the Atlantic Ocean and the Gulf of Mexico.

To address this factor comprehensively, NMFS initiated a Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries (Strategy). The Strategy is a gear-based approach to addressing sea turtle bycatch. Certain types of fishing gear are more prone to incidentally capture sea turtles than others, depending on the design of the gear, the way the gear is fished, and/or the time and area within which it is fished. The Strategy provides a framework to evaluate sea turtle

interactions by gear type in order to have a more comprehensive assessment of fishery impacts across fishing sectors as well as across state, federal, and regional boundaries. Through this Strategy, NMFS seeks to address sea turtle bycatch across jurisdictional boundaries and fisheries for gear types that have the greatest impact on sea turtle populations.

Based on documented sea turtle-fishery interactions, NMFS has identified several gear types that need to be addressed to reduce incidental capture of sea turtles. These gear types include, but are not limited to: gillnets, longlines, trap/pot and trawl gear. Trawl gear has been identified as a priority for addressing sea turtle bycatch, given our knowledge of the level of bycatch in this gear and the availability of technology that is effective at excluding sea turtles from capture in trawl gear.

Trawling is a method of fishing that involves actively pushing or towing a net through the water. Because trawl gear is pushed or towed, it has the capability to incidentally capture sea turtles and other species that are not the intended target of the fishery. The likelihood of incidental capture is inherent in the basic design of trawls, regardless of the target species. Trawl fisheries with documented observer coverage or historical bycatch information that occur in known areas and times of sea turtle distribution have consistently been shown to capture sea turtles. In fact, trawling is often used as a means to capture sea turtles for research, distribution studies, and relocation because of the effectiveness of this method. Without an avenue for escape, sea turtles captured in trawl gear may drown due to forced submergence. Even when drowning does not occur, the stress of forced submergence has been shown to result in various negative physiological consequences that can make the turtles susceptible to delayed mortality, predation, boat strike or other sources of injury and mortality (including potentially higher mortality if repeated capture occurs).

NMFS is now working to develop and implement bycatch reduction regulations for trawl fisheries in the Atlantic and Gulf of Mexico when and where sea turtle bycatch has occurred or where gear, time, location, fishing method, and other similarities exist between a particular trawl fishery and a trawl fishery where sea turtle bycatch has occurred. Turtle Excluder Devices (TEDs) have been proven to be an effective method to minimize adverse effects related to sea turtle bycatch in the shrimp trawl fishery, summer flounder trawl fishery, several state trawl fisheries, and certain other trawl fisheries around the world. TEDs have an escape opening, usually covered by a webbing flap that allows sea turtles to escape from trawl nets. While TEDs have potential as a bycatch reduction device for all trawl fisheries, differences in trawl designs and fishing methods may necessitate modifications or adjustments to the design of existing TEDs before they can be applied in other trawl fisheries. Testing is necessary to ensure that feasible TED designs for specific fisheries still accomplish the desired sea turtle bycatch reduction goals and to determine the TEDs' impact on target catch retention. It is possible that TEDs may not be feasible for some trawl fisheries. In the event that TEDs are not a viable option, other regulations, e.g., tow time restrictions and time/area closures, may need to be considered. NMFS anticipates a phased approach to the implementation of regulations to reduce sea turtle bycatch in trawl fisheries as the information needed to support and properly analyze regulations in various trawl type becomes available. The ANPR specified those trawl fisheries for which the first phase of establishment of conservation measures via regulation are being considered.

Under the Strategy, there is a proposed three-phase approach to regulating trawl fisheries. The first phase, ''Trawl Phase I,'' will include the following fisheries summer flounder, Atlantic sea scallop, whelk, calico scallop and the flynet fisheries for croaker and weakfish. The second phase, ''Trawl Phase II,'' will likely include sheepshead/black drum/king whiting, porgy, skimmer, Spanish sardine/scad/ladyfish/ butterfish, trynet, squid/mackerel/butterfish, and multispecies (large and small mesh) trawl fisheries. Phase three, ''Trawl Phase III,'' will likely include the skate, horseshoe crab, monkfish, bluefish, spiny dogfish, and the herring trawl fisheries. Given that NMFS is still in the process of developing and testing the appropriate TED technology for phases two and three fisheries, it is possible that some fisheries in Phase II may move to Phase III or vice versa. Additional trawl fisheries that may exist or develop but have not been identified above would also be considered in Phase II and/or Phase III as information becomes available on those fisheries. For some of these fisheries, TEDs may not be effective given the configuration of the gear or the size of the target species. For those fisheries in which TEDs are not effective, other mitigation measures, such as time and area closures or tow time restrictions, may be considered. This EIS will provide background on the overall Strategy but, due to the state of the current knowledge on Phase II and Phase III, the EIS analyses will focus on fisheries that were identified for Trawl – Phase I.

As mentioned previously, the incidental capture of sea turtles in certain trawl fisheries has been documented in the Gulf of Mexico and the northwest Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206. The incidental taking of threatened sea turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223.206(d)) are followed. The conservation regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic Area and Gulf of Mexico Area) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. Under 50 CFR 222.102, a shrimp trawler is defined as any vessel that is equipped with one or more trawl nets and that is capable of, or used for, fishing for shrimp, or whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

TEDs are devices with an escape opening, usually covered by a webbing flap, that when installed in trawl nets allows sea turtles to escape and avoid drowning or serious injury. There are a variety of different TED designs approved by NMFS for use in various trawl fisheries depending on trawl type, target catch, and fisherman preference. The list of approved TEDs and detailed descriptions of their construction and measurements are contained in 50 CFR 223.207. To be approved for use by NMFS, a TED design must be shown to be at least 97 percent effective in excluding sea turtles during experimental TED testing. TEDs must meet generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

To allow the release of leatherback and large loggerhead sea turtles, NMFS required the use of large escape openings in the shrimp fishery in February 2003 (68 FR 8456; February 21, 2003). The February 2003 regulations required the use of either the

double cover flap TED, which is a TED with a minimum opening of 71-inch (180 cm) straight-line stretched mesh, or the Parker soft TED with a minimum 96-inch (244-cm) opening in offshore waters (from the seaward from the U.S. Coast Guard demarcated lines provided under the International Regulations for Preventing Collisions at Sea [COLREGS demarcation lines, 33 CFR part 80] line seaward) and in all inshore waters off of Georgia and South Carolina; and required a TED with a minimum opening of 44-inch (112 cm) straight-line stretched mesh with a 20-inch (51 cm) vertical taut height in all inshore waters (from the COLREGS demarcation line landward) except for the inshore waters of Georgia and South Carolina. At this time, the large-opening TED is only required in the shrimp trawl fishery.

*Summer Flounder Fishery*

Since 1992, all vessels using bottom trawls to fish for summer flounder in specific times and areas off Virginia and North Carolina have been required to use NMFS-approved TEDs in their nets (57 FR 57358, December 4, 1992; 50 CFR 223.206(d)(2)(iii)). Currently, the escape opening requirements for the flounder TED are ≥35 inches (≥89 cm) in width and ≥12 inches (≥31 cm) in height (50 CFR 223.207(b)(1)). Although the February 21, 2003 final rule (68 FR 8456) to require the larger opening in the shrimp trawl fishery did not require vessels in the summer flounder trawl fishery to use the larger escape opening sizes, the rule stated NMFS was evaluating the need for such restrictions in this fishery. The smaller opening currently used in this fishery is insufficient to allow the escapement of leatherback sea turtles and larger loggerhead and green sea turtles. The larger opening TEDs have passed the NMFS testing criteria for turtle escapement, and NMFS has conducted testing of the larger opening in the Mid-Atlantic summer flounder trawl fishery since 2003.

As part of this first phase of rulemaking, NMFS is considering modifying TED regulations in the summer flounder trawl fishery to require a larger escape opening. The larger escape opening would have a 142-inch (361-cm) circumference with a corresponding 71-inch (180-cm) straight-line stretched measurement. This is expected to decrease escape times for all turtles and allow for the release of leatherbacks and all larger loggerhead and green sea turtles. The larger opening would be consistent with sea turtle regulations currently in place in the shrimp trawl fishery. Additionally, the northern component of the summer flounder trawl fishery, which currently does not fall under the TED requirement, would also be considered for a requirement to use TEDs, as detailed below in this notice.

*Whelk and Calico Scallop Trawl Fisheries*

Much of the whelk fishery occurs primarily in the state waters of Georgia and South Carolina, in both state and Federal fisheries. The fishery arose as an alternative fishery when the shrimp fishery was closed. Trawling for knobbed, channeled and lightning whelk occurs from mid-February through mid-April. Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Virginia, Maryland, and North Carolina have reported landings of channeled, lightning or knobbed whelk by trawl gear.

Due to documented sea turtle interactions in whelk fisheries, NMFS evaluated potential TED designs for the fishery in 2000–2001. The whelk TED was developed in cooperation with the Georgia Department of Natural Resources (GDNR) and the University of Georgia Marine Extension Service in an effort to provide nearshore whelk fishermen with a TED that would allow the target species to pass through the TED frame and be retained as catch. The whelk TED passed the NMFS turtle testing protocol in 2001. The whelk TED design is similar to the top-opening flounder TED used along the southeastern Atlantic coast during the winter months, and features enlarged openings at the bottom of the frame. Currently, GDNR requires the use of this TED in the whelk trawl fishery in Georgia state waters. As part of the Strategy, NMFS is considering requiring the use of TEDs in the whelk trawl fishery throughout the range of the fishery.

The calico scallop fishery originally developed in North Carolina in the early 1960s, but the focus of the fishery shifted to areas off Florida during the early 1970s. Calico scallop trawls are typically small (e.g., headrope length <40 feet) and are towed for short periods of time (e.g., 15 minutes). The scallop beds off Florida stretch from Jacksonville to Ft. Pierce in 60 to 240 feet (18 to 73 m) of water. Due to large fluctuations of calico scallop abundance and patchy distribution, landings within the fishery have been extremely sporadic. No vessels are thought to currently be operating in the fishery as a result of resource depletion, habitat degradation, and lack of processing facilities. NMFS has determined that a hard TED, similar in design to the whelk TED, could be installed in calico scallop trawls. As part of the Strategy, NMFS is considering an option to require the use of TEDs in the calico scallop trawl fishery in the event that the fishery re-emerges. TED use in this fishery would be a new requirement.

*Mid-Atlantic Scallop Trawl Fishery*

The U.S. Atlantic sea scallop fishery is conducted in the Gulf of Maine, on Georges Bank, and in the Mid-Atlantic offshore region southward to North Carolina. The commercial fishery for Atlantic sea scallops occurs year round and is primarily conducted using dredges and otter trawls. Approximately 10 percent of landings in the sea scallop fishery are from vessels using trawl gear, primarily in the Mid-Atlantic. Fishing by these vessels often occurs during the summer when other species (e.g., summer flounder) are not available (NMFS 2003). Trawl fishermen participating in the sea scallop fishery primarily use either Atlantic sea scallop trawls or flounder trawls. Sea turtle bycatch has been documented in the Atlantic sea scallop trawl fishery.

In 2005 and 2006, NMFS tested the feasibility of TED use in the sea scallop trawl fishery. The sea scallop TED tested is a whelk TED that has been modified to prevent chafing of the gear. This TED design passed the NMFS testing criteria for sea turtle escapement. Initial results suggest that TED use in the sea scallop trawl fishery is feasible. As part of the first phase of rulemaking, NMFS is considering an option to require the use of TEDs in the Mid-Atlantic sea scallop trawl fishery. TED use in this fishery would be a new requirement.

*Flynet Fishery*

Flynets are high profile trawls fished just off the bottom and range from 80 to 120 feet (24.4 to 36.6 m) in width, with wing mesh sizes of 8 to 64 inches (41 to 163 cm). The flynet fishery is a multi-species fishery that operates along the east coast of the United States. One component of the fishery operates inside of 180 feet (55 m) from North Carolina to New Jersey, and targets Atlantic croaker, weakfish, and other finfish species. Another component of the flynet fishery operates outside of 180 feet (55 m) from the Hudson Canyon off New York, south to Hatteras Canyon off North Carolina. Target species for the deeper-water component of the fishery include bluefish, Atlantic mackerel, squid, black sea bass, and scup. Sea turtle bycatch has been documented in this fishery. TED requirements for Trawl–Phase I would be only for Atlantic croaker and weakfish fisheries.

TEDs for the flynet fishery have been in development since 1999. Two semi-rigid TED designs for use within the flynet fishery have passed the NMFS turtle testing protocol when rigged with a top-opening escape panel. As part of the first phase, NMFS is currently considering requiring the use of TEDs in the flynet fishery. TED use in this fishery would be a new requirement.

*Replacement of the Summer Flounder Fishery Sea Turtle Protection Area Boundary with a General Sea Turtle Protection Area Boundary*

The existing Summer Flounder Fishery Sea Turtle Protection Area rule requires that any summer flounder trawler operating within the boundary must use TEDs (50 CFR 223.206(d)(2)(iii)). Currently, this protection area is bounded on the north by a line extending off Cape Charles, Virginia, on the south by a line extending from the South Carolina-North Carolina border, and on the east by the Exclusive Economic Zone boundary. Vessels are exempted from the summer flounder TED requirement north of Oregon Inlet, North Carolina, from January 15 through March 15, annually, when bycatch of sea turtles by summer flounder trawling is not expected.

From 1994–2004, observers documented turtle bycatch in summer flounder and other Mid-Atlantic bottom otter trawl fisheries in areas and times when TEDs are not required in the summer flounder trawl fishery (Murray 2006). Based on the analysis, the likelihood of interacting with a turtle depends on the time and area in which fishing occurs rather than the fish species being targeted. While incidental captures of sea turtles occurred throughout the year, Murray (2006) demonstrated that most interactions were confined to certain bathymetric and thermal regimes. Because of documented bycatch of sea turtles north of the current line, NMFS is considering expanding the geographic scope of the TED requirements in the summer flounder fishery as part of the first phase to address sea turtle bycatch in the summer flounder fishery. This change would expand the TED requirements to other trawl fisheries in the Mid-Atlantic, which currently do not have any TED requirements within this geographic area.

**Purpose of This Action**

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. NMFS is considering a variety of regulatory measures under the Strategy to reduce the bycatch of threatened and endangered sea turtles in trawl fisheries. This EIS will provide background on the overall Strategy and specifically evaluate the alternatives and impacts associated with the proposed first phase of regulating the trawl fisheries along the Atlantic Coast and Gulf of Mexico. This rulemaking authority would be pursuant to the ESA. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with the exceptions identified in 50 CFR 223.206. NMFS is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives, associated impacts of any alternatives, and suitable mitigation measures.

**Public Involvement and the Scoping Process**

On February 15, 2007, NMFS published an ANPR in the **Federal Register** regarding potential amendments to the regulatory requirements for TEDs (72 FR 7382). The notice initiated a 30-day public comment period scheduled to end on March 19, 2007. However, due to requests from the pubic to extend the comment period, NMFS published an extension to the ANPR on March 19, 2007 (72 FR 12749), to allow comments through May 18, 2007.

NMFS received approximately 165 comments on proposed regulatory requirements during the combined 90-day comment period. The vast majority of nearly identical comments (approximately 130) were in favor of additional TED requirements for trawl fisheries, as well as a closure of ''key sea turtle habitat areas.'' While not specifically opposed to the proposed regulatory requirements, another group of 23 identical e-mail comments suggested a ''new approach perhaps a deflector'' for trawl fisheries. Through this NOI, NMFS further encourages all interested parties to participate in this NEPA process.

**Scope of the Action**

The Draft EIS is expected to identify and evaluate the relevant impacts and issues associated with implementing the first phase of sea turtle regulations in trawl fisheries of the northwest Atlantic and Gulf of Mexico, in accordance with the Council on Environmental Quality's Regulations at 40 CFR parts 1500, 1508, and NOAA's procedures for implementing NEPA found in NOAA Administrative Order (NAO) 216–6, dated May 20, 1999.

NMFS is proposing to implement the trawl part of the Strategy along the Atlantic Coast and the Gulf of Mexico. Phase one will specifically focus on the Atlantic coast trawl fisheries. The public will have additional opportunity to provide input on Trawl Phases II and III regulations at such time that separate rule-making processes are initiated.

**Alternatives**

NMFS will evaluate a range of alternatives in the Draft EIS for implementing phase one of the Strategy to reduce sea turtle bycatch and mortality in trawl fisheries along the Atlantic Coast. In addition to evaluating the status quo, NMFS will evaluate several alternatives. These alternatives include time and area closures, requiring the use of TEDs in the summer flounder, whelk, croaker and weakfish flynet and calico scallop trawls for the entire Atlantic Coast, as well as combination of spatial and temporal options. In terms of spatial options, sea turtles in U.S. waters range as far North as Georges Bank and the Gulf of Maine, but may be less likely to interact with a fishery towards the northern extent of this range. We will likely evaluate several alternatives related to the northern/northeastern extent of any required gear modification or other regulation. In general, NMFS is considering applying any gear modification or other regulation shoreward to the mean high water line. Similarly, several alternatives will likely be evaluated for the temporal extent of when a regulation would be in effect, as sea turtles migrate north along the Atlantic coast as waters warm each year, and are only present in more northern areas during the warmer months. Several datasets are available to help select and analyze the various spatial and temporal alternatives; these include fisheries landings and catch reports, observer data, sea surface temperature data, sea turtle strandings data, and sea turtle sighting and survey data.

**Public Comments**

NMFS provides this notice to advise the public and other agencies of NMFS's intentions and to obtain suggestions and information on the scope of the issues to include in the EIS. Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action and all substantive issues are identified. NMFS requests that comments be as specific as possible. In particular, the agency requests information regarding the potential direct, indirect, and cumulative impacts on the human environment from the

proposed action. The human environment is defined as ''the natural and physical environment and the relationship of people with that environment'' (40 CFR 1508.14). In the context of the EIS, the human environment could include air quality, water quality, underwater noise levels, socioeconomic resources, fisheries, and environmental justice.

Comments concerning this environmental review process should be directed to NMFS (see **ADDRESSES**). See **FOR FURTHER INFORMATION CONTACT** Alexis Gutierrez at *Alexis.Gutierrez@noaa.gov* or at 301–713–2322 for questions. All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

Authority: The environmental review of the phase one of the Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries will be conducted under the authority and in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR parts, 1500 through 1508), other appropriate Federal laws and regulations, and policies and procedures of NOAA and NMFS for compliance with those regulations.

**Scoping Meetings Code of Conduct**

The public is asked to follow the following code of conduct at the scoping meetings. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the meeting room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees may not interrupt one another). The NMFS representative will structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not will be asked to leave the meeting.

**Special Accommodations**

The scoping meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to one of the contacts (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting. See Council meeting announcement for accessibility information for the briefings to the councils.

Dated: May 1, 2009.

**Katy Vincent,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–10674 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XI63**

### Incidental Takes of Marine Mammals During Specified Activities; Marine Geophysical Survey in the Northeast Pacific Ocean, August – October 2009

**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 seismic survey in the northeast Pacific Ocean. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to authorize L-DEO to take, by Level B harassment only, small numbers of marine mammals incidental to conducting a marine seismic survey during August through October, 2009.

**DATES:** Comments and information must be received no later than June 8, 2009.

**ADDRESSES:** Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.0648–XI63@noaa.gov*. 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#applications* 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#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 or Howard Goldstein, 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.

Authorization for incidental taking 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.''

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. 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 [ALevel 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 [ALevel B harassment@].

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 on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in Section 101(a)(5)(D)(i), the Secretary shall issue or deny issuance of the authorization with appropriate conditions to meet the requirements of clause 101(a)(5)(D)(ii).

**Summary of Request**

On February 11, 2009, NMFS received an application from L-DEO for the taking by Level B harassment only, of small numbers of 33 species of marine mammals incidental to conducting a marine seismic survey within the Exclusive Economic Zone (EEZ) of Canada in the northeast Pacific Ocean during August through October 2009. L-DEO, with research funding from the NSF, is conducting the geophysical data acquisition activities with onboard assistance by Drs. Toomey and Hooft from the University of Oregon, and Dr. Wilcock from the University of Washington.

This survey, also known as the Endeavor Tomography (ETOMO) Study, will take place approximately 250 kilometers (km) (155 miles (mi)) southwest of Vancouver Island, British Columbia, within the Canadian Endeavour Marine Protected Area (MPA) along an 80–km- (50- mi-) long section of the Endeavour segment of the Juan de Fuca Ridge. The Endeavor MPA is a unique ecosystem consisting of hydrothermal vents and associated fauna. Canada officially designated the area as an MPA in March 2003. However, scientific research for the conservation, protection and understanding of the area is permissible under the Canadian Oceans Act of 1996. Regulations regarding this MPA can be found on the Department of Justice Canada website at: *http://laws.justice.gc.ca/en/ShowFullDoc/cr/SOR–2003–87///en.*

The survey will obtain information on the sub-seafloor structure of volcanic and hydrothermal features that form as a result of movements of the Earth's plates; will obtain information on the three-dimensional (3–D) seismic structure of the crust and top-most mantle along an the Endeavour segment; and will define the distribution of magma beneath active volcanoes. Past studies using manned submersibles and remotely piloted vehicles have mapped the locations and characteristics of vent fields along this ridge segment. The ETOMO Study will extend that mapping beneath the seafloor and allow researchers to understand the dynamics of these systems.

**Description of the Specified Activity**

The planned survey will involve one source vessel, the R/V *Marcus G.Langseth* (*Langseth*), a seismic research vessel owned by the NSF and operated by L-DEO. The proposed project is scheduled to commence on August 17, 2009, and scheduled to end on October 13, 2009. The vessel will depart Astoria, Oregon on August 17, 2009 for transit to the Endeavor MPA, between 47–48° N. and 128–130° W.

To obtain high-resolution, 3–D structures of the area's magmatic systems and thermal structures, the *Langseth* will deploy a towed array of 36 airguns. The *Langseth* will also deploy 64 Ocean Bottom Seismometers (OBS). As the airgun array is towed along the survey lines, the OBSs will receive the returning acoustic signals and record them internally for later analysis. For the ETOMO study, the *Langseth* will not use a hydrophone streamer to receive geophysical data from the airgun array.

The ETOMO study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will take place in deep (between 1200 and 3000 m, 3,280 feet (ft) and 1.8 mi) water and will require approximately 10 days to complete 12 transects of variable lengths totaling 1800 km of survey lines. Data acquisition will include approximately 240 hours of airgun operation. Please see L-DEO's application for more detailed information. The exact dates of the activities will depend on logistics, weather conditions, and the need to repeat some lines if data quality is substandard.

*Vessel Specifications*

The *Langseth* is a seismic research vessel with a propulsion system designed to be as quiet as possible to avoid interference with the seismic signals. The vessel, which has a length of 71.5 m (235 feet (ft); a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 2925, can accommodate up to 55 people. The ship is powered by two Bergen BRG–6 diesel engines, each producing 3550 horsepower (hp), which drive the two propellers directly. Each propeller has four blades, and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800 hp bowthruster, which is not used during seismic acquisition. The operation speed during seismic acquisition is typically 7.4B9.3 km/hour (h) (4–5 knots). When not towing seismic survey gear, the *Langseth* can cruise at 20B24 km/h (11–13 knots). The *Langseth* has a range of 25,000 km (13,499 nautical miles). The *Langseth* will also serve as the platform from which vessel-based marine mammal (and sea turtle) observers will watch for animals before and during airgun operations.

*Acoustic Source Specifications*

Seismic Airguns

The full airgun array for the survey consists of 36 airguns (a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 360 cubic inches ($in^3$)), with a total volume of approximately 6,600 $in^3$ and a firing pressure of 1900 pounds per square inch (psi). The dominant frequency components range from two to 188 Hertz (Hz).

The array configuration consists of four identical linear arrays or strings, with 10 airguns on each string; the first and last airguns will be spaced 16 m (52 ft) apart. For each operating string, nine airguns will be fired simultaneously, whereas 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 24H16 m (79 x 52 ft) behind the *Langseth* and will be towed approximately 50 to 100 m (164–328 ft) behind the vessel at a tow-depth of 15 m (49.2 ft). The airgun array will fire every 250 m (105 seconds (s)) or 500 m (210 s) depending on which grid or line the *Langseth* surveys. During firing, a brief (approximately 0.1 s) pulse of sound is emitted. The airguns will be silent during the intervening periods.

Multibeam Echosounder

The *Langseth* will operate a Simrad EM120 multibeam echosounder (MBES) simultaneously during airgun operations to map characteristics of the ocean floor. The hull-mounted MBES emits brief pulses of mid- or high-frequency (11.25–12.6 kHz) sound in a fanshaped beam that extends downward and to the sides of the ship. The beamwidth is 1 degree (°) fore-aft and 150° athwartship. The maximum source level is 242 dB re 1 µPa• m (root mean square (rms)). For deep-water operation, each Aping@ consists of nine successive fan-shaped transmissions, each 15 millisecond (ms) in duration and each ensonifying a sector that extends 1° foreBaft. The nine successive

transmissions span an overall cross-track angular extent of about 150°, with 16 ms gaps between the pulses for successive sectors. A receiver in the overlap area between two sectors would receive two 15–ms pulses separated by a 16–ms gap. In shallower water, the pulse duration is reduced to 5 or 2 ms, and the number of transmit beams is also reduced. The ping interval varies with water depth, from approximately 5 s at 1000 m (3,281 ft) to 20 s at 4000 m (13,124 ft).

Sub-bottom Profiler

The *Langseth* will operate a sub-bottom profiler (SBP) continuously throughout the cruise with the MBES. An SBP operates at mid- to high frequencies and is generally used simultaneously with an MBES to provide information about the sedimentary features and bottom topography. SBP pulses are directed downward at typical frequencies of approximately 3 18 kHz. However, the dominant frequency component of the SBP is 3.5 kHz which is directed downward in a narrow beam by a hull-mounted transducer on the vessel. The SBP output varies with water depth from 50 watts in shallow water to 800 watts in deep water and has a normal source output (downward) of 200 dB re 1 μPa m and a maximum source level output (downward) of 204 dB re 1 μPa m.

The SBP used aboard the *Langseth* uses seven beams simultaneously, with a beam spacing of up to 15° and a fan width up to 30°. Pulse duration is 0.4 100 ms at intervals of 1 s; a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause.

*Characteristics of Airgun Pulses*

Discussion of the characteristics of airgun pulses has been provided in Appendix B of L-DEO=s application and in previous **Federal Register** notices (see 69 FR 31792, June 7, 2004; 71 FR 58790, October 5, 2006; 72 FR 71625, December 18, 2007; 73 FR 52950, September 12, 2008, or 73 FR 71606, November 25, 2008). Reviewers are referred to those documents for additional information.

*Safety Radii*

Safety zones are areas defined by the radius of received sound levels believed to have the potential for at least temporary hearing impairment (HESS, 1999). The distance from the sound source at which an animal would be exposed to these different received sound levels may be estimated and is typically referred to as safety radii. These safety radii are specifically used to help NMFS estimate the number of marine mammals likely to be harassed by the proposed activity and in deciding how close a marine mammal may approach an operating sound source before the applicant will be required to power-down or shut down the sound source.

During this study, all survey efforts will take place in deep (greater than 1000 m, 3820 ft) water. L-DEO has summarized the modeled safety radii for the planned airgun configuration in Table 1 which shows the predicted distances at which sound levels (190 decibels (dB), 180 dB, and 160 dB) are expected to be received from the 36–airgun array and a single airgun operating in water greater than 1000 m (3,820 ft) in depth.

TABLE 1. PREDICTED DISTANCES TO WHICH SOUND LEVELS ≥190, 180, AND 160 DB RE 1 μPA MIGHT BE RECEIVED IN DEEP (>1000 M; 3280 FT) WATER FROM THE 36–AIRGUN ARRAY DURING THE SEISMIC SURVEY, AUGUST SEPTEMBER, 2009 (BASED ON L-DEO MODELING).

| Source and Volume | Tow Depth (m) | Predicted RMS Distances (m) | | |
|---|---|---|---|---|
| | | 190 dB | 180 dB | 160 dB |
| Single Bolt airgun 40 in$^3$ | 6–15* | 12 | 40 | 385 |
| 4 strings 36 airguns 6600 in$^3$ | 6 | 220 | 710 | 4670 |
| | 9 | 300 | 950 | 6000 |
| | 12 | 340 | 1120 | 6850 |
| | 15 | 380 | 1220 | 7690 |

*The tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the single 40 in$^3$ airgun; thus the predicted safety radii are essentially the same at each tow depth.

The L-DEO model applied to airgun configuration does not allow for bottom interactions, and thus is most directly applicable to deep water and to relatively short ranges. The calculated distances are expected to overestimate the actual distances to the corresponding Sound Pressure Levels (SPL), given the deep-water results of Tolstoy *et al.* (2004a,b). Additional information regarding how the safety radii were calculated and how the empirical measurements were used to correct the modeled numbers may be found in Appendix A of L-DEO=s Environmental Assessment (EA). The conclusion that the model predictions in Table 1 are precautionary, relative to actual 180- and 190–dB (rms) radii, is based on empirical data from the acoustic calibration of different airgun configurations used by the R/V *Maurice Ewing* (*Ewing*) in the northern Gulf of Mexico. (Tolstoy *et al.*, 2004a,b).

L-DEO conducted a more extensive acoustic calibration study of the *Langseth*=s 36–airgun array in late 2007/early 2008 in the northern Gulf of Mexico (LGL Ltd., 2006; Holst and Beland, 2008). L-DEO is currently modeling the distances to the corresponding Sound Pressure Levels (SPL) (e.g., 190, 180, and 160 dB re 1 μPa (rms)) for various airgun configurations and water depths. Those results are not yet available. However, the empirical data from the 2007/2008 calibration study will be used to refine the exclusion zones proposed above for use during survey, if the data are appropriate and available at the time of the survey.

**Description of Marine Mammals in the Activity Area**

Thirty-three marine mammal species may occur off the coast of British Columbia, Canada, including 20 odontocetes (toothed cetaceans), 7 mysticetes (baleen whales), 5 pinnipeds, and the sea otter (*Enhydra* sp.). In the United States, sea otters are managed by the U.S. Fish and Wildlife Service (USFWS) and are unlikely to be encountered in or near the Endeavor Marine Protected Area where seismic operations will occur, and are, therefore, not addressed further in this document. Eight of these species are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA), including the Steller sea lion (*Eumetopias jubatus*), the humpback (*Megaptera*

*novaeanliae*), sei (*Balaenoptera borealis*), fin (*Balenoptera physalus*), blue (*Balenoptera musculus*), North Pacific right (*Eubalena japonica*), sperm (*Physeter macrocephalus*), and Southern Resident killer (*Orcinus orca*) whales.

This proposed IHA will only address requested take authorizations for cetaceans and pinnipeds. Table 2 below outlines the species, their habitat and abundance in the proposed survey area, the estimated number of exposures (based on average density) to sound levels greater than or equal to 160 dB during the seismic survey if no animals moved away from the survey vessel.

| Species | Habitat | Abundance in the NE Pacific | Occurrence in the Survey Area | Estimated Number of Exposures to Sound Levels ≥ 160 dB | Estimated Number of Individuals Exposed to Sound Levels ≥160 dB | Approx. Percent of Regional Population |
|---|---|---|---|---|---|---|
| North Pacific right whale* | Coastal and shelf waters | 100–200 | Rare and unlikely | 0 | 0 | 0 |
| Humpback whale* | Coastal waters | >6000 | Uncommon | 29 | 6 | 0.10 |
| Minke whale | Coastal and shelf waters | 9000 | Uncommon | 26 | 26 | 0.06 |
| Sei whale | Pelagic | 7260 - 12,620 | Uncommon | 5 | 1 | 0.01 |
| Fin whale* | Pelagic, shelf and coastal waters | 13,620–18,680 | Uncommon | 39 | 8 | 0.05 |
| Blue whale* | Pelagic, shelf and inshore waters | 1186 | Uncommon | 8 | 2 | 0.14 |
| Sperm whale* | Pelagic | 24,000 | Uncommon | 52 | 10 | 0.04 |
| Pygmy sperm whale | Deep waters off the shelf | Not available | Common | 47 | 9 | Not available |
| Dwarf Sperm whale | Deep waters off the shelf | Not available | Uncommon | 0 | 0 | 0.0 |
| Baird's beaked whale | Deep waters and cont. slopes | 6000 | Common | 62 | 13 | 0.21 |
| Blainville's beaked whale | Deep waters and cont. slopes | 603 | Uncommon | 8 | 2 | 0.28 |
| Cuvier's beaked whale | Pelagic | 20,000 | Uncommon | 0 | 0 | 0.0 |
| Hubb's beaked whale | Deep waters and cont. slopes | 421 | Uncommon | 8 | 2 | 0.40 |
| Stejneger's beaked whale | Deep waters | 421 | Uncommon | 8 | 2 | 0.40 |
| Bottlenose dolphin | Coastal and offshore waters | 3257 | Rare | 0 | 0 | 0.0 |
| Striped dolphin | Pelagic | 23,883 | rare | 2 | 0 | 0.0 |
| Short-beaked common dolphin | Coastal and offshore waters | 487,622 | Common | 511 | 104 | 0.02 |
| Pacific white-sided dolphin | Pelagic, shelf and slope waters | 931,000 | Common | 895 | 181 | 0.02 |
| Northern right-whale dolphin | Pelagic, shelf and slope waters | 15,305 | Common | 699 | 142 | 0.93 |
| Risso's dolphin | Pelagic | 12,093 | Common | 467 | 95 | 0.78 |
| False killer whale | Pelagic | Not available | Rare | 0 | 0 | 0.0 |
| Killer whale | Widely distributed | 8500 | Uncommon | 61 | 12 | 0.15 |
| Short-finned pilot whale | Pelagic | 160,200 | Uncommon | 0 | 0 | 00.0 |

| Species | Habitat | Abundance in the NE Pacific | Occurrence in the Survey Area | Estimated Number of Exposures to Sound Levels ≥ 160 dB | Estimated Number of Individuals Exposed to Sound Levels ≥160 dB | Approx. Percent of Regional Population |
|---|---|---|---|---|---|---|
| Dall's porpoise | Offshore and near-shore waters | 57,549 | Common | 5337 | 1081 | 1.88 |
| Northern fur seal | Coastal | 721,935 | Common | 360 | 73 | 0.01 |
| Total | | | | 8,624 | 1,748 | |

Table 2. Abundance, preferred habitat, and commonness of the marine mammal species that may be encountered during the proposed survey within the ETOMO survey area. The far right columns indicate the estimated number of each species that will be exposed to ≥160 dB based on average density estimates. NMFS believes that, when mitigation measures are taken into consideration, the activity is likely to result in take of numbers of animals less than those indicated by the column titled NUmber of Individuals Exposed ≥160 dB.

* Federally listed endangered species.

Detailed information regarding the status and distribution of these marine mammals may be found in sections III and IV of L-DEO's application.

**Potential Effects of the Proposed Activity on Marine Mammals**

*Summary of Potential Effects of Airgun Sounds on Marine Mammals*

The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, 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 permanent hearing impairment, or any significant non-auditory physical or physiological effects. Some behavioral disturbance is expected, but is expected to be localized and short-term.

*Tolerance*

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. For a brief summary of the characteristics of airgun pulses, see Appendix B of L-DEO's application. Several studies have also shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response (tolerance) (see Appendix B (5) of L-DEO's EA). 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 that 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 cetaceans, with the relative responsiveness of baleen and toothed whales being variable.

*Masking*

Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.*, 1995).

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 very few specific data on this. 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 some situations, multi-path arrivals and reverberation cause airgun sound to arrive for much or all of the interval between pulses (e.g., 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, and their calls can usually be heard between the seismic pulses (e.g., 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). In the northeast Pacific Ocean, blue whale calls have been recorded during a seismic survey off Oregon (McDonald *et al.*, 1995). Among odontocetes, 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 this species continued calling in the presence of seismic pulses (Madsen *et al.*, 2002; Tyack *et al.*, 2003; Smultea *et al.*, 2004; Holst *et al.*, 2006; Jochens *et al.*, 2006, 2008). Dolphins and porpoises commonly are heard calling while airguns are operating (e.g., 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 are the dominant components of airgun sounds, thus limiting the potential for masking. In general, masking effects of seismic pulses are expected to be negligible, given the normally intermittent nature of seismic pulses. Masking effects on marine mammals are discussed further in Appendix B (4) of L-DEO's EA.

*Disturbance Reactions*

Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Based on NMFS (2001, p. 9293), NRC (2005), and Southall *et al.* (2007), L-DEO assumes that simple exposure to sound, or brief reactions that do not disrupt behavioral patterns in a potentially significant manner, do not constitute harassment or ''taking''. By potentially significant, L-DEO means ''in a manner that might have deleterious effects to the well-being of individual marine mammals or their populations''.

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). If a marine mammal does react briefly to an

underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. 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 would be present within a particular distance of industrial activities and exposed to a particular level of industrial sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

The sound 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 a few species. Detailed studies have been done on humpback, gray (*Eshrichtius robustus*), bowhead (*Balena mysticetes*), and sperm whales, and on ringed seals (*Pusa hispida*). Less detailed data are available for some other species of baleen whales, and small toothed whales, 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 L-DEO's EA, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the cases of 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 shown that seismic pulses with received levels of 160 170 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 4–15 km (2.5–9.3 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 of L-DEO's EA have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160 170 dB re 1 µPa (rms).

Responses of humpback whales to seismic surveys have been studied during migration, on 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, 2678–in$^3$ array, and to a single 20–in$^3$ airgun with source level of 227 dB re 1 µPa m (peak to peak). McCauley *et al.* (1998) documented that avoidance reactions began at 5–8 km (3–5 mi) from the array, and that those reactions kept most pods approximately 3–4 km (1.8–2.5 mi) from the operating seismic boat. McCauley *et al.* (2000a) noted localized displacement during migration of 4–5 km (2.5–3.1 mi) by traveling pods and 7–12 km (4.3–7.5 mi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re 1 µPa (rms) for humpback pods containing females, and at the mean closest point of approach distance the received level was 143 dB re 1 µPa (rms). The initial avoidance response generally occurred at distances of 5–8 km (3.1–4.9 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 100–400 m (328–1312 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). Malme *et al.* reported that some of the humpbacks seemed startled at received levels of 150 169 dB re 1 µPa and concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 re 1 FPa 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 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 their 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 - 30 km (12.4 - 18.6 mi) from a medium-sized airgun source at received sound levels of around 120 130 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.*, 2005; 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 received levels of about 152 178 dB re 1 µPa (rms) (Richardson *et al.*, 1986, 1995; Ljungblad *et al.*, 1988; Miller *et al.*, 2005).

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. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped 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 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 western Pacific gray whales feeding off Sakhalin Island, Russia (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, and minke whales) have occasionally been reported in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006). 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 vs. 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 versus 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 directions during seismic vs. non-seismic periods Moulton *et al.*, 2005, 2006a,b).

Data on short-term reactions by 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 have 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 (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 previous 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 of L-DEO's EA have been reported for toothed whales. However, there are recent systematic studies on sperm whales (Jochens *et al.*, 2006; Miller *et al.*, 2006), and 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; Weir, 2008).

Seismic operators and marine mammal observers on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.*, 2006; Stone and Tasker, 2006; Weir, 2008). 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 arrays of airguns are firing (e.g., Moulton and Miller, 2005). Nonetheless, 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 (e.g., Stone and Tasker, 2006; Weir, 2008). In most cases the avoidance radii for delphinids appear to be small, on the order of 1 km less, and some individuals show no apparent avoidance. The beluga (*Delphinapterus leucas*) is a species that (at times) shows long-distance avoidance of seismic vessels. Aerial surveys conducted in the southeastern Beaufort Sea during summer found that sighting rates of beluga whales were significantly lower at distances 10–20 km (6.2–12.4 mi) compared with 20–30 km (12.4–18.6 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 (Tursiops truncates) 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). 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 (*Phocoena phocoena*) show stronger avoidance of seismic operations than do Dall's porpoises (*Phocoenoides dalli*) (Stone, 2003; MacLean and Koski, 2005; 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 operating 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 (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 (e.g., Stone, 2003; Moulton *et al.*, 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call (see Appendix B of L-DEO's EA for review). However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.*, 2006). In the Sperm Whale Seismic Study (SWSS), D-tags (Johnson and Tyack, 2003) were used to record the movement and acoustic exposure of eight foraging sperm whales before, during, and after controlled sound exposures of airgun arrays in the Gulf of Mexico (Jochens *et al.*, 2008). Whales were exposed to maximum received sound levels between 111 and 147 dB re 1 μPa rms (131 – 164 dB re 1 μPa pk-pk) at ranges of approximately 1.4 - 12.6 km (0.8 – 7.8 mi) from the sound source. Although the tagged whales showed no horizontal avoidance, some whales changed foraging behavior during full-array exposure (Jochens *et al.*, 2008).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, northern bottlenose whales 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 (e.g., Wursig *et al.*, 1998). They may also dive for an extended period when approached by a vessel (e.g., 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). In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly.

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are ongoing nearby (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and USN, 2001; Jepson *et al.*, 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; see also the ''Strandings and Mortality'' subsection, later). These strandings are apparently at least in part a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown (see ''Strandings and Mortality'', below). Seismic survey sounds are quite different from those of the sonars in operation during the above-cited incidents, and in particular, the dominant frequencies in airgun pulses are at lower frequencies than used by mid-frequency naval sonars.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and some porpoises (e.g., Dall's, *Phocoenoides dalli*), seem to be confined to a smaller radius than has been observed for the more responsive of the mysticetes, belugas, and harbor porpoises (refer to Appendix B in L-DEO's EA).

Pinnipeds

Pinnipeds are not likely to show a strong avoidance reaction to the airgun array. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior see Appendix B (5) of the EA. In the Beaufort Sea, some ringed seals avoided an area of 100 m (328 ft) to (at most) a few hundred meters around seismic vessels, but many seals remained within 100 - 200 m (328 656 ft) of the trackline as the operating airgun array passed by (e.g., Harris *et al.*, 2001; Moulton and Lawson 2002; Miller *et al.*, 2005). Ringed seal sightings averaged somewhat farther away from the seismic vessel when the airguns were operating than when they were not, but the difference was small (Moulton and Lawson, 2002). Similarly, in Puget Sound, sighting distances for harbor seals (*Phoca vitulina*) and California sea lions (*Zalophus californianus*) tended to be larger when airguns were operating (Calambokidis and Osmek, 1998). Previous telemetry work suggests that avoidance and other behavioral reactions may be stronger than evident to date from visual studies (Thompson *et al.*, 1998). Even if reactions of any pinnipeds that might be encountered in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations, with no long-term effects on pinniped individuals or populations.

*Hearing Impairment and Other Physical Effects*

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, and temporary threshold shift (TTS) has been demonstrated and studied in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.*, 2007).

Current NMFS policy regarding exposure of marine mammals to high-level sounds is that cetaceans and pinnipeds should not be exposed to impulsive sounds with received levels greater than or equal to 180 and 190 dB re 1 µPa rms, respectively (NMFS 2000). L-DEO has used those criteria to establish the exclusion (i.e., shut-down) zones planned for the proposed seismic survey. However, those criteria were established before there was any information about minimum received levels of sounds necessary to cause auditory impairment in marine mammals. As discussed in Appendix B of the EA: (1) the 180–dB criterion for cetaceans is probably quite precautionary, i.e., lower than necessary to avoid temporary auditory impairment let alone permanent auditory injury; (2) NMFS treats TTS as the upper bound of Level B Harassment. Tissues are not irreparably damaged with the onset of TTS, the effects are temporary (particularly for onset-TTS), and NMFS does not believe that this effect qualifies as an injury; (3) the minimum sound level necessary to cause permanent hearing impairment (''Level A harassment'') is higher, by a variable and generally unknown amount, than the level that induces barely detectable TTS; and (4) the level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage. The actual PTS threshold is likely to be well above the level causing onset of TTS (Southall *et al.*, 2007).

Recommendations for new science-based noise exposure criteria for marine mammals, frequency-weighting procedures, and related matters were published recently (Southall *et al.*, 2007). Those recommendations have not, as of early 2009, been formally adopted by NMFS for use in regulatory processes and during mitigation programs associated with seismic surveys. However, some aspects of the recommendations have been taken into account in certain Environmental Impact Statements and small-take authorizations. NMFS has indicated that it may issue new noise exposure criteria for marine mammals that account for the now available scientific data on TTS, the expected offset between the TTS and PTS thresholds, differences in the acoustic frequencies to which different marine mammal groups are sensitive, and other relevant factors. Preliminary information about possible changes in the regulatory and mitigation requirements, and about the possible structure of new criteria, was given by Wieting (2004) and NMFS (2005).

Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the airgun array, and to avoid exposing them to sound pulses that might, at least in theory, cause hearing impairment (see section XI of L-DEO's application). In addition, many cetaceans and (to a limited degree) pinnipeds and sea turtles 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 might 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 unlikely that any effects of these types would occur during the proposed

project given the brief duration of exposure of any given mammal, the deep water in the survey area, and the planned 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)

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. 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).

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran *et al.*, 2002, 2005). Given the available data, the received energy level of a single seismic pulse (with no frequency weighting) might need to be approximately 186 dB re 1 $\mu Pa^2 \bullet s$ (i.e., 186 dB SEL or approximately 196 201 dB re 1 µPa rms in order to produce brief, mild TTS. Exposure to several strong seismic pulses that each have received levels near 190 dB 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. The distances 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. Levels greater than or equal to 190 dB re 1 µPa rms are expected to be restricted to radii no more than 380 m (1246 ft) (See Table 1). 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. There is no published TTS information for other types of cetaceans. However, preliminary evidence from a harbor porpoise exposed to airgun sound suggests that its TTS threshold may have been lower (Lucke *et al.*, 2007).

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most 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 low abundance of baleen whales in most parts of the planned study area; (2) the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for TTS to occur; and (3) the mitigation measures that are planned.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from more prolonged (non-pulse) exposures suggested that some pinnipeds (harbor seals in particular) incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999, 2005; Ketten *et al.*, 2001). The TTS threshold for pulsed sounds has been indirectly estimated as being an SEL of approximately 171 dB re 1 $\mu Pa^2 \bullet s$ (Southall *et al.*, 2007), which would be equivalent to a single pulse with received level of approximately 181 - 186 dB re 1 µPa (rms), or a series of pulses for which the highest rms values are a few dB lower. Corresponding values for California sea lions and northern elephant seals (*Mirounga angustirostris*) are likely to be higher (Kastak *et al.*, 2005).

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. Those sound levels are not considered to be the levels above which TTS might occur. Rather, they were 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 marine mammals. 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 in which the strongest pulse has a received level substantially exceeding 180 dB re 1 µPa rms. On the other hand, for the harbor seal and any species with similarly low TTS thresholds (possibly including the harbor porpoise), TTS may occur upon exposure to one or more airgun pulses whose received level equals the NMFS ''do not exceed'' value of 190 dB re 1 µPa rms. That criterion corresponds to a single-pulse SEL of

175 - 180 dB re 1 $\mu Pa^2 \bullet s$ in typical conditions, whereas TTS is suspected to be possible (in harbor seals) with a cumulative SEL of approximately 171 dB re 1 $\mu Pa^2 \bullet s$.

Permanent Threshold Shift (PTS)

When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while 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, p. 372*ff*). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage.

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 L-DEO's 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.* (2007:441–4) 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 a mammal-weighted (M-weighted) SEL (for the sequence of received pulses) of approximately 198 dB re 1 $\mu Pa^2 \bullet s$ (15 dB higher than the TTS threshold for an impulse), where the SEL value is accumulated over the sequence of pulses. Additional assumptions had to be made to derive a corresponding estimate for pinnipeds, as the only available data on TTS-thresholds in pinnipeds pertain to non-impulse sound. Southall *et al.* (2007) estimate that the PTS threshold could be a cumulative Mpw-weighted SEL of approximately 186 dB re 1 $\mu Pa^2 \bullet s$ in the harbor seal exposed to impulse sound. The PTS threshold for the California sea lion and northern elephant seal the PTS threshold would probably be higher, given the higher TTS thresholds in those species.

Southall *et al.* (2007) also note that, regardless of the SEL, there is concern about the possibility of PTS if a cetacean or pinniped received one or more pulses with peak pressure exceeding 230 or 218 dB re 1 µPa (peak), respectively. A peak pressure of 230 dB re 1 FPa (3.2 bar•m, 0–peak) would only be found within a few meters of the largest (360 $in^3$) airgun 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 nearfield 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 would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals and sea turtles. The planned monitoring and mitigation measures, including visual monitoring, PAM, power downs, and shut downs of the airguns when mammals are seen within or approaching the exclusion zones, will further reduce the probability of exposure of marine mammals to sounds strong enough to induce PTS.

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 (Gentry, 2002) and direct noise-induced bubble formation (Crum *et al.*, 2005) are not expected in the case of an impulsive 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, some odontocetes, and some pinnipeds, are especially unlikely to incur non-auditory physical effects. Also, the planned mitigation measures (see section XI), including shut downs of the airguns, will reduce any such effects that might otherwise occur.

*Strandings and Mortality*

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). However, explosives are no longer used for marine seismic research or commercial seismic surveys, and 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 specific evidence 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 (e.g., Hildebrand, 2005; Southall *et al.*, 2007). Appendix B (7) of L-DEO's 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 vestibular 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. 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. However, 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 emit non-impulse sounds at frequencies of 2–10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. 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 signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (e.g., Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.*, 2003; Fernandez *et al.*, 2004, 2005; Hildebrand, 2005; 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) were not well founded (IAGC, 2004; IWC, 2007). In September 2002, there was a stranding of two Cuvier's beaked whales (*Ziphius cavirostris*) in the Gulf of California, Mexico, when the L-DEO vessel R/V *Maurice Ewing* was operating a 20–airgun, 8490–in$^3$ airgun array in the general area. The link between the stranding and the seismic surveys 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 in 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.

*Possible Effects of Multibeam Echosounder (MBES) Signals*

The Simrad EM120 12–kHz MBES will be operated from the source vessel continuously during the planned study. Sounds from the MBES are very short pulses, occurring for 2–15 ms once every 5 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this MBES is at frequencies near 12 kHz, and the maximum source level is 242 dB re 1 µPa• m (rms). The beam is narrow (1°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of nine 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 Simrad EM120 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 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 to receive the multiple pulses that might result in sufficient exposure to cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans: (1) generally have longer pulse duration than the Simrad EM120, and (2) are often directed close to omnidirectionally versus more downward for the Simrad EM120. 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 naval sonar. During L-DEO's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by the area.

Masking - Marine mammal communications will not be masked appreciably by the MBES signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the MBES signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses: Behavioral reactions of free-ranging marine mammals to sonar, 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 (*Globicephala* spp.) (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21–25 kHz sonar with a source level of 215 dB re 1 µPa•m, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (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 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 duration as compared with those from an MBES.

Very few data are available on the reactions of pinnipeds to sonar sounds at frequencies similar to those used during seismic operations. Hastie and Janik (2007) conducted a series of behavioral response tests on two captive gray seals to determine their reactions to underwater operation of a 375–kHz multibeam imaging sonar that included significant signal components down to 6 kHz. Results indicated that the two seals reacted to the sonar signal by significantly increasing their dive durations. Because of the likely brevity of exposure to the MBES sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequence to the animals.

Hearing Impairment and Other Physical Effects: Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the MBES proposed for use by L-DEO is quite different than sonars used for navy operations. Pulse duration of the MBES is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be in the beam of the MBES for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; navy sonars often use nearhorizontally-directed sound. Those factors would all reduce the sound energy received from the MBES rather drastically relative to that from the sonars used by the navy.

Given the maximum source level of 242 dB re 1 µPa•m rms, the received level for an animal within the MBES beam 100 m (328 ft) below the ship would be approximately 202 dB re 1 µPa rms, assuming 40 dB of spreading loss over 100 m (328 ft) (circular spreading). Given the narrow beam, only one pulse is likely to be received by a given animal as the ship passes overhead. The received energy level from a single pulse ofduration 15 ms would be about 184 dB re 1 µPa$^2$•s, i.e., 202 dB + 10 log (0.015 s). That is below the TTS threshold for a cetacean receiving a single non-impulse sound (195 dB re 1 µPa$^2$•s) and even further below the anticipated PTS threshold (215 dB re 1 µPa$^2$•s) (Southall *et al.*, 2007). In contrast, an animal that was only 10 m (32 ft) below the MBES when a ping is

emitted would be expected to receive a level approximately 20 dB higher, i.e., 204 dB re 1 μPa²•s in the case of the EM120. That animal might incur some TTS (which would be fully recoverable), but the exposure would still be below the anticipated PTS threshold for cetaceans. As noted by Burkhardt *et al.*, (2007, 2008), cetaceans are very unlikely to incur PTS from operation of scientific sonars on a ship that is underway.

In the harbor seal, the TTS threshold for non-impulse sounds is about 183 dB re 1 μPa²•s, as compared with approximately 195 dB re 1 μPa²•s in odontocetes (Kastak *et al.*, 2005; Southall *et al.*, 2007). TTS onset occurs at higher received energy levels in the California sea lion and northern elephant seal than in the harbor seal. A harbor seal as much as 100 m (328 ft) below the *Langseth* could receive a single MBES pulse with received energy level of greater than or equal to 184 dB re 1 μPa²•s (as calculated in the toothed whale subsection above) and thus could incur slight TTS. Species of pinnipeds with higher TTS thresholds would not incur TTS unless they were closer to the transducers when a sonar ping was emitted. However, the SEL criterion for PTS in pinnipeds (203 dB re 1 μPa²•s) might be exceeded for a ping received within a few meters of the transducers, although the risk of PTS is higher for certain species (e.g., harbor seal). Given the intermittent nature of the signals and the narrow MBES beam, only a small fraction of the pinnipeds below (and close to) the ship would receive a pulse as the ship passed overhead.

*Possible Effects of the Sub-bottom Profiler Signals*

An SBP may be operated from the source vessel at times during the planned study. Sounds from the sub-bottom profiler are very short pulses, occurring for 1 4 ms once every second. Most of the energy in the sound pulses emitted by the SBP is at 3.5 kHz, and the beam is directed downward in a narrow beam with a spacing of up to 15° and a fan width up to 30°. The sub-bottom profiler on the *Langseth* has a maximum source level of 204 dB re 1 μPa•m. 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 and in order to be subjected to sound levels that could cause TTS.

*Masking* - Marine mammal communications will not be masked appreciably by the sub-bottom profiler signals given their directionality 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.

*Behavioral Responses* - 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. However, the pulsed signals from the SBP are considerably weaker than those from the MBES. Therefore, behavioral responses would not be expected unless marine mammals were to approach very close to the source.

Hearing Impairment and Other Physical Effects: 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 usually operated simultaneously with other higher-power acoustic sources. 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, mitigation measures that would be applied to minimize effects of other sources would further reduce or eliminate any minor effects of the SBP.

*Possible Effects of the Acoustic Release Signals*

The acoustic release transponder used to communicate with the OBS uses frequencies of 9 13 kHz. Once the OBS is ready to be retrieved, an acoustic release transponder interrogates the OBS at a frequency of 9 11 kHz, and a response is received at a frequency of 9 13 kHz. However, these signals will be used very intermittently. The source level of the release signal is 190 dB (re 1 μPa at 1 m). An animal would have to pass by the OBS at close range when the signal is emitted in order to be exposed to any pulses at that level. The sound is expected to undergo a spreading loss of approximately 40 dB in the first 100 m (328 ft). Thus, any animals located 100 m (328 ft) or more from the signal will be exposed to very weak signals (less than 150 dB) that are not expected to have any effects. The signal is used only for short intervals to interrogate and trigger the release of the OBS and consists of pulses rather than a continuous sound. Given the short duration use of this signal and rapid attenuation in seawater it is unlikely that the acoustic release signals would significantly affect marine mammals or sea turtles through masking, disturbance, or hearing impairment. Any effects likely would be negligible given the brief exposure at presumable low levels.

**Proposed Monitoring and Mitigation Measures**

*Monitoring*

L-DEO proposes to sponsor marine mammal monitoring during the present 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 this section. L-DEO understands that this monitoring plan will be subject to review by NMFS, and that refinements may be required. 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

Marine mammal visual observers (MMVOs) will be based aboard the seismic source vessel and will watch for marine mammals and turtles near the vessel during daytime airgun operations and during any start-ups at night. The MMVOs will also watch for marine mammals and turtles near the seismic vessel for at least 30 minutes (min) prior to the start of airgun operations after an extended shut down. When feasible, MMVOs will also observe during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with versus without airgun operations. Based on the MMVOs' observations, the *Langseth* will power down the airguns or shut down the airguns when marine mammals are observed within or about to enter a designated exclusion zone (EZ). The EZ is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations in the Endeavour MPA, at least three MMVOs will be based aboard the *Langseth*. MMVOs will be appointed by L-DEO with NMFS concurrence. At least one MMVO, and when feasible, two

MMVOs, will monitor marine mammals and turtles near the seismic vessel during ongoing daytime operations and nighttime start ups of the airguns. Use of two simultaneous observers will increase the proportion of the animals present near the source vessel that are detected. MMVO(s) will be on duty in shifts of duration no longer than 4 h. Other crew will also be instructed to assist in detecting marine mammals and turtles and implementing mitigation requirements (if feasible). 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 marine mammal and turtle observations. When stationed on the observation platform, the eye level will be approximately 18 m (59 ft) above sea level, and the observer will have a good view around the entire vessel. During daytime, the MMVOs will scan the area around the vessel systematically with reticle binoculars (e.g., 7 50 Fujinon), Big-eye binoculars (25 150), and with the naked eye. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocularimage 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 observers 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.

The vessel-based monitoring will provide data to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions or lack thereof, and thus to estimate the numbers of mammals potentially ''taken'' by harassment. It will also provide the information needed in order to power down or shut down the airguns at times when mammals and turtles are present in or near the safety radii. When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, 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 airguns 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) 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 and power-downs or shut downs will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. Preliminary reports will be prepared during the field program and summaries forwarded to the operating institution's shore facility and to NSF weekly or more frequently.

Results from 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 and turtles in the area where the seismic study is conducted.

4. Data on the behavior and movement patterns of marine mammals and turtles seen at times with and without seismic activity.

Passive Acoustic Monitoring

Passive acoustic monitoring (PAM) will take place to complement the visual monitoring program. Visual monitoring typically is not effective during periods of 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, localization, and tracking 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 conditioning and processing system will be located. The lead-in from the hydrophone array is approximately 400 m (1312 ft) long, and the active part of the hydrophone array is approximately 50 m (164 ft) long. The hydrophone array is typically towed at depths of 20 m (66 ft) to 30 m (98 ft).

The towed hydrophones will be monitored 24 h per day while at the seismic survey area during airgun operations, and during most periods when the *Langseth* is underway while the airguns are not operating. One MMO 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. MMOs monitoring the acoustical data will be on shift for 1 6 h at a time. Besides the visual MMOs, an additional MMO with primary responsibility for PAM will also be aboard. All MMOs 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 MMO will contact the visual MMO immediately, to alert him/her to the presence of cetaceans (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 call 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.

*Mitigation*

L-DEO's mitigation procedures are based on protocols used during previous L-DEO seismic research cruises as approved by NMFS, and on best practices recommended in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007). The measures

are described in detail below this section.

**Proposed Exclusion Zones**

As noted earlier, L-DEO modeled received sound levels for the 36–airgun array and for a single 1900LL 40–in$^3$ airgun (which will be used during power downs), in relation to distance and direction from the airguns. Based on the modeling for deep water, the distances from the source where sound levels are predicted to be 190, 180, and 160 dB re 1 µPa (rms) were determined (Table 1). The 180- and 190–dB radii vary with tow depth of the airgun array and range up to 1220 m (4002 ft) and 380 m (1246 ft), respectively. 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 exclusion zones (EZ). If the MMO detects marine mammal(s) or turtle(s) within or about to enter the appropriate safety radii, the airguns will be powered down (or shut down if necessary) immediately.

Mitigation During Operations

Mitigation measures that will be adopted during the L-DEO survey include: (1) speed or course alteration, provided that doing so will not compromise operational safety requirements; (2) power-down procedures; (3) shut-down procedures; (4) ramp-up procedures; and (5) special procedures for species of particular concern.

*Speed or Course Alteration* - If a marine mammal or sea turtle is detected outside the safety zone and, based on its position and the relative motion, is likely to enter the safety zone, the vessel's speed and/or direct course may be changed. This would be done if practicable while minimizing the effect on the planned science objectives. The activities and movements of the marine mammal or sea turtle (relative to the seismic vessel) will then be closely monitored to determine whether the animal is approaching the applicable safety zone. If the animal appears likely to enter the safety zone, further mitigative actions will be taken, i.e., either further course alterations or a power down or shut down of the airguns. Typically, during seismic operations that use hydrophone streamers, the source vessel is unable to change speed or course and one or more alternative mitigation measures (see below) will need to be implemented.

*Power-down Procedures* - A power-down involves decreasing 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 or turtles are no longer in or about to enter the safety zone. 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 and turtles 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 or turtle is detected outside the EZ but is likely to enter the EZ, and if the vessel's speed and/or course cannot be changed to avoid having the animal enter the safety radius, the airguns will be powered down before the animal is within the EZ. Likewise, if a mammal or turtle 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 or turtle is detected within or near the smaller EZ around that single airgun (Table 1), it will be shut down (see next subsection).

Following a power-down, airgun activity will not resume until the marine mammal or turtle has cleared the EZ. 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 zone for 15 min in the case of small odontocetes; or (3) has not been seen within the zone for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales; or (4) the vessel has moved outside the EZ for turtles, i.e., approximately 5 to 20 min, depending on the sighting distance, vessel speed, and tow-depth.

During airgun operations following a power down (or shut down) whose duration has exceeded the limits specified above, the airgun array will be ramped up gradually (see below).

*Shut-down Procedures* - During a power down, the operating airgun will be shut down if a marine mammal or turtle is seen within or approaching the EZ for a single airgun. Shut-downs will be implemented: (1) if an animal enters the exclusion zone of the single airgun after a power-down has been initiated, or (2) if an animal is initially seen within the exclusion zone of a single airgun when more than one airgun (typically the full array) is operating.

Airgun activity will not resume until the marine mammal or turtle has cleared the EZ, or until the visual marine mammal observer (MMVO) is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as described in the preceding subsection.

The airguns will be shut down if a North Pacific right whale is sighted from the vessel, even if it is located outside the EZ, because of the rarity and sensitive status of this species.

*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 9 min. This period is based on the largest modeled 180–dB radius for the 36–airgun array (see Table 1) in relation to the planned speed of the *Langseth* while shooting the airguns. Similar periods (approximately 8 10 min) were used during previous L-DEO surveys.

Ramp-up will begin with the smallest gun 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 about 30 - 40 min. During ramp-up, the MMVOs will monitor the safety zone and if marine mammals or turtles are sighted, a course/speed change, 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 and turtles 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 sea turtle or marine mammal is sighted within or near the applicable zones during the day or close to the vessel at night.

*Shutdown if Injured or Dead Whale is Found* - In the unanticipated event that any cases of marine mammal injury or mortality are found and are judged likely to have resulted from these activities, L-DEO will cease operating seismic airguns and report the incident

to the Office of Protected Resources, NMFS immediately.

**Reporting**

L-DEO will submit a report to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals and turtles near the operations. The report will provide 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 and turtle sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways.

All injured or dead marine mammals (regardless of cause) must 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.

**Estimated Take by Incidental Harassment**

Because of the mitigation measures that will be required and the likelihood that some cetaceans will avoid the area around the operating airguns of their own accord, NMFS does not expect any marine mammals to approach the sound source close enough to be injured (Level A harassment). All anticipated takes would be ''takes by Level B harassment'', as described previously, involving temporary behavioral modifications or low-level physiological effects.

Estimates of the numbers of marine mammals that might be affected are based on consideration of the number of marine mammals that could be disturbed appreciably by approximately 1800 km (1118 mi) of seismic surveys during the proposed seismic program in the Endeavor MPA.

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 or 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 described in section I of L-DEO's application. Such reactions are not considered to constitute ''taking'' (NMFS, 2001). Therefore, no additional allowance is included for animals that might be affected by sound sources other than airguns.

*Density Estimates*

There is very little information on the cetaceans that occur in deep water off the west coast of Vancouver Island, but the waters off Oregon and Washington have been studied in some detail (e.g., Green *et al.*, 1992, 1993; Barlow, 1997, 2003; Barlow and Taylor, 2001; Calambokidis and Barlow, 2004; Barlow and Forney, 2007). The primary data used to provide densities for the proposed project area off southwestern British Columbia (BC) were obtained from the 1996, 2001, and 2005 NMFS/SWFSC ''ORCAWALE'' or ''CSCAPE'' ship surveys off Oregon/Washington, as synthesized by Barlow and Forney (2007). The surveys took place up to approximately 550 km (341 mi) offshore from June or July through November or December. Thus, the surveys included effort in coastal, shelf/slope, and offshore water, and they encompass the August September period for the proposed study. Systematic, offshore survey data for pinnipeds are more limited. The most comprehensive such studies are reported by Bonnell *et al.*, (1992) based on systematic aerial surveys conducted in 1989 1990.

The waters off the west coast of Vancouver Island are included in the same ecological province as Oregon/Washington, the California Coastal Province (Longhurst, 2007). Thus, information on cetaceans from Oregon/Washington is relevant to the proposed offshore study area far offshore of BC. Although densities for BC are available for some cetacean species (see Williams and Thomas 2007), these are for inshore coastal waters and would not be representative of the densities occurring in offshore areas. Although the cetacean densities based on data from Barlow and Forney (2007) better reflect those that will be encountered during the ETOMO study, the actual densities in the Endeavour MPA are expected to be lower still, as the survey effort off Oregon/Washington covered offshore as well as shelf and coastal waters, and it included sightings for summer and fall.

Oceanographic conditions, including occasional El Nino and La Nina events, influence the distribution and numbers of marine mammals present in the NEPO, resulting in considerable year-to-year variation in the distribution and abundance of many marine mammal species (Forney and Barlow, 1998; Buchanan *et al.*, 2001; Escorza-Trevino, 2002; Ferrero *et al.*, 2002; Philbrick *et al.*, 2003; Becker, 2007). Thus, for some species the densities derived from recent surveys may not be representative of the densities that will be encountered during the proposed seismic survey.

*Potential Number of Exposures to Sound Levels at or above 160 dB*

L-DEO's ''best estimate'' of the potential number of exposures of cetaceans, absent any mitigation measures, to seismic sounds with received levels at or above 160 dB re 1 µPa (rms) is 8,624 (Table 2). It is assumed that marine mammals exposed to airgun sounds this strong might change their behavior sufficiently to be considered ''taken by harassment''.

The number of potential exposures to sound levels at or above 160 dB re 1 µPa (rms) were calculated by multiplying the expected average species density (see section VII of L-DEO's application) times the anticipated minimum area (7302 km2, 4537 mi2) to be ensonified to that level during airgun operations including overlap.

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 around each seismic line, and then calculating the total area within the buffers. Areas where overlap occurred (because of closely-spaced lines) were included when estimating the number of exposures.

*Number of Individual Cetaceans Exposed to Sound Levels at or above 160 dB*

L-DEO's ''best estimate'' of the potential number of different individuals that could be exposed to airgun sounds with received levels at or above 160 dB re 1 µPa (rms) on one or more occasions is 1,748. That total includes 22 baleen whales, 17 of which are considered endangered under the ESA: six humpback whales, two blue whales, one sei whale, and eight fin whales, which would represent small numbers of the regional populations (Table 2). Ten sperm whales and 19 beaked whales could be exposed during the survey as well (Table 2).

Based on numbers of animals encountered during previous L-DEO seismic surveys, the likelihood of the successful implementation of the required mitigation measures, and the likelihood that some animals will avoid the area around the operating airguns, NMFS believes that L-DEO's airgun seismic testing program may result in

the Level B harassment of some lower number of individual marine mammals (a few times each) than is indicated by the column titled, Number of Individuals Exposed to ≥160 dB (Request) in Table 2. L-DEO has asked for authorization for take of their best estimate of numbers for each species. Though NMFS believes that take of the requested numbers is unlikely, we still find these numbers small relative to the population sizes.

*Potential Effects on Habitat*

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to 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.

The *Langseth* will deploy 16 OBS in the vent field grid (see Figure 1 of L-DEO's application), and will deploy another 48 OBS throughout the remaining study area in the Endeavour MPA. L-DEO proposes to use two different types of OBS: (1) the WHOI ''D2'' OBS, which has an anchor made of hot-rolled steel with dimensions 2.5 x 30.5 x 38.1 cm; and (2) the LC4x4, which consists of a an anchor with a 1 m2 piece of steel grating. These OBS anchors will remain upon equipment recovery.

Although OBS placement may disrupt a very small area of seafloor habitat and may disturb benthic invertebrates, the impacts are expected to be localized and transitory. The vessel will deploy the OBS in such a way that creates the least disturbance to the area. The vent area is dynamic, and the natural variability within the system is high; toppling and regrowth of sulphide structures, and death of assemblages are common (Tunnicliffe and Thomson, 1999). Thus, it is not expected that the placement of OBS would have adverse effects beyond naturally occurring changes in this environment, and any effects of the planned activity on marine mammal habitats and food resources are expected to be negligible.

*Potential Effects on Fish*

Existing information on the impacts of seismic surveys on marine fish and invertebrate populations is very limited (See Appendix D of L-DEO's EA) and the vast majority of the data are in the form of reports and other documents that have not been peer reviewed (Popper and Hastings, 2009).

There are three types of potential effects of exposure to seismic surveys: (1) pathological, (2) physiological, and (3) behavioral.

*Pathological Effects* - Pathological effects involve lethal and temporary or permanent sub-lethal injury. 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 L-DEO's 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. McCauley *et al.* (2003), found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of ''pink snapper'' (*Pagrusauratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. O n 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 $\mu Pa^2 \bullet s$ 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 airguns [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 (29.5 ft) in the former case and less than 2 m (6.5 ft) in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the ''cutoff frequency'') at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

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 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; Hassel *et al.* 2003; Popper *et al.*, 2005).

*Physiological Effects* – Physiological effects involve temporary and permanent primary and secondary stress responses. Cellular and/or biochemical responses of fish to acoustic stress such as changes in levels of enzymes and proteins could potentially 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,b). 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 L-DEO's 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; Lokkeborg, 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 Impacts 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 also Appendix E of L-DEO's EA).

*Pathological Effects* – 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; 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.

Benthic invertebrates in the Endeavor MPA are not expected to be affected by seismic operations, as sound levels from the airguns will diminish dramatically by the time the sound reaches the ocean floor at a depth of approximately 2250 m (7382 ft).

**Negligible Impact Determination**

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a seismic program in the northeast Pacific Ocean 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 and avoidance reactions may be made by these species in response to the resultant noise from the airguns, these behavioral changes are expected to have a negligible impact on the affected species and stocks of marine mammals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the area of seismic operations, the number of potential harassment takings is estimated to be relatively small in light of the population size (see Table 2). NMFS anticipates the actual take of individuals to be lower than the numbers depicted in the table, because those numbers do not reflect either the implementation of the mitigation numbers or the fact that some animals will avoid the sound at levels lower than those expected to result in harassment. Additionally, mitigation measures require that the *Langseth* avoid any areas where marine mammals are concentrated.

In addition, no take by death and/or serious injury is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the required mitigation measures described in this document. This conclusion is supported by: (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up of the seismic array, marine mammals are expected to move away from a noise source that it is annoying prior to its becoming potentially injurious; (2) TTS is unlikely to occur, especially in odontocetes, until levels above 180 dB re 1 µPa (rms) are reached; (3) the fact that injurious levels of sound are only likely very close to the vessel; and (4) the monitoring program developed to avoid injury will be sufficient to detect (using visual detection and PAM), with reasonable certainty, all marine mammals within or entering the identified safety zones.

**Endangered Species Act (ESA)**

Under section 7 of the ESA, the National Science Foundation (NSF) has begun consultation on this proposed seismic survey. NMFS will also consult internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

**National Environmental Policy Act (NEPA)**

On September 22, 2005 (70 FR 55630), NSF published a notice of intent to prepare a Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OES) to evaluate the potential environmental impacts associated with the use of seismic sources in support of NSF-funded research by U.S. academic scientists. NMFS agreed to be a cooperating agency in the preparation of the EIS/OEIS. This EIS/OEIS has not been completed. Therefore, in order to meet NSF's and NMFS' NEPA requirements for the proposed activity and issuance of an IHA to L-DEO, the NSF has prepared an Environmental Assessment of a Marine Geophysical Survey by the *Langseth* in the northeast Pacific Ocean in the Endeavor MPA. NMFS is revi*Ewing* that document and will either adopt NSF's EA or conduct a separate NEPA analysis, as necessary, prior to making a determination of the issuance of the IHA. NMFS has posted NSF's EA on its website at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

**Preliminary Conclusions**

Based on the preceding information, and provided that the proposed mitigation and monitoring are incorporated, NMFS has preliminarily concluded that the proposed activity will incidentally take, by level B behavioral harassment only, small numbers of marine mammals. There is no subsistence harvest of marine mammals in the proposed research area; therefore, there will be no impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses. No take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures proposed in this document.

**Proposed Authorization**

NMFS proposes to issue an IHA to L-DEO for a marine seismic survey in the northeast Pacific Ocean during August - October 2009, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 4, 2009.

**Helen M. Golde,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–10821 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XO92**

### Notice of Availability of the Marine Mammal Health and Stranding Response Program Record of Decision

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

**ACTION:** Notice of Availability (NOA) of Record of Decision.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces the availability of the Record of Decision (ROD) for the Marine Mammal Health and Stranding Response Program (MMHSRP). This ROD announces NMFS' decisions for implementing the MMHSRP. Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations, NMFS prepared a Programmatic Environmental Impact Statement (PEIS) that evaluated the potential environmental and socioeconomic effects associated with alternatives for the MMHSRP's activities.

**ADDRESSES:** Comments or questions regarding the ROD can be sent to David Cottingham, Chief, Marine Mammal and Sea Turtle Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13635, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Sarah Howlett, Fishery Biologist, NMFS, at (301) 713–2322; facsimile at (301) 427–2522.

**SUPPLEMENTARY INFORMATION:** A copy of the ROD and the Final PEIS are available at: *http://www.nmfs.noaa.gov/pr/health/eis.htm*.

Dated: May 1, 2009.

**Katy M. Vincent,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–10676 Filed 5–7–09; 8:45 am]

**BILLING CODE S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XO84**

### Small Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction and Operation of a Liquefied Natural Gas Facility off Massachusetts

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments and information.

**SUMMARY:** NMFS received an application from Neptune LNG, L.L.C. (Neptune) for take of marine mammals, by Level B harassment, incidental to construction and operation of an offshore liquefied natural gas (LNG) facility in Massachusetts Bay. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to Neptune to incidentally take, by harassment, small numbers of several species of marine mammals during construction and operations of the LNG facility for a period of 1 year.

**DATES:** Comments and information must be received no later than June 8, 2009.

**ADDRESSES:** Written 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 20910–3225. The mailbox address for providing email comments is *PR1.0648–XO84@noaa.gov*. Comments sent via email, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed below (see **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.

Instructions: 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#applications* 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.

The Maritime Administration (MARAD) and U.S. Coast Guard (USCG) Final Environmental Impact Statement (Final EIS) on the Neptune LNG Deepwater Port License Application is available for viewing at *http://www.regulations.gov* by entering the search words ''Neptune LNG.''

**FOR FURTHER INFORMATION CONTACT:** Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289 ext. 156.

**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 to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. 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, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Section 101(a)(5)(D) of the MMPA establishes an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of 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'']. 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 on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

**Summary of Request**

On December 27, 2007, NMFS received an application from Neptune requesting an MMPA authorization to take small numbers of several species of marine mammals, by Level B (behavioral) harassment, incidental to construction and operation of an offshore LNG facility. NMFS has already issued a 1-year IHA to Neptune for construction activities pursuant to section 101(a)(5)(D) of the MMPA (73 FR 33400, June 12, 2008), which is effective through June 30, 2009. This proposed IHA would cover the completion of construction activities and operations for a 1-year period. Since operation and maintenance of the Neptune LNG Port facility will be ongoing into the foreseeable future, NMFS plans to propose regulations, pursuant to section 101(a)(5)(A) of the MMPA, to govern these incidental takes under a Letter of Authorization for up to 5 years. Under section 101(a)(5)(A), NMFS also must prescribe mitigation, monitoring, and reporting requirements in its regulations. NMFS announced notice of receipt of the application for regulations and requested comments on February 19, 2008 (73 FR 9092) and plans to publish proposed regulations later this year.

**Description of the Project**

On March 23, 2007, Neptune received a license to own, construct, and operate a deepwater port (Port or Neptune Port) from MARAD. The Port, which will be located in Massachusetts Bay, will consist of a submerged buoy system to dock specifically designed LNG carriers approximately 22 mi (35 km) northeast of Boston, Massachusetts, in Federal waters approximately 260 ft (79 m) in depth. The two buoys will be separated by a distance of approximately 2.1 mi (3.4 km).

Neptune will be capable of mooring LNG shuttle and regasification vessels (SRVs) with a capacity of approximately 140,000 cubic meters (m3). Up to two SRVs will temporarily moor at the proposed deepwater port by means of a submerged unloading buoy system. Two separate buoys will allow natural gas to be delivered in a continuous flow, without interruption, by having a brief overlap between arriving and departing SRVs. The annual average throughput capacity will be around 500 million standard cubic feet per day (mmscfd) with an initial throughput of 400 mmscfd, and a peak capacity of approximately 750 mmscfd.

The SRVs will be equipped to store, transport, and vaporize LNG, and to odorize, meter and send out natural gas by means of two 16-in (40.6–cm) flexible risers and one 24-in (61–cm) subsea flowline. These risers and flowline will lead to a proposed 24-in (61–cm) gas transmission pipeline connecting the deepwater port to the existing 30-in (76.2–cm) Algonquin Hubline$^{SM}$ (Hubline$^{SM}$) located approximately 9 mi (14.5 km) west of the proposed deepwater port location. The Port will have an expected operating life of approximately 20 years. Figure 1–1 of Neptune's application shows an isometric view of the Port.

On February 15, 2005, Neptune submitted an application to the USCG and MARAD under the Deepwater Port Act for all Federal authorizations required for a license to own, construct, and operate a deepwater port for the import and regasification of LNG off the coast of Massachusetts. Because, as described later in this document, there is a potential for marine mammals to be taken by harassment, incidental to construction of the facility and its pipeline and by the transport and regasification of LNG, Neptune has applied for an MMPA authorization. The following sections briefly describe the activities that might harass marine mammals. Detailed information on these activities can be found in the MARAD/USCG Final EIS on the Neptune Project (see **ADDRESSES** for availability).

**Construction Activities**

The sequence for the offshore installation effort for Neptune is as follows: mobilize an anchored lay barge and support vessels (i.e., anchor handling tugs, oceangoing tugs, and survey/diver support vessel) for the Proposed Pipeline Route; install the flowline between the riser mainfolds locations; install the new gas transmission pipeline from the northern riser manifold location to the transition manifold location at the Hubline$^{SM}$; conduct pipeline hydrostatic testing; install the hot tap at the Hubline$^{SM}$; install the two riser manifolds and the transition manifold; install the anchor piles and the lower portion of the mooring lines; connect the mooring lines to the unloading buoys and properly tension the mooring lines; and connect the two risers and control umbilicals between the unloading buoys and the riser manifolds. Construction began in July 2008 and is expected to be completed in September 2009. Construction activities in 2008 ceased on October 13. Activities are expected to resume on May 1, 2009, under the current IHA. See Figure 1–2 of Neptune's application for a full construction schedule.

**Description of Construction Activities Completed in 2008**

*Flowline*

A pipelaying vessel installed the flowline between the two riser manifold locations. The flowline is a 24-in-diameter (61–cm) line pipe with concrete weight coating and has a length of approximately 2.5 mi (4 km). The flowline is buried to the top of the pipe. Trenching began approximately 300 ft (91.4 ft) from the southern riser manifold location and ended approximately 300 ft (91.4 ft) from the northern manifold location. Transition sections used hand jetting machines, as required, to lower the pipe in the trench. Transition sections were covered with concrete mats. A post-trenching survey was performed to verify that the proper depth was achieved. Subsequent survey runs will be performed in spring 2009 and after all construction is complete to ensure burial depth requirements are achieved.

*Gas Transmission Pipeline to the Hubline$^{SM}$*

The gas transmission pipeline begins at the existing Hubline$^{SM}$ pipeline approximately 3 mi (4.8 km) east of Marblehead Neck, Massachusetts. From this point, the pipeline extends toward the northeast crossing of the territorial waters of the town of Marblehead, the city of Salem, the city of Beverly, and the town of Manchester-by-the-Sea for approximately 6.4 mi (10.3 km). The transmission line route continues to the southeast for approximately 4.5 mi (7.2 km) crossing state and Federal waters. The location of the pipeline is shown in Figure 2–1 of Neptune's application.

The transmission pipe (with concrete weight coating) was transported from the temporary shore base to the operating site. The construction sequence for the transmission line began with plowing of the pipeline trench. A pipelaying vessel installed the 24-in-diameter (61–cm) pipeline (target burial depth of 3 ft (0.9 m) to the top of the pipe) from the northern riser manifold location to the location of the transition manifold near the connection point to the Hubline$^{SM}$. The gas transmission

line was buried from the transition manifold location to the northern riser manifold location. Trenching began approximately 300 ft (91.4 m) from the northern riser manifold location and ended approximately 300 ft (91.4 m) from the transition manifold location. A post-trenching survey was performed to verify that the proper depth was achieved. Subsequent survey runs will be performed in spring 2009 and after all construction is complete to ensure burial depth requirements are achieved.

*Hydrostatic Pipeline Integrity Testing*

There was one combined gas transmission line and flowline hydrotest, following pipelay, trenching, and burial. The whole system is in-line and piggable, meaning that the pipeline can accept pigs, which are gauging/cleaning devices that are driven by pressure from one end of the pipe segment to the other without obstruction. The gas transmission line and flowline were flooded with approximately 1.5 million gallons of filtered seawater, including environmentally-friendly fluorescent dye and corrosion inhibitor. This volume assumes that no water will bypass the pigs and will include approximately 1,700 gallons (6,435 liters) of water in front of the flooding pig and approximately 1,700 gallons (6,435 liters) of water between other pigs. Flooding took place from the southern riser manifold location to the Hubline$^{SM}$ transition manifold location. All hydro-test water will be discharged in Federal waters, near the unloading buoys in summer 2009. The total pipeline system will then be swab-dried using a pig train with slugs of glycol or similar fluid. The water content of the successive slugs will be sampled to verify that the total pipeline has been properly dried.

**Description of Construction Activities to be Completed in 2009**

*Pipeline Hot Tap Installation*

The hot tap fitting, which will not require welding, will provide full structural reinforcement where the hole will be cut in the Hubline$^{SM}$. The tapping tool and actual hot tap procedure will be supplied and supervised by a specialist from the manufacturer. Prior to construction of the hot tap, divers will excavate the Hubline$^{SM}$ tie-in location using suction pumps. The concrete weight coating will be removed from the Hubline$^{SM}$ and inspected for suitability of the hot tap. The hinged hot tap fitting will then be lowered and opened to fit over the 30-in (76.2–cm) Hubline$^{SM}$. The hot tap fitting will then be closed around the pipeline, the clam studs and packing flanges will be tightened, and the fitting will be leak tested. The Hubline$^{SM}$ then will be tapped, and the valves will be closed. The hot tap and exposed sections of the Hubline$^{SM}$ will be protected with concrete mats until the tie-in to the transition manifold occurs.

*Anchor Installation*

The prefabricated anchor piles will be installed offshore with a dynamic positioning derrick barge. The anchor points will be within a radius of 1,600 to 3,600 ft (487.7 to 1,097.3 m) of the center of each unloading buoy. The anchor system will be installed using suction pile anchors.

*Unloading Buoys*

The unloading buoys will be offloaded near the designated site. The derrick barge will connect the mooring lines from the anchor points to each unloading buoy and then adjust the mooring line tensions to the desired levels.

*Risers*

The anchor-handling vessel or small derrick barge also will connect the riser and the control umbilical between each unloading buoy and the associated riser manifold, complete the hydrostatic testing and dewatering of the risers, and test the control umbilicals.

*Demobilization*

Upon completion of the offshore construction effort, sidescan sonar will be used to check the area. Divers will remove construction debris from the ocean floor. All construction equipment will leave the site.

**Construction Vessels**

The pipeline lay barge, anchor-handling vessels, and survey/diver support vessel each made two trips (one round trip) to and from the area of origin (Gulf of Mexico) and remained on station for the majority of the construction period. The supply vessels (or oceangoing tugs with cargo barges) and crew/survey vessel made regular trips between the construction sites and mainly the port of Gloucester (approximately 8 mi (12.9 km)) and Quincy Shipyard (approximately 20 mi (12.4 km)). During the entire project installation period in 2008 and 2009, the supply vessel will make approximately 102 trips (51 round trips), and the crew/survey vessel will make approximately 720 trips (360 round trips) for a combined total of 822 construction-support-related transits (411 round trips).

All of the construction and support vessels transit Massachusetts Bay en route to the Port. While transiting to and from the construction sites, the supply and crew/survey vessels travel at approximately 10 knots (18.5 km/hr). While transiting to and from the Gulf of Mexico, the derrick/lay barge and anchor handling vessels travel up to 12 and 14 knots (22.2 and 25.9 km/hr), respectively, but operate either in place or at very slow speeds during construction. The survey/diver support vessel travels at speeds up to 10 knots (18.5 km/hr) transiting to and from the construction area and between dive sites.

Materials, including unloading buoys, mooring lines, risers, and control umbilicals, will be transported from the shore-based storage area in New Brunswick, Canada, to the operating site on the vessel's deck. Cargo barges pulled by tugs transport the concrete-coated pipe sections and manifolds to the operating site.

Approved construction procedures are delivered to each construction vessel, and a kick-off meeting to review construction procedures, health and safety procedures, and environmental limitations are held with key personnel prior to starting each construction activity.

**Construction Sound**

Underwater acoustic analyses were completed for activities related to all aspects of Neptune construction. Activities considered to be potential sound sources during construction include: installation (plowing) of flowline and main transmission pipeline routes; lowering of materials (pipe, anchors, and chains); and installation of the suction pile anchors.

Construction-related activities for the Port and the pipeline will generate sound exceeding 120–dB re 1 μPa (rms). The loudest source of underwater noise during construction of the Neptune Port will be the use of thrusters for dynamic positioning.

**Port Operations**

During Neptune Port operations, sound will be generated by the regasification of the LNG aboard the SRVs and as a result of the use of thrusters by vessels maneuvering and maintaining position at the Port. Of these potential sound sources, thruster use for dynamic positioning has the potential to have the greatest impact. Operations are not expected to begin until spring 2010 at the earliest. The following text describes the activities that will occur at the Port upon its commissioning.

**Description of Port Operations**

*Vessel Activity*

The SRVs will approach the Port using the Boston Harbor Traffic Separation Scheme (TSS), entering the TSS within the Great South Channel (GSC) and remaining in the TSS until they reach the Boston Harbor Precautionary Area. At the Boston Lighted Horn Buoy B (at the center of the Boston Harbor Precautionary Area), the SRV will be met by a pilot vessel and a support vessel. A pilot will board the SRV, and the support vessel will accompany the SRV to the Port. SRVs carrying LNG typically travel at speeds up to 19.5 knots (36 km/hr). However, Neptune SRVs will reduce speed to 10 knots (18.5 km/hr) within the TSS year-round in the Off Race Point Seasonal Management Area (SMA; described later in this document) and to a maximum of 10 knots (18.5 km/hr) when traveling to and from the buoys once exiting the shipping lanes at the Boston Harbor Precautionary Area. In addition, Neptune will reduce speeds to 10 knots (18.5 km/hr) in the GSC SMA (described later in this document) from April 1 to July 31.

To supply a continuous flow of natural gas into the pipeline, about 50 roundtrip SRV transits will take place each year on average (one transit every 3.65 days). However, in the early stages of operation, it is expected that far fewer transits will occur each year. As an SRV approaches the Port, vessel speed will gradually be reduced. Upon arrival at the Port, one of the submerged unloading buoys will be located and retrieved from its submerged position by means of a winch and recovery line. The SRV is designed for operation in harsh environments and can connect to the unloading buoy in up to 11.5 ft (3.5 m) significant wave heights and remain operation in up to 36 ft (11 m) significant wave heights, providing high operational availability. The vessel's aft/forward thrusters will be used, only as necessary, for between 10 and 30 min during the docking procedure. During normal conditions, the vessel will be allowed to ''weathervane'' on the single-point mooring system. However, there will be certain conditions when aft thrusters may be used to maintain the heading of the vessel into the wind when competing tides operate to push the vessel broadside to the wind. In these circumstances, the ambient sound will already be high because of the wind and associated wave sound.

*Regasification System*

Once an SRV is connected to a buoy, the vaporization of LNG and send-out of natural gas can begin. Each SRV will be equipped with three vaporization units, each with the capacity to vaporize 250 mmscfd. Under normal operation, two units will be in service. The third vaporization unit will be on standby mode, though all three units could operate simultaneously.

**Operations Sound**

The acoustic effects of using the thrusters for maneuvering at the unloading buoys were modeled by JASCO Research Limited (2005). The analysis assumed the use of four thrusters (two bow, two stern) at 100 percent power during all four seasons. Additional details of the modeling analyses can be found in Appendices B and C of Neptune's application (see **ADDRESSES**). During operations of the Port, the only sound that will exceed 120–dB is associated with the maneuvering of the SRVs during final docking at the Port. The loudest source of underwater sound during both construction or operation of the Neptune Port will be the use of thrusters for dynamic positioning.

**Description of Marine Mammals Affected by the Activity**

Marine mammal species that potentially occur within the Neptune facility impact area include several species of cetaceans and pinnipeds: North Atlantic right whale, blue whale, fin whale, sei whale, minke whale, humpback whale, killer whale, long-finned pilot whale, sperm whale, Atlantic white-beaked dolphin, Atlantic white-sided dolphin, bottlenose dolphin, common dolphin, harbor porpoise, Risso's dolphin, striped dolphin, gray seal, harbor seal, harp seal, and hooded seal. Table 3–1 in the IHA application outlines the marine mammal species that occur in Massachusetts Bay and the likelihood of occurrence of each species. Information on those species that may be impacted by this activity are discussed in detail in the MARAD/USCG Final EIS on the Neptune LNG proposal. Please refer to that document for more information on these species and potential impacts from construction and operation of this LNG facility. In addition, general information on these marine mammal species can also be found in the NMFS U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (Waring *et al.*, 2009), which are available at: *http://www.nefsc.noaa.gov/publications/tm/tm210/*. A summary on several commonly sighted marine mammal species distribution and abundance in the vicinity of the action area is provided below.

*Humpback Whale*

The highest abundance for humpback whales is distributed primarily along a relatively narrow corridor following the 100–m (328 ft) isobath across the southern Gulf of Maine from the northwestern slope of Georges Bank, south to the GSC, and northward alongside Cape Cod to Stellwagen Bank and Jeffreys Ledge. The relative abundance of whales increases in the spring with the highest occurrence along the slope waters (between the 40- and 140–m, 131- and 459–ft, isobaths) off Cape Cod and Davis Bank, Stellwagen Basin and Tillies Basin and between the 50- and 200–m (164- and 656–ft) isobaths along the inner slope of Georges Bank. High abundance was also estimated for the waters around Platts Bank. In the summer months, abundance increases markedly over the shallow waters (<50 m, or <164 ft) of Stellwagen Bank, the waters (100–200 m, 328–656 ft) between Platts Bank and Jeffreys Ledge, the steep slopes (between the 30- and 160–m isobaths, 98- and 525-ft isobaths) of Phelps and Davis Bank north of the GSC towards Cape Cod, and between the 50- and 100–m (164- and 328–ft) isobath for almost the entire length of the steeply sloping northern edge of Georges Bank. This general distribution pattern persists in all seasons except winter when humpbacks remain at high abundance in only a few locations including Porpoise and Neddick Basins adjacent to Jeffreys Ledge, northern Stellwagen Bank and Tillies Basin, and the GSC.

*Fin Whale*

Spatial patterns of habitat utilization by fin whales are very similar to those of humpback whales. Spring and summer high-use areas follow the 100–m (328 ft) isobath along the northern edge of Georges Bank (between the 50- and 200–m, 164- and 656–ft, isobaths), and northward from the GSC (between the 50- and 160–m, 164- and 525–ft, isobaths). Waters around Cashes Ledge, Platts Bank, and Jeffreys Ledge are all high-use areas in the summer months. Stellwagen Bank is a high-use area for fin whales in all seasons, with highest abundance occurring over the southern Stellwagen Bank in the summer months. In fact, the southern portion of Stellwagen Bank National Marine Sanctuary (SBNMS) is used more frequently than the northern portion in all months except winter, when high abundance is recorded over the northern tip of Stellwagen Bank. In addition to Stellwagen Bank, high abundance in winter is estimated for Jeffreys Ledge and the adjacent Porpoise Basin (100- to

160–m, 328- to 525-ft, isobaths), as well as Georges Basin and northern Georges Bank.

*Minke Whale*

Like other piscivorus baleen whales, highest abundance for minke whale is strongly associated with regions between the 50- and 100–m (164- and 328-ft) isobaths, but with a slightly stronger preference for the shallower waters along the slopes of Davis Bank, Phelps Bank, GSC, and Georges Shoals on Georges Bank. Minke whales are sighted in SBNMS in all seasons, with highest abundance estimated for the shallow waters (approximately 40 m, 131 ft) over southern Stellwagen Bank in the summer and fall months. Platts Bank, Cashes Ledge, Jeffreys Ledge, and the adjacent basins (Neddick, Porpoise, and Scantium) also support high relative abundance. Very low densities of minke whales remain throughout most of the southern Gulf of Maine in winter.

*North Atlantic Right Whale*

North Atlantic right whales are generally distributed widely across the southern Gulf of Maine in spring with highest abundance located over the deeper waters (100- to 160–m, or 328- to 525–ft, isobaths) on the northern edge of the GSC and deep waters (100–300 m, 328–984 ft) parallel to the 100–m (328–ft) isobath of northern Georges Bank and Georges Basin. High abundance was also found in the shallowest waters (< 30 m, <98 ft) of Cape Cod Bay (CCB), over Platts Bank and around Cashes Ledge. Lower relative abundance is estimated over deep-water basins including Wilkinson Basin, Rodgers Basin, and Franklin Basin. In the summer months, right whales move almost entirely away from the coast to deep waters over basins in the central Gulf of Maine (Wilkinson Basin, Cashes Basin between the 160- and 200–m, 525- and 656–ft, isobaths) and north of Georges Bank (Rogers, Crowell, and Georges Basins). Highest abundance is found north of the 100–m (328–ft) isobath at the GSC and over the deep slope waters and basins along the northern edge of Georges Bank. The waters between Fippennies Ledge and Cashes Ledge are also estimated as high-use areas. In the fall months, right whales are sighted infrequently in the Gulf of Maine, with highest densities over Jeffreys Ledge and over deeper waters near Cashes Ledge and Wilkinson Basin. In winter, CCB, Scantum Basin, Jeffreys Ledge, and Cashes Ledge were the main high-use areas. Although SBNMS does not appear to support the highest abundance of right whales, sightings within SBNMS are reported for all four seasons, albeit at low relative abundance. Highest sighting within SBNMS occurs along the southern edge of the Bank.

*Long-finned Pilot Whale*

The long-finned pilot whale is more generally found along the edge of the continental shelf (a depth of 100 to 1,000 m, or 328 to 3,280 ft), choosing areas of high relief or submerged banks in cold or temperate shoreline waters. This species is split into two subspecies: the Northern and Southern subspecies. The Southern subspecies is circumpolar with northern limits of Brazil and South Africa. The Norther subspecies, which could be encountered during construction and/or operation of the Neptune Port facility, ranges from North Carolina to Greenland (Reeves *et al.*, 2002; Wilson and Ruff, 1999). In the western North Atlantic, long-finned pilot whales are pelagic, occurring in especially high densities in winter and spring over the continental slope, then moving inshore and onto the shelf in summer and autumn following squid and mackerel populations (Reeves *et al.*, 2002). They frequently travel into the central and northern Georges Bank, GSC, and Gulf of Maine areas during the summer and early fall (May and October; NOAA, 1993). According to the SAR, the best population estimate for the western North Atlantic stock of long-finned pilot whale is 31,139 individuals (Waring *et al.*, 2009).

*Atlantic White-sided Dolphin*

In spring, summer and fall, Atlantic white-sided dolphins are widespread throughout the southern Gulf of Maine, with the high-use areas widely located on either side of the 100–m (328–ft) isobath along the northern edge of Georges Bank, and north from the GSC to Stellwagen Bank, Jeffreys Ledge, Platts Bank, and Cashes Ledge. In spring, high-use areas exist in the GSC, northern Georges Bank, the steeply sloping edge of Davis Bank, and Cape Cod, southern Stellwagen Bank, and the waters between Jeffreys Ledge and Platts Bank. In summer, there is a shift and expansion of habitat toward the east and northeast. High-use areas occur along most of the northern edge of Georges Bank between the 50- and 200–m (164- and 656–ft) isobaths and northward from the GSC along the slopes of Davis Bank and Cape Cod. High sightings are also recorded over Truxton Swell, Wilkinson Basin, Cashes Ledge and the bathymetrically complex area northeast of Platts Bank. High sightings of white-sided dolphin are recorded within SBNMS in all seasons, with highest density in summer and most widespread distributions in spring located mainly over the southern end of Stellwagen Bank. In winter, high sightings were recorded at the northern tip of Stellwagen Bank and Tillies Basin.

A comparison of spatial distribution patterns for all baleen whales (Mysticeti) and all porpoises and dolphins combined showed that both groups have very similar spatial patterns of high- and low-use areas. The baleen whales, whether piscivorus or planktivorous, are more concentrated than the dolphins and porpoises. They utilize a corridor that extends broadly along the most linear and steeply sloping edges in the southern Gulf of Maine indicated broadly by the 100 m (328 ft) isobath. Stellwagen Bank and Jeffreys Ledge support a high abundance of baleen whales throughout the year. Species richness maps indicate that high-use areas for individual whales and dolphin species co-occurred, resulting in similar patterns of species richness primarily along the southern portion of the 100–m (328–ft) isobath extending northeast and northwest from the GSC. The southern edge of Stellwagen Bank and the waters around the northern tip of Cape Cod are also highlighted as supporting high cetacean species richness. Intermediate to high numbers of species are also calculated for the waters surrounding Jeffreys Ledge, the entire Stellwagen Bank, Platts Bank, Fippennies Ledge, and Cashes Ledge.

*Killer Whale, Common Dolphin, Bottlenose Dolphin, and Harbor Porpoise*

Although these four species are some of the most widely distributed small cetacean species in the world (Jefferson *et al.*, 1993), they are not commonly seen in the vicinity of the project area in Massachusetts Bay (Wiley *et al.*, 1994; NCCOS, 2006; Northeast Gateway Marine Mammal Monitoring Weekly Reports, 2007; Neptune Marine Mammal Monitoring Weekly Reports, 2008).

*Harbor Seal and Gray Seal*

In the U.S. western North Atlantic, both harbor and gray seals are usually found from the coast of Maine south to southern New England and New York (Waring *et al.*, 2007).

Along the southern New England and New York coasts, harbor seals occur seasonally from September through late May (Schneider and Payne, 1983). In recent years, their seasonal interval along the southern New England to New Jersey coasts has increased (deHart, 2002). In U.S. waters, harbor seal breeding and pupping normally occur in

waters north of the New Hampshire/Maine border, although breeding has occurred as far south as Cape Cod in the early part of the 20th century (Temte *et al.*, 1991; Katona *et al.*, 1993).

Although gray seals are often seen off the coast from New England to Labrador, within U.S. waters, only small numbers of gray seals have been observed pupping on several isolated islands along the Maine coast and in Nantucket-Vineyard Sound, Massachusetts (Katona *et al.*, 1993; Rough, 1995). In the late 1990s, a year-round breeding population of approximately 400 gray seals was documented on outer Cape Cod and Muskeget Island (Waring *et al.*, 2007).

**Potential Effects of Noise on Marine Mammals**

The effects of sound on marine mammals are highly variable and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The sound may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) The sound may be audible but not strong enough to elicit any overt behavioral response; (3) The sound may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions, such as vacating an area at least until the sound ceases; (4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation) or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent, and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat; (5) Any anthropogenic sound that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise; (6) If mammals remain in an area because it is important for feeding, breeding, or some other biologically important purpose even though there is chronic exposure to sound, it is possible that there could be sound-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and (7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic (or explosive events) may cause trauma to tissue associated with organs vital for hearing, sound production, respiration, and other functions. This trauma may include minor to severe hemorrhage.

There are three general types of sounds recognized by NMFS: continuous, intermittent (or transient), and pulsive. Sounds of short duration that are produced intermittently or at regular intervals, such as sounds from pile driving, are classified as ''pulsed.'' Sounds produced for extended periods, such as sound from generators, are classified as ''continuous.'' Sounds from moving sources, such as ships, can be continuous, but for an animal at a given location, these sounds are ''transient'' (i.e., increasing in level as the ship approaches and then diminishing as it moves away).

The only anticipated impact to marine mammals during construction and operation would be the short-term displacement of marine mammals from areas ensonified by sound generated by equipment operation and vessel movement (thruster use). The sound sources of potential concern are continuous and intermittent sound sources, including underwater noise generated during pipeline/flowline construction and operational underwater sound generated by regasification/offloading (continuous) and dynamic positioning of vessels using thrusters (intermittent). Neither the construction nor operation of the Port will cause pulsive sound activities, including pile driving, seismic activities, or blasting. Both continuous and intermittent sound sources are subject to NMFS' 120 dB re 1 µPa threshold for determining Level B harassment take levels from continuous underwater noise that may result in the disturbance of marine mammals.

*Potential Impacts of Construction Activities*

Construction and operation of the Neptune Port will occur consecutively, with no overlap in activities. Sound from Port and pipeline construction will cause some possible disturbance to small numbers of both baleen and toothed whales. Additionally, harbor and gray seals may occur in the area and may experience some disturbance.

The installation of the suction piles will produce only low levels of sound during the construction period and will not increase the numbers of animals affected. Modeling results indicate that noise levels would be below 90 dB re 1 µPa within 0.2 mi (0.3 km) of the source. Pipe-laying activities will generate continuous but transient sound and will likely result in variable sound levels during the construction period. Modeling conducted by JASCO Research Limited indicates that, depending on water depth, the 120–dB contour during pipe-laying activities would extend 3.9 km (2.1 nm) from the source and cover an area of 52 $km^2$ (15 $nm^2$). Additionally, the use of thrusters during maneuvering or under certain wind and tidal conditions will generate sound levels above the 120–dB threshold. The temporary elevation in the underwater sound levels may cause some species to temporarily disperse from or avoid construction areas, but they are expected to return shortly after construction is completed. The underwater sound generated by the use of the thrusters during maneuvering or under certain wind and tidal conditions is expected to have only minimal effects to individual marine mammals and is not expected to have a population-level effect to local marine mammal species or stocks because of the short-term and temporary nature of the activity.

The likelihood of a vessel strike of a marine mammal during construction is low since construction vessels travel at very slow speeds. Any whales foraging near the bottom would be able to avoid collision or interaction with the equipment and displacement would be temporary for the duration of the plow pass. No injury or mortality of marine mammals is expected as a result of construction of the Neptune Port facility.

*Potential Impacts of Operational Activities*

During the operational life of the project, marine mammals will be exposed to intermittent sound from the use of thrusters positioning the carriers at the unloading buoys and the sounds associated with the regasification process. Under certain wind and tidal conditions, the two aft thrusters will be continuously operated to maintain the heading of the vessel into the wind when competing tides operate to push the vessel broadside to the wind. These activities will occur at each of the two fixed-location unloading buoys. The sound from the regasification process is low and will not reach levels of 120 dB

re 1 μPa. However, the brief bursts (10–30 min) of sound associated with the use of four thrusters to position the ships would have the potential to disturb marine mammals near the Port. The underwater sound generated by the use of the thrusters during maneuvering or under certain wind and tidal conditions is expected to have only minimal effects to individual marine mammals and is not expected to have a population-level effect to local marine mammal species or stocks. One reason is the relatively short duration and infrequency of the use of thrusters (every 4–8 days and 10–30 min each episode for maneuvering or intermittently to maintain heading during certain weather conditions when operations reach their peak. However, between July 2009 and June 2010, the period for this proposed IHA, it is expected that only one to two shipments would occur, and they may be spaced even farther apart than every 4–8 days).

The use of thrusters during dynamic positioning and the sounds produced during the regasification process may cause some behavioral harassment to marine mammals present in the project area. However, this harassment is expected to be short-term and minimal in nature. Any displacement from the Port location and surrounding areas is expected to be temporary. Additionally, the distribution of odontocetes in the area is patchy, the presence of baleen whales, especially North Atlantic right whales, is seasonal, and harbor and gray seals have been observed to habituate to human activities, including sound. No injury or mortality is expected as a result of operations at the Port.

Using conservative estimates of both marine mammal densities in the Project area and the size of the 120–dB zone of influence (ZOI), the calculated number of individual marine mammals for each species that could potentially be harassed annually is small. Please see the ''Estimates of Take by Harassment'' section for the calculation of these numbers.

**Estimates of Take by Harassment**

Pipe-laying activities will generate continuous but transient sound and will likely result in variable sound levels during the construction period. Depending on water depth, the 120–dB contour during pipe-laying activities will extend from the source (the Port) out to 3.9 km (2.1 nm) and cover an area of 52 $km^2$ (15 $nm^2$), and, for the flowline at the Port, the 120–dB contour will extend from the pipeline route out to 4.2 km (2.3 nm) and cover an area of 49 $km^2$ (14.3 $nm^2$). (This information is different from what is contained in the March 23, 2007, application submitted by Neptune to NMFS. Neptune conducted its acoustic modeling in the very early planning stages of the project, when little information was available on the types of vessels that could potentially be used during construction. Since that time, a contractor has been hired to construct the Port. The vessels to be used during Neptune Port construction are now estimated to generate broadband underwater source levels in the range of 180 dB re 1 Pa at 1m, similar to several of the vessels modeled by JASCO for Neptune and not in the range of 200 dB re 1 Pa at 1m, which was also included in the original modeling as a worst case scenario. For more information on the modeling conducted by JASCO, please refer to Appendix B of Neptune's application.) Installation of the suction pile anchors at the Port will produce only low levels of underwater sound, with no source levels above 120–dB for continuous sound.

In order to estimate the level of takes for the operation phase of this activity, NMFS has used the same ensonified zone as that described above for construction activities (i.e., 52 $km^2$ [15 $nm^2$]).

The basis for Neptune's ''take'' estimate is the number of marine mammals that potentially could be exposed to sound levels in excess of 120 dB. Typically, this is determined by applying the modeled ZOI (e.g., the area ensonified by the 120–dB contour) to the seasonal use (density) of the area by marine mammals and correcting for seasonal duration of sound-generating activities and estimated duration of individual activities when the maximum sound-generating activities are intermittent to occasional. Nearly all of the required information is readily available in the MARAD/USCG Final EIS, with the exception of marine mammal density estimates for the project area. In the case of data gaps, a conservative approach was used to ensure that the potential number of takes is not underestimated, as described next.

NMFS recognizes that baleen whale species other than North Atlantic right whales have been sighted in the project area from May to November. However, the occurrence and abundance of fin, humpback, and minke whales is not well documented within the project area. Nonetheless, NMFS used the data on cetacean distribution within Massachusetts Bay, such as those published by the NCCOS (2006), to determine potential takes of marine mammals in the vicinity of the project area.

The NCCOS study used cetacean sightings from two sources: (1) the North Atlantic Right Whale Consortium (NARWC) sightings database held at the University of Rhode Island (Kenney, 2001); and (2) the Manomet Bird Observatory (MBO) database, held at the NMFS Northeast Fisheries Science Center (NEFSC). The NARWC data contained survey efforts and sightings data from ship and aerial surveys and opportunistic sources between 1970 and 2005. The main data contributors included: the Cetacean and Turtles Assessment Program, the Canadian Department of Fisheries and Oceans, the Provincetown Center for Coastal Studies, International Fund for Animal Welfare, NEFSC, New England Aquarium, Woods Hole Oceanographic Institution, and the University of Rhode Island. A total of 406,293 mi (653,725 km) of survey track and 34,589 cetacean observations were provisionally selected for the NCCOS study in order to minimize bias from uneven allocation of survey effort in both time and space. The sightings-per-unit-effort (SPUE) was calculated for all cetacean species by month covering the southern Gulf of Maine study area, which also includes the project area (NCCOS, 2006).

The MBO's Cetacean and Seabird Assessment Program (CSAP) was contracted from 1980 to 1988 by NEFSC to provide an assessment of the relative abundance and distribution of cetaceans, seabirds, and marine turtles in the shelf waters of the northeastern U.S. (MBO, 1987). The CSAP program was designed to be completely compatible with NEFSC databases so that marine mammal data could be compared directly with fisheries data throughout the time series during which both types of information were gathered. A total of 8,383 mi (5,210 km) of survey distance and 636 cetacean observations from the MBO data were included in the NCCOS analysis. Combined valid survey effort for the NCCOS studies included 913,840 mi (567,955 km) of survey track for small cetaceans (dolphins and porpoises) and 1,060,226 mi (658,935 km) for large cetaceans (whales) in the southern Gulf of Maine. The NCCOS study then combined these two data sets by extracting cetacean sighting records, updating database field names to match the NARWC database, creating geometry to represent survey tracklines and applying a set of data selection criteria designed to minimize uncertainty and bias in the data used.

Based on the comprehensiveness and total coverage of the NCCOS cetacean distribution and abundance study, NMFS calculated the estimated take number of marine mammals based on

the most recent NCCOS report published in December, 2006. A summary of seasonal cetacean distribution and abundance in the project area is provided previously in this document, in the ''Marine Mammals Affected by the Activity'' section. For a detailed description and calculation of the cetacean abundance data and SPUE, refer to the NCCOS study (NCCOS, 2006). SPUE for the spring, summer, and fall seasons were analyzed, and the highest value SPUE for the season with the highest abundance of each species was used to determine relative abundance. Based on the data, the relative abundance of North Atlantic right, fin, humpback, minke, and pilot whales and Atlantic white-sided dolphins, as calculated by SPUE in number of animals per square kilometer, is 0.0082, 0.0097, 0.0265, 0.0059, 0.0407, and 0.1314 n/km, respectively.

In calculating the area density of these species from these linear density data, NMFS used 0.4 km (0.25 mi), which is a quarter the distance of the radius for visual monitoring (see Monitoring, Mitigation, and Reporting section later in this document), as a conservative hypothetical strip width (W). Thus the area density (D) of these species in the project area can be obtained by the following formula:

D = SPUE/2W.

Based on the calculation, the estimated take numbers by Level B harassment for the 1–year IHA period for North Atlantic right, fin, humpback, minke, and pilot whales and Atlantic white-sided dolphins, within the 120–dB ZOI of the LNG Port facility area of approximately 52 $km^2$ (15 $nm^2$) maximum ZOI, corrected for 50 percent underwater, are 48, 57, 155, 35, 238, and 770, respectively. This estimate is based on an estimated 60 days of construction activities remaining for the period July until September, 2009, that will produce sounds of 120 dB or greater.

Based on the same calculation method described above for Port construction, the estimated take numbers by Level B harassment for North Atlantic right, fin, humpback, minke, and pilot whales and Atlantic white-sided dolphins for the 1–year IHA period incidental to Port operations (which is expected to happen no more than twice during the effectiveness of this proposed IHA), operating the vessel's thrusters for dynamic positioning before offloading natural gas, corrected for 50 percent underwater, are 2, 2, 5, 1, 8, and 26, respectively.

The total estimated take of these species as a result of both construction and operation of the Neptune Port facility from July 1, 2009, through June 30, 2010, is: 50 North Atlantic right whales, 59 fin whales, 160 humpback whales, 36 minke whales, 246 pilot whales, and 796 Atlantic white-sided dolphins. These numbers represent a maximum of 15.4, 2.6, 18.9, 1.1, 0.8, and 1.3 percent of the populations for these species in the western North Atlantic, respectively. Since it is highly likely that individual animals will be ''taken'' by harassment multiple times (since certain individuals may occur in the area more than once while other individuals of the population or stock may not enter the proposed project area) and the fact that the highest value SPUE for the season with the highest abundance of each species was used to determine relative abundance, these percentages are the upper boundary of the animal population that could be affected. Therefore, the actual number of individual animals being exposed or taken are expected to be far less.

In addition, bottlenose dolphins, common dolphins, killer whales, harbor porpoises, harbor seals, and gray seals could also be taken by Level B harassment as a result of the deepwater LNG port project. The numbers of estimated take of these species are not available because they are rare in the project area. The population estimates of these marine mammal species and stocks in the western North Atlantic basin are 81,588; 120,743; 89,700; 99,340; and 195,000 for bottlenose dolphins, common dolphins, harbor porpoises, harbor seals, and gray seals, respectively (Waring *et al.*, 2007). No population estimate is available for the North Atlantic stock of killer whales, however, their occurrence within the proposed project area is rare. Since Massachusetts Bay represents only a small fraction of the western North Atlantic basin where these animals occur, and these animals do not regularly congregate in the vicinity of the project area, NMFS believes that only relatively small numbers of these marine mammal species would be potentially affected by the Neptune LNG deepwater project. From the most conservative estimates of both marine mammal densities in the project area and the size of the 120–dB ZOI, the maximum calculated number of individual marine mammals for each species that could potentially be harassed annually is small relative to the overall population sizes (18.9 percent for humpback whales and 15.4 percent for North Atlantic right whales and no more than 2.6 percent of any other species).

**Potential Impact of the Activity on Habitat**

*Potential Impact on Habitat from Construction*

Construction of the Neptune Port and pipeline will affect marine mammal habitat in several ways: seafloor disturbance, increased turbidity, and generation of additional underwater sound in the area. Proposed construction activities will temporarily disturb 418 acres (1.7 $km^2$) of seafloor (11 acres (0.04 $km^2$) at the Port, 85 acres (0.3 $km^2$) along the pipeline route, and an estimated 322 acres (1.3 $km^2$) due to anchoring of construction and installation vessels). Of the proposed construction activities, pipeline installation, including trenching, plowing, jetting, and backfill, is expected to generate the most disturbance of bottom sediments. Sediment transport modeling conducted by Neptune indicates that initial turbidity from pipeline installation could reach 100 milligrams per liter (mg/L) but will subside to 20 mg/L after 4 hours. Turbidity associated with the flowline and hot-tap will be considerably less and also will settle within hours of the work being completed. Resettled sediments also will constitute to seafloor disturbance. When re-suspended sediments resettle, they reduce growth, reproduction, and survival rates of benthic organisms, and in extreme cases, smother benthic flora and fauna. Plankton will not be affected by resettled sediment. The project area is largely devoid of vegetation and consists of sand, silt, clay, or mixtures of the three.

Recovery of soft-bottom benthic communities impacted by project installation is expected to be similar to the recovery of the soft habitat associated with the construction of the Hubline℠ (Algonquin Gas Transmission L.L.C., 2004). Post-construction monitoring of the Hubline℠ indicates that areas that were bucket-dredged showed the least disturbance. Displaced organisms will return shortly after construction ceases, and disrupted communities will easily re-colonize from surrounding communities of similar organisms. Similarly, disturbance to hard-bottom pebble/cobble and piled boulder habitat is not expected to be significant. Some organisms could be temporarily displaced from existing shelter, thereby exposing them to increased predation, but the overall structural integrity of these areas will not be reduced (Auster and Langton, 1998).

Short-term impacts on phytoplankton, zooplankton (holoplankton), and

planktonic fish and shellfish eggs and larvae (meroplankton) will occur as a result of the project. Turbidity associated with Port and pipeline installation will result in temporary direct impacts on productivity, growth, and development. Phytoplankton and zooplankton abundance will be greatest during the summer construction schedule. Fish eggs and larvae are present in the project area throughout the year. Different species of fish and invertebrate eggs and larvae will be affected by the different construction schedules.

The temporary disturbance of benthic habitat from trenching for and burial of the transmission pipeline will result in direct, minor, adverse impacts from the dispersion of fish from the area and the burying or crushing of shellfish. In the short-term, there will be a temporary, indirect, and beneficial impact from exposing benthic food sources. Seafloor disturbance could also occur as a result of resettling of suspended sediments during installation and construction of the proposed Port and pipeline. Redeposited sediments will potentially reduce viability of demersal fish eggs and growth, reproduction, and survival rates of benthic shellfish. In extreme cases, resettled sediments could smother benthic shellfish, although many will be able to burrow vertically through resettled sediments.

Based on the foregoing, construction activities will not create long-term habitat changes, and marine mammals displaced by the disturbance to the seafloor are expected to return soon after construction ceases. Marine mammals also could be indirectly affected if benthic prey species were displaced or destroyed by construction activities. However, affected species are expected to recover soon after construction ceases and will represent only a small portion of food available to marine mammals in the area.

*Potential Impact on Habitat from Operation*

Operation of the Port will result in long-term, continued disturbance of the seafloor, regular withdrawal of seawater, and generation of underwater sound.

*Seafloor Disturbance:* The structures associated with the Port (flowline and pipeline, unloading buoys and chains, suction anchors) will be permanent modifications to the seafloor. Up to 63.7 acres (0.25 $km^2$) of additional seafloor will be subject to disturbance due to chain and flexible riser sweep while the buoys are occupied by SRVs.

*Ballast and Cooling Water Withdrawal:* Withdrawal of ballast and cooling water at the Port as the SRV unloads cargo (approximately 2.39 million gallons per day) could potentially entrain zooplankton and ichthyoplankton that serve as prey for whale species. This estimate includes the combined seawater intake while two SRVs are moored at the Port (approximately 9 hr every 6 days). The estimated zooplankton abundance in the vicinity of the seawater intake ranges from 25.6–105 individuals per gallon (Libby *et al.*, 2004). This means that the daily intake will remove approximately 61.2–251 million individual zooplankton per day, the equivalent of approximately 7.65–31.4 lbs (3.47–14.2 kg). Since zooplankton are short-lived species (e.g., most copepods live from 1 wk to several months), these amounts will be indistinguishable from natural variability.

*Underwater Sound:* During operation of the Port, underwater sound will principally be generated by use of thrusters when SRVs are mooring at the unloading buoy and at other times for maintaining position under certain wind and tidal conditions. Thruster use will be intermittent, equating to about 20 hr/yr when the Port is fully operational and should equate to less than 1 hr during the period of effectiveness for this proposed IHA.

In the long-term, approximately 64.6 acres (0.26 $km^2$) of seafloor will be permanently disturbed to accommodate the Port (including the associated pipeline). The area disturbed because of long-term chain and riser sweep includes 63.7 acres (0.25 $km^2$) of soft sediment. This area will be similar in calm seas and in hurricane conditions. The chain weight will restrict the movement of the buoy or the vessel moored on the buoy. An additional 0.9 acre (0.004 $km^2$) of soft sediments will be converted to hard substrate. The total affected area will be small compared to the soft sediments available in the proposed project area. Long-term disturbance from installation of the Port will comprise approximately 0.3 percent of the estimated 24,000 acres (97 $km^2$) of similar bottom habitat surrounding the project area (northeast sector of Massachusetts Bay).

It is likely that displaced organisms will not return to the area of continual chain and riser sweep. A shift in benthic faunal community is expected in areas where soft sediment is converted to hard substrate (Algonquin Gas Transmission LLC, 2005). This impact will be beneficial for species that prefer hard-bottom structure and adverse for species that prefer soft sediment. Overall, because of the relatively small areas that will be affected, impacts on soft-bottom communities are expected to be minimal.

Daily removal of seawater will reduce the food resources available for planktivorous organisms. The marine mammal species in the area have fairly broad diets and are not dependent on any single species for survival. Because of the relatively low biomass that will be entrained by the Port, the broad diet, and broad availability of organisms in the proposed project area, indirect impacts on the food web that result from entrainment of planktonic fish and shellfish eggs and larvae are expected to be minor and therefore should have minimal impact on affected marine mammal species or stocks.

**Proposed Mitigation and Monitoring Measures**

For the proposed Neptune LNG Port construction and operation activities, NMFS proposes the following monitoring and mitigation measures.

*Port Construction Minimization Measures*

(1) General

Construction activities will be limited to a May through November time frame so that acoustic disturbance to the endangered North Atlantic right whale can largely be avoided.

(2) Proposed Visual Monitoring Program

The Neptune Project will employ two marine mammal observers (MMOs) on each lay barge, bury barge, and diving support vessel for visual shipboard surveys during construction activities. Qualifications for these individuals will include direct field experience on a marine mammal/sea turtle observation vessel and/or aerial surveys in the Atlantic Ocean and/or Gulf of Mexico. The observers (one primary, one secondary) are responsible for visually locating marine mammals at the ocean's surface, and, to the extent possible, identifying the species. Both observers will have responsibility for monitoring for the presence of marine mammals. The primary observer will act as the identification specialist, and the secondary observer will serve as data recorder and also assist with identification. All observers must receive NMFS-approved MMO training and be approved in advance by NMFS after review of their qualifications.

The MMOs will be on duty at all times when each vessel is moving and at selected periods when construction vessels are idle, including when other vessels move around the construction lay barge. The MMOs will monitor the construction area beginning at daybreak

using 25x power binoculars and/or hand-held binoculars, resulting in a conservative effective search range of 0.5 mi (0.8 km) during clear weather conditions for the shipboard observers. The MMO will scan the ocean surface by eye for a minimum of 40 min/hr. All sightings will be recorded in marine mammal field sighting logs. Observations of marine mammals will be identified to species or the lowest taxonomic level and their relative position will be recorded. Night vision devices will be standard equipment for monitoring during low-light hours and at night.

During all phases of construction, MMOs will be required to scan for and report all marine mammal sightings to the vessel captain. The captain will then alert the environmental coordinator that a marine mammal is near the construction area. The MMO will have the authority to bring the vessel to idle or to temporarily suspend operations if a baleen whale is seen within 0.6 mi (1 km) of the moving pipelay vessel or construction area. The MMO or environmental coordinator will determine whether there is a potential for harm to an individual animal and will be charged with responsibility for determining when it is safe to resume activity. A vessel will not increase power again until the marine mammal(s) leave(s) the area or has/have not been sighted for 30 min. The vessel will then power up slowly.

Construction and support vessels will be required to display lights when operating at night, and deck lights will be required to illuminate work areas. However, use of lights will be limited to areas where work is actually occurring, and all other lights will be extinguished. Lights will be downshielded to illuminate the deck and will not intentionally illuminate surrounding waters, so as not to attract whales or their prey to the area.

(3) Distance and Noise Level for Cut-Off

(1) During construction, if a marine mammal is detected within 0.5 mi (0.8 km) of a construction vessel, the vessel superintendent or on-deck supervisor will be notified immediately. The vessel's crew will be put on a heightened state of alert. The marine mammal will be monitored constantly to determine if it is moving toward the construction area. The observer is required to report all North Atlantic right whale sightings to NMFS, as soon as possible.

(2) Construction vessels will cease any movement in the construction area if a marine mammal other than a right whale is sighted within or approaching to a distance of 100 yd (91 m) from the operating construction vessel. Construction vessels will cease any movement in the construction area if a right whale is sighted within or approaching to a distance of 500 yd (457 m) from the operating construction vessel. Vessels transiting the construction area such as pipe haul barge tugs will also be required to maintain these separation distances.

(3) Construction vessels will cease all activities that emit sounds reaching a received level of 120 dB re 1 μPa or higher at 100 yd (91 m) if a marine mammal other than a right whale is sighted within or approaching to this distance, or if a right whale is sighted within or approaching to a distance of 500 yd (457 m), from the operating construction vessel. The back-calculated source level, based on the most conservative cylindrical model of acoustic energy spreading, is estimated to be 139 dB re 1 μPa.

(4) Construction may resume after the marine mammal is positively reconfirmed outside the established zones (either 500 yd (457 m) or 100 yd (91 m), depending upon species).

(4) Vessel Strike Avoidance

(1) While under way, all construction vessels will remain 0.6 mi (1 km) away from right whales and all other whales to the extent possible and 100 yd (91 m) away from all other marine mammals to the extent physically feasible given navigational constraints as required by NMFS.

(2) MMOs will direct a moving vessel to slow to idle if a baleen whale is seen less than 0.6 mi (1 km) from the vessel.

(3) All construction vessels 300 gross tons or greater will maintain a speed of 10 knots (18.5 km/hr) or less. Vessels less than 300 gross tons carrying supplies or crew between the shore and the construction site must contact the appropriate authority or the construction site before leaving shore for reports of recent right whale sighting and, consistent with navigation safety, restrict speeds to 10 knots (18.5 km/hr) or less within 5 mi (8 km) of any recent sighting location.

(4) Vessels transiting through the Cape Cod Canal and CCB between January 1 and May 15 will reduce speeds to 10 knots (18.5 km/hr) or less, follow the recommended routes charted by NOAA to reduce interactions between right whales and shipping traffic, and avoid aggregations of right whales in the eastern portion of CCB. To the extent practicable, pipe deliveries will be avoided during the January to May time frame. In the unlikely event the Canal is closed during construction, the pipe haul barges will transit around Cape Cod following the Boston TSS and all measures for the SRVs when transiting to the Port.

(5) Construction and support vessels will transit at 10 knots or less in the following seasons and areas, which either correspond to or are more restrictive than the times and areas in NMFS' final rule (73 FR 60173, October 10, 2008) to implement speed restrictions to reduce the likelihood and severity of ship strikes of right whales:

- Southeast U.S. SMA from November 15 through April 15, which is bounded by the shoreline, 31° 27' N. (i.e., the northern edge of the Mandatory Ship Reporting System (MSRS) boundary) to the north, 29° 45' N. to the south, and 80° 51.6' W. (i.e., the eastern edge of the MSRS boundary);
- Mid-Atlantic SMAs from November 1 through April 30, which encompass the waters within a 30 nm (55.6 km) area with an epicenter at the midpoint of the COLREG demarcation line crossing the entry into the following designated ports or bays: (a) Ports of New York/New Jersey; (b) Delaware Bay (Ports of Philadelphia and Wilmington); (c) Entrance to the Chesapeake Bay (Ports of Hampton Roads and Baltimore) (d) Ports of Morehead City and Beaufort, North Carolina; (e) Port of Wilmington, North Carolina; (f) Port of Georgetown, South Carolina; (g) Port of Charleston, South Carolina; and (h) Port of Savannah, Georgia;
- CCB SMA from January 1 through May 15, which includes all waters in CCB, extending to all shorelines of the Bay, with a northern boundary of 42° 12' N. latitude;
- Off Race Point SMA year round, which is bounded by straight lines connecting the following coordinates in the order stated: 42° 30' N. 69° 45' W.; thence to 42° 30' N. 70° 30' W.; thence to 42° 12' N. 70° 30' W.; thence to 42° 12' N. 70° 12' W.; thence to 42° 04' 56.5'' N. 70° 12' W.; thence along mean high water line and inshore limits of COLREGS limit to a latitude of 41° 40' N.; thence due east to 41° 41' N. 69° 45' W.; thence back to starting point; and
- GSC SMA from April 1 through July 31, which is bounded by straight lines connecting the following coordinates in the order stated:

42° 30' N. 69° 45' W.
41° 40' N. 69° 45' W.
41° 00' N. 69° 05' W.
42° 09' N. 67° 08' 24″ W.
42° 30' N. 67° 27' W.
42° 30' N. 69° 45' W.

(5) Passive Acoustic Monitoring (PAM) Program

In addition to visual monitoring, Neptune will utilize a PAM system to aid in the monitoring and detection of North Atlantic right whales in the proposed project construction area. The PAM system will be capable of detecting and localizing (range and bearing) North Atlantic right whales in real-time with the use of six strategically placed acoustic bouys. When combined with the action and communication plan, Neptune has the capability to make timely decisions and undertake steps to minimize the potential for collisions between these marine mammals and construction vessels. An array of auto-detection monitoring buoys moored at regular intervals in a circle surrounding the site of the terminal and associated pipeline construction were installed in 2008 and will be redeployed for the 2009 construction season. Passive acoustic devices are actively monitored for detections by a NMFS-approved bioacoustic technician.

Nineteen permanent archival acoustic recording units (ARUs) or pop-ups have been arranged around the Port and pipeline to maximize auto detection and to provide localization capability. The buoys are designed to monitor the sound output from construction activities to assess construction impacts on marine mammals and to aid in the estimation of takes during the construction period.

(6) Other Measures

Operations involving excessively noisy equipment will ''ramp-up'' sound sources, as long as this does not jeopardize the safety of vessels or construction workers, allowing whales a chance to leave the area before sounds reach maximum levels. Contractors will be required to utilize vessel-quieting technologies that minimize sound. Contractors will be required to maintain individual Spill Prevention, Control, and Containment Plans in place for construction vessels during construction.

An environmental coordinator with experience coordinating projects to monitor and minimize impacts to marine mammals will be onsite to coordinate all issues concerning marine protected species, following all of the latest real-time marine mammal movements. The coordinator will work to ensure that environmental standards are adhered to and adverse interactions between project equipment and marine mammals do not occur.

*Port Operation Minimization Measures*

(1) Visual Monitoring and Vessel Strike Avoidance

Prior to entering areas where right whales are known to occur, including the GSC and SBNMS, SRV operators will consult NAVTEX, NOAA Weather Radio, NOAA's Right Whale Sighting Advisory System (SAS), or other means to obtain the latest Dynamic Management Area (DMA) information. Vessel operators will also receive active detections from the passive acoustic array prior to and during transit through the northern leg of the Boston Harbor TSS where the buoys are installed.

In response to active DMAs or acoustic detections, SRVs will take appropriate actions to minimize the risk of striking whales, including reducing speed to 10 knots (18.5 km/hr) maximum and posting additional observers. Designated crew members will undergo NMFS-approved training regarding marine mammal presence and collision avoidance procedures.

Vessels approaching and departing the port from LNG supply locations will enter the Boston Harbor TSS as soon as practicable and remain in the TSS until the Boston Harbor Precautionary Area. SRVs and support vessels will travel at 10 knots (18.5 km/hr) maximum when transiting to/from the port outside of the TSS. SRVs will abide by the same restrictions as required in the ''Vessel Strike Avoidance'' subsection for ''Port Construction Minimization Measures'' in the Off Race Point and GSC SMAs for operations unless hydrographic, meteorological, or traffic conditions dictate an alternative speed to maintain the safety and maneuverability of the vessel. In such cases where speeds in excess of the 10–knot (18.5 km/hr) speed maximums are required, the reasons for the deviation, the speed at which the vessel is operated, the area, and the time and duration of such deviation will be documented in the logbook of the vessel and reported to NMFS' Northeast Region Ship Strike Coordinator.

All vessels will comply with the year-round MSRS. If whales are seen within 0.6 mi (1 km) of the buoy, then the SRVs will wait until the whale(s) leave(s) the area before departing.

(2) PAM Program

The array of auto-detection monitoring buoys described previously in the ''Passive Acoustic Monitoring (PAM) Program'' subsection of this document will be monitored during the LNG Port operations and will provide near real-time information on the presence of vocalizing whales in the shipping lanes. Additionally, the ARUs, discussed in that subsection, will be in place for 5 years following initiation of operations to monitor the actual acoustic output of port operations and to alert NOAA to any unanticipated adverse effects of port operations, such as large-scale abandonment of the area or greater acoustic impacts than predicted through modeling.

**Proposed Reporting Requirements**

During construction, weekly status reports will be provided to NMFS utilizing standardized reporting forms. In addition, the Neptune Port Project area is within the MSRA, so all construction and support vessels will report their activities to the mandatory reporting section of the USCG to remain apprised of North Atlantic right whale movements within the area. All vessels entering and exiting the MSRA will report their activities to WHALESNORTH. Any right whale sightings will be reported to the NMFS SAS.

During all phases of project construction, sightings of any injured or dead marine mammals will be reported immediately to the USCG and NMFS, regardless of whether the injury or death is caused by project activities. Sightings of injured or dead marine mammals not associated with project activities can be reported to the USCG on VHF Channel 16 or to NMFS Stranding and Entanglement Hotline. In addition, if the injury or death was caused by a project vessel (e.g., SRV, support vessel, or construction vessel), USCG must be notified immediately, and a full report must be provided to NMFS, Northeast Regional Office. The report must include the following information: (1) the time, date, and location (latitude/longitude) of the incident; (2) the name and type of vessel involved; (3) the vessel's speed during the incident; (4) a description of the incident; (5) water depth; (6) environmental conditions (e.g., wind speed and direction, sea state, cloud cover, and visibility); (7) the species identification or description of the animal; and (8) the fate of the animal.

An annual report on marine mammal monitoring and mitigation will be submitted to NMFS Office of Protected Resources and NMFS Northeast Regional Office within 90 days after the expiration of the IHA. The weekly reports and the annual report should include data collected for each distinct marine mammal species observed in the project area in the Massachusetts Bay during the period of LNG facility construction. Description of marine mammal behavior, overall numbers of

individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to construction activities shall also be included in the annual report. Additional information that will be recorded during construction and contained in the reports include: date and time of marine mammal detections (visually or acoustically), weather conditions, species identification, approximate distance from the source, activity of the vessel or at the construction site when a marine mammal is sighted, and whether thrusters were in use and, if so, how many at the time of the sighting.

**Endangered Species Act (ESA)**

On January 12, 2007, NMFS concluded consultation with MARAD and USCG under section 7 of the ESA on the proposed construction and operation of the Neptune LNG facility and issued a Biological Opinion. The finding of that consultation was that the construction and operation of the Neptune LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales and Kemp's ridley, loggerhead, green, or leatherback sea turtles. Issuance of this IHA will not have any impacts beyond those analyzed in that consultation.

**National Environmental Policy Act**

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Neptune LNG Deepwater Port. A notice of availability was published by MARAD on November 2, 2006 (71 FR 64606). The Final EIS/EIR provides detailed information on the proposed project facilities, construction methods, and analysis of potential impacts on marine mammals. The Final EIS/EIR is incorporated as part of the MMPA record of decision (ROD) for this action.

NMFS was a cooperating agency in the preparation of the Draft and Final EISs based on a Memorandum of Understanding related to the Licensing of Deepwater Ports entered into by the U.S. Department of Commerce along with 10 other government agencies. On June 3, 2008, NMFS adopted the USCG and MARAD FEIS and issued a separate ROD for issuance of authorizations pursuant to sections 101(a)(5)(A) and (D) of the MMPA for the construction and operation of the Neptune LNG Port facility.

**Preliminary Determinations**

NMFS has preliminarily determined that the impact of construction and operation of the Neptune Port Project may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals that may be in close proximity to the Neptune LNG facility and associated pipeline during its construction and operation. These activities are expected to result in some local short-term displacement, resulting in no more than a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence use does not apply for this proposed action as there is no such uses of these species or stocks in the proposed project area.

This preliminary determination is supported by measures described earlier in this document under ''Proposed Mitigation and Monitoring Measures,'' ''Reporting Requirements,'' and MARAD's ROD (and NMFS' Biological Opinion on this action). As a result of the described mitigation measures, no take by injury or death is requested, anticipated, or proposed to be authorized, and the potential for temporary or permanent hearing impairment is very unlikely due to the relatively low sound source levels (and consequently small zone of impact for hearing-related effects). The likelihood of such effects would be avoided through the incorporation of the proposed shut-down mitigation measures mentioned in this document. While the number of marine mammals that may be harassed will depend on the distribution and abundance of marine mammals in the vicinity of the Port facility during construction and operation, the estimated number of marine mammals to be harassed is small.

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Neptune for the taking (by Level B harassment only) incidental to construction and operation of the Neptune Port provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 1, 2009.

**Katy M. Vincent,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–10681 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1614]**

### Termination of Foreign-Trade Subzone 22G; Sanofi-Aventis, Des Plaines, IL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* on July 20, 1994, the Foreign-Trade Zones Board issued a grant of authority to the Illinois International Port District authorizing the establishment of Foreign-Trade Subzone 22G at the Sanofi-Aventis facility, Des Plaines, Illinois (Board Order 700, 59 FR 38431, 07/27/94);

*Whereas,* the Illinois International Port District has advised the Board that zone procedures are no longer needed at the facility and requested voluntary termination of Subzone 22G (FTZ Docket 39–2008);

*Whereas,* the request has been reviewed by the FTZ Staff and U.S. Customs and Border Protection officials, and approval has been recommended;

*Now, therefore,* the Foreign-Trade Zones Board terminates the subzone status of Subzone 22G, effective this date.

Signed at Washington, DC, this 24th day of April, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E9–10799 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, Department of Commerce

**ACTION:** Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for

Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT

[3/18/09 through 4/30/09]

| Firm | Address | Date accepted for filing | Products |
|---|---|---|---|
| Boston Gem & Findings, Inc | 333 Washington Street Boston MA 2108. | 4/17/2009 | 14 karat and 18 karat classically styled jewelry featuring their branded manufactured ''Bella Luna Moonstone.'' The jewelry line consists of earrings, rings, and necklaces. |
| Custom Machining, Inc | 1204 Hale Road Shelbyville IN 46176. | 3/27/2009 | Guidance rails and structural members for elevators and escalators made by forming and machining steel stock. |
| L&D Industries, Inc d.b.a. Royal Machine Co.. | 1214 S.E. Broadway Drive Lee's Summit MO 64081. | 4/20/2009 | Metal parts for use in I.V. pumps and navigation systems. |
| Plasticoid Manufacturing, Inc | 32 North Road, P.O. Box East Windsor CT 06070. | 4/17/2009 | Drafting, graphic arts and computer-aided products, rulers, straightedges, carrying and storage products. |
| R.P. Wakefield Company, Inc | 600 W. Maple St. Waterloo IN 46793. | 4/9/2009 | Wood products for moldings, doors, mantels, panels, casings, frames, etc. |
| Saloom Furniture Co., Inc | 256 Murdock Avenue WIncendon MA 01475. | 3/20/2009 | Dining tables, chairs, buffets and China cabinets in a broad spectrum of styles. Also provides custom furniture finishing and upholstery to their products. |
| Sennco Solutions, Inc | 14407 Coli Plus Drive, Plainfield IL 60544. | 4/17/2009 | Plastic display security devices. |
| Tedd Wood, Inc | Johnstown Road, P.O. Box Thompsontown NJ 17094. | 3/23/2009 | Wooden cabinets with acrylic finishes and melamine interiors. |
| Timberlane, Inc | 150 Domorah Drive Montgomeryville PA 18936. | 3/24/2009 | Wooden and synthetic shutters. |
| Tri-Century Corporation | 385 S. 31 Street Colorado CO 80904. | 3/18/2009 | Machinery, parts and accessories for refilling ink jet cartridges are designed, packaged, and sold to customers. |
| United Scientific, Inc | 15 Yorkton Court Little Canada MN 55117. | 4/17/2009 | Turned and milled metal parts. |
| Aunt Sally's Praline Shops, Inc | 2831 Chartres Street New Orleans LA 70117. | 4/17/2009 | The entire product line of hard and novelty candy for retail sale. |
| The Display Center, Inc | 929 Warren Barrett Drive Hannibal MO 63401. | 4/23/2009 | Point-of-purchase (POP) illuminated display signs. |
| Contract Specialties, Inc d.b.a. Sunburst. | 234 Hartford Avenue Providence RI 02909. | 4/9/2009 | Bracelets, cuff links, anklets, bangle, earrings, posts, drops, clips, pendants, bolos, drop pendants, cords, rings, hair accessories, pins, badges, magnets, spoons, bells, letter openers, thimbles, money clips, key rings, belts, buckles and charms. |
| Algonquin Industries, Inc | 139 Farm Street Bellingham MA 02109. | 4/22/2009 | Precision machining and production machining business, with extensive capabilities in CNC milling, turning, grinding, drilling, programming, cleaning and inspection. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: May 4, 2009.

**William P. Kittredge,**

*Program Officer for TAA.*

[FR Doc. E9–10723 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–24–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Effective Date:* 6/8/2009.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

**Additions**

On 3/13/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (74 FR 10881–10882) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and/or service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

**Regulatory Flexibility Act Certification**

*I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:*

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

**End of Certification**

Accordingly, the following products and services are added to the Procurement List:

*Products*

*NSN:* 6532–00–NIB–0018—Pajama Top, Mens, Small, Khaki.
*NSN:* 6532–00–NIB–0019—Pajama Top, Mens, Medium, Brown.
*NSN:* 6532–00–NIB–0020—Pajama Top, Mens, Large, Cranberry.
*NSN:* 6532–00–NIB–0021—Pajama Top, Mens, X-Large, Beige.
*NSN:* 6532–00–NIB–0022—Pajama Top, Mens, 2X-Large, Hunter Green.
*NSN:* 6532–00–NIB–0023—Pajama Top, Mens, 3X-Large, Navy Blue.
*NSN:* 6532–00–NIB–0024—Pajama Top, Mens, 4X-Large, Gray.
*NSN:* 6532–00–NIB–0025—Pajama Top, Mens, 5X-Large, Green.
*NSN:* 6532–00–NIB–0026—Pajama Pants, Mens, Small, Khaki.
*NSN:* 6532–00–NIB–0027—Pajama Pants, Mens, Medium, Brown.
*NSN:* 6532–00–NIB–0028—Pajama Pants, Mens, Large, Cranberry.
*NSN:* 6532–00–NIB–0029—Pajama Pants, Mens, X-Large Beige.
*NSN:* 6532–00–NIB–0030—Pajama Pants, Mens, 2X-Large, Hunter Green.
*NSN:* 6532–00–NIB–0031—Pajama Pants, Mens, 3X-Large, Navy Blue.
*NSN:* 6532–00–NIB–0032—Pajama Pants, Mens, 4X-Large, Gray.
*NSN:* 6532–00–NIB–0033—Pajama Pants, Mens, 5X-Large, Green.
*NSN:* 6532–00–NIB–0034—Pajamas, Mens, Komograph Stamped.
*NPA:* Central Association for the Blind & Visually Impaired, Utica, NY.
*Contracting Activity:* Department of Veterans Affairs, Hines, IL.
*Coverage:* C-list for the requirements of the Department of Veterans Affairs, Hines, IL.

*Services*

*Service Type/Location:* Custodial Services, Fort Custer Education Center, 2501 26th Street, Augusta, MI.
*NPA:* Navigations, Inc., Battle Creek, MI
*Contracting Activity:* Dept of the Army, Xraw8ac Miarng ElemenT, JF HQ.
*Service Type/Location:* BSC—USCG Seattle, WA, US Coast Guard, Seattle, WA, US Coast Guard Integrated Support Command.
*NPA:* The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
*Contracting Activity:* U.S. Coast Guard, Department of Homeland Security, Seattle, WA.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. E9–10774 Filed 5–7–09; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletion

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to and Deletion From Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete service previously furnished by such agencies.

*Comments Must Be Received On Or Before:* 6/8/2009.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Barry S. Lineback, *Telephone:* (703) 603–7740, *Fax:* (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

**Additions**

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

**End of Certification**

*The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:*

*Products*

*NSN:* 1670–01–529–1202—LCADS High Velocity Parachute.
*NPA:* Winston-Salem Industries for the Blind, Winston-Salem, NC.
*Contracting Activity:* DEPT OF THE ARMY, XR W6BA ACA NATICK, Natick, MA.
*Coverage:* C-list for 33% of total allocation over 5 years for the Department of the Army, Natick, MA.

**Tape, Pressure Sensitive, Yellow & Blue Duct**

*NSN:* 7510–00–NIB–0910—Tape, Painters.
*NSN:* 7510–00–NIB–0860—Tape, Painters.
*NSN:* 7510–00–NIB–0911—Tape, Painters.

*NSN:* 7510–00–NIB–0859—Tape, Duct.
*NSN:* 7510–00–NIB–0858—Tape, Duct.
*NPA:* Cincinnati Association for the Blind, Cincinnati, OH.
*Contracting Activity:* Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
*Coverage:* A-list for the total Government requirement as aggregated by the General Services Administration.

*NSN:* 5120–00–878–5932—Intrenching Tool.
*NPA:* The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
*Contracting Activity:* Federal Acquisition Service, GSA/FSS Tools Acquisition Division I, Kansas City, MO.
*Coverage:* B-list for the broad Government requirement as specified by the General Services Administration.

*Services*

*Service Type/Location:* Custodial Services, VA Midsouth CMOP, 5171 Sam Jared Drive, Murfreesboro, TN.
*NPA:* Bobby Dodd Institute, Inc., Atlanta, GA.
*Contracting Activity:* Veterans Affairs, Department Of, CMOP National Contracting, Leavenworth, KS.

**Deletions**

**Regulatory Flexibility Act Certification**

*I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:*

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

**End of Certification**

The following service is proposed for deletion from the Procurement List:

*Services*

*Service Type/Location:* Janitorial/Custodial, Fort Bliss: Main Store Building 1735, AAFES, Main Store—Building 1735, Fort Bliss, TX.
*NPA:* Goodwill Industries of El Paso, El Paso, TX.
*Contracting Activity:* Dept. of the Army, XR W40M Natl. Region Contract OFC, Washington, DC.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. E9–10775 Filed 5–7–09; 8:45 am]

**BILLING CODE 6353–01–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Notice Inviting Preliminary Informal Public Input

**AGENCY:** Corporation for National and Community Service

**ACTION:** Notice inviting preliminary public input.

**SUMMARY:** On April 21, 2009, President Obama signed the bi-partisan Edward M. Kennedy Serve America Act (the Act). The Act takes effect on October 1, 2009 and calls upon the Corporation for National and Community Service (''the Corporation'') and its partners to expand opportunities for all Americans to serve, to focus on important national outcomes, to be a catalyst for social innovation, and to support the nonprofit sector. In achieving these goals, the Corporation must look for new ways to build on the assets of federal and private programs while reducing unnecessary burdens.

The Serve America Act authorizes the Corporation not only to expand existing programs but to add several new programs and initiatives, ultimately expanding the core mission of the agency. Implementation of this historic legislation and strategic planning for the future will require the best ideas and thoughts from around the country.

The Corporation is inviting preliminary informal input from the public concerning the implementation of the Serve America Act. We will accept input in writing, as described below, or in person at one of six listening sessions we will hold across the country in May. We will also be holding several conference calls, to be scheduled at a later date. Please *see* **SUPPLEMENTARY INFORMATION** for some topics to consider when formulating input. The Corporation will not respond individually to those providing input, but will consider the input in drafting any Notice of Proposed Rulemaking, in developing the agency's strategic plan, and in otherwise developing guidelines around new and existing programs. The public will have a separate opportunity to provide formal comment on any proposed rule the Corporation publishes for comment in 2009 or thereafter.

Please note that this Notice does not request comments on individual application forms used under the various programs of the Corporation. The Corporation periodically publishes separate requests for comments concerning such application forms.

**DATES:** Please submit written input to the Corporation as soon as possible. We will consider input as we begin drafting proposed regulations and as we develop our new five-year strategic plan. In addition, the Corporation will hold six public input meetings across the country, and conference calls to seek in-person input under this Notice. *See* **SUPPLEMENTARY INFORMATION** for public input meeting information. Conference calls will be scheduled at a later date; additional information can be found at *http://www.nationalservice.gov/serveact*.

**ADDRESSES:** You may submit written input to the Corporation by any of the following methods:

(1) Electronically via e-mail to *ServeAmericaAct@cns.gov*.

(2) By fax to (202) 606–3467, with attention to Amy Borgstrom, Docket Manager.

(3) By mail sent to: Amy Borgstrom, Docket Manager, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525.

(4) On the Corporation's Serve America implementation Web site, visit *http://www.nationalservice.gov/serveact*.

Members of the public may review copies of all communications received at the Corporation's Washington, DC headquarters. Input submitted on the Serve America implementation Web site is available for review online.

**FOR FURTHER INFORMATION CONTACT:** Amy Borgstrom, Docket Manager, Corporation for National and Community Service, (202) 606–6930, TDD (202) 606–3472. Persons with visual impairments may request this rule in an alternate format.

**SUPPLEMENTARY INFORMATION:** For more information on the Corporation and its programs, please visit our Web site at *http://www.nationalservice.gov*.

The Corporation is inviting preliminary informal input from the public concerning the implementation of the Serve America Act. We will accept input in writing, as described below, or in person at one of six listening sessions we will hold across the country in May. We will also be holding several conference calls, to be scheduled at a later date. The Corporation will not respond individually to those providing input, but will consider the input in drafting any Notice of Proposed Rulemaking, in developing the agency's strategic plan, and in otherwise developing guidelines around new and existing programs. The public will have a separate opportunity to provide formal comment on any proposed rule the Corporation publishes for comment in 2009 or thereafter. When providing in-person or written

input on the issues outlined above, please consider the following questions:

**Expanding Opportunities To Serve**

How can CNCS and its partners attract people of all ages to serve? How should the Corporation and its partners identify and nurture new programs that can host additional AmeriCorps slots? What are some promising approaches to promoting more service programs focused on education, healthy futures, clean energy, veterans and economic opportunity? What do State Commissions, national intermediaries, and other partners view as the best strategies for reaching and developing new program sponsors? What kind(s) of assistance do grantees need to continue delivering high quality programs and to expand? Should the Service Corps outlined in the Act (education, healthy futures, clean energy, veterans and economic opportunity) be focus areas within AmeriCorps or programs with their own identity? How should CNCS and its partners manage the growth of service brands?

**Combining Assets for Greater Impact**

How can CNCS and its programs capitalize on the diversity of our programs while also coordinating efforts creatively and effectively for maximum impact? How can the Corporation stimulate new partnerships, both within the government sector and with businesses and foundations, to combine our assets for greater impact?

**Demonstrating Impact**

In what ways can service produce the greatest impact? How do we better demonstrate impact, and as we move to more standardized performance measures, how do we preserve the diversity of programs and localized nature of solutions? What is the best way to identify program models that work? How should the Corporation transition from the current practice of self-nominated performance measures in AmeriCorps to standardized measures? For example, the Act sets forth standard measures for each of the five Service Corps. In education, the legislation includes performance measures such as: Student engagement, student attendance, student behavior, and student academic achievement. What support do grantees need to implement these new measures? Should the Corporation establish standard national performance measures in VISTA, Senior Corps and Learn and Serve? If so, how? Should there be a few measures that apply to all Corporation programs?

**Spurring Innovation and Supporting the Nonprofit Sector**

The Act calls on the Corporation to become a hub of innovation and support for the nonprofit sector as a whole. How should the Corporation implement that goal? What does the sector need that CNCS can provide with expanded service opportunities? How should the Social Innovation Fund operate in order to provide seed money and scale-up capital for innovative and evidence-based programs? How should the Volunteer Generation Fund operate to ensure we are maximizing its potential to support the recruitment and management of volunteers? How should the Nonprofit Capacity Building Program be implemented to provide training and technical assistance to small and mid-sized non-profits? How should the Serve America Fellows and Encore Fellows programs be implemented? How much capacity is required of commissions to launch the Serve America Fellows program? How should we develop the list of qualified eligible organizations? How can we effectively spur innovation in service-learning? How should the new Innovative Service-Learning funds be utilized in Learn and Serve America? How should the Silver Scholarships program be implemented? How should the Summer of Service program be implemented?

**Achieving Growth Through Simpler Grantmaking**

How can we make it easier and more attractive for non-profits to work with CNCS? What are ways to reduce burden, avoid duplication and increase efficiency? How can the Corporation consolidate the application process most effectively? How can the Corporation reduce reporting requirements while still ensuring appropriate use of federal funds? The Corporation intends to implement fixed amount grants for programs in which the cost of running the program is substantially more than the amount received in the grant. To accomplish this, the Corporation must know the costs of each type of program in order to set the ''fixed'' grant amount. From the grantee perspective, what are the known costs for programs with part-time members? What are the operational benefits/challenges from the grantee perspective of fixed-amount grants? How do we structure fixed-price grants so that they realize the promise of a reduction in burden, while at the same time providing better information about impact?

*Conference Calls and Public Input Meetings*

The Corporation is planning six public input meetings across the country and will also be scheduling conference calls. The public input meetings have been scheduled as follows:

May 13, 1–4 p.m.—Springfield, MO
May 14, 1–4 p.m.—Columbia, SC
May 20, 12:30–2:30 p.m.—Washington, DC (During public comment segment at conclusion of Public Board Meeting).
May 22, 9 a.m.–12 p.m.—Boston, MA
May 27, 9 a.m.–12 p.m.—Salt Lake City, UT
May 28, 1–4 p.m.—New Orleans, LA

Please check our Web site at *http://www.nationalservice.gov/serveact* for further information on the times, locations, and other relevant information regarding these meetings and conference calls.

Dated: May 5, 2009.

**Frank R. Trinity,**

*General Counsel.*

[FR Doc. E9–10831 Filed 5–7–09; 8:45 am]

**BILLING CODE 6050–$$–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[DoD–2007–OS–0136]**

### Defense Transportation Regulation, Part IV

**AGENCY:** Department of Defense; United States Transportation Command (USTRANSCOM).

**ACTION:** Notice.

**SUMMARY:** The Department of Defense announces completion of the review and disposition of comments received in connection with Federal Register Notice April 1, 2008 (73 FR 17327) Phase II Interim Final Business Rules for the Families First Personal Property Program. Final disposition of comments is located on the USTRANSCOM Web site at *http://www.transcom.mil/j5/pt/dtr_part_iv.cfm.* This notice announces:

1. All references to Families First are changed to ''Defense Personal Property Program (DP3)''.

2. DP3 Phase II business rules are final and contained in the Defense Transportation Regulation (DTR) Part IV (DTR 4500.9–R), where applicable.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Teague, United States Transportation Command, TCJ5/4–PT, 508 Scott Drive, Scott Air Force Base, IL 62225–5357; 618) 229–1985.

**SUPPLEMENTARY INFORMATION:** All changes resulting from comments received are identified on the disposition excel spreadsheet located on the USTRANSCOM Web site.

Dated: May 5, 2009.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E9–10707 Filed 5–7–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Board of Visitors Meeting

**AGENCY:** Department of Defense, Defense Acquisition University.

**ACTION:** Board of Visitors Meeting.

**SUMMARY:** The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at Defense Acquisition University South Region, Huntsville, AL. The purpose of this meeting is to report back to the BoV on continuing items of interest.

**DATES:** May 20, 2009 from 0900–1500.

**ADDRESSES:** Defense Acquisition University, 6767 Old Madison Pike, Building 7, Huntsville, AL 35806.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christen Goulding at 703–805–5134.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Christen Goulding at 703–805–5134.

Dated: May 5, 2009.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E9–10709 Filed 5–7–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to receive briefings on Women's Role in Combat and Wounded Warrior issues, view Lioness film, and review pilot and upcoming installation visits. The meeting is open to the public, subject to the availability of space.

**DATES:** May 27–28, 2009, 8:30 a.m.–5 p.m.

**ADDRESSES:** Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** MSgt Robert Bowling, USAF, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. *Robert.bowling@osd.mil* Telephone (703) 697–2122. Fax (703) 614–6233.

**SUPPLEMENTARY INFORMATION:** Meeting agenda.

**Wednesday, May 27, 2009 8:30 a.m.–5 p.m.**

—Welcome and announcements
—Lioness film showing
—Staff Judge Advocate legal discussion on OSD Policy on the assignment of women in the armed forces (Direct ground combat definition and assignment rules)
—Book Review: The Lonely Soldier
—Sexual Assault Prevention and Response Office discussion
—Public Forum

**Thursday, May 28, 2009 8:30 a.m.–5 p.m.**

—Welcome and announcements
—Review research instruments (ICF)
—Review pilot and upcoming installation visits
—Comprehensive Health Care for Women Veterans briefing
—Foundation of care, management, and transition support for recovering service members and their families briefing
—Office of Transition Policy and Care Coordinator briefing

Interested persons may submit a written statement for consideration by the Defense Department Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact listed above at the address detailed above NLT 3 p.m., Tuesday, May 26, 2009. If a written statement is not received by Tuesday, May 26, 2009, prior to the meeting which is the subject of this notice, then it may not be provided to or considered by the Defense Department Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Department Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Department Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement must be submitted as above. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who will be making an oral presentation will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Wednesday, May 27, 2009 from 4:30 p.m. to 5 p.m. before the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

Dated: May 5, 2009.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E9–10704 Filed 5–7–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meeting date change.

**SUMMARY:** On Monday, March 16, 2009 (74 FR 11090–11091) the Department of Defense announced closed meetings of the Defense Science Board (DSB) Spring quarterly. These meetings have been rescheduled from May 13–14, 2009, to June 3–4, 2009; at the Pentagon.

**FOR FURTHER INFORMATION CONTACT:** Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *debra.rose@osd.mil*, or via phone at (703) 571–0084.

Dated: May 5, 2009.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E9–10706 Filed 5–7–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Availability for the Draft Environmental Impact Statement (DEIS) for Development and Implementation of Range-Wide Mission and Major Capabilities at White Sands Missile Range (WSMR), New Mexico

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of Availability (NOA).

**SUMMARY:** The Department of the Army announces the availability of a DEIS that assesses environmental impacts associated with new mission requirements and new test and training capabilities at WSMR. It analyzes the impacts of land use changes that provide for increased research, development, and testing activities. The impacts of expanded off-road maneuver and facilities needed to support increased Future Combat Systems testing and the stationing and training of a Heavy Brigade Combat Team (HBCT) of approximately 3,800 Soldiers is also analyzed.

**DATES:** The public comment period will end 45 days after publication of an NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

**ADDRESSES:** For specific questions regarding the DEIS, please contact the White Sands Test Center; Operations Office, Attention: Catherine Giblin, 124 Crozier Street, Building 124, Room B–15, White Sands Missile Range, NM 88002. Written comments may be mailed to the above address, faxed to (575) 678–4082, or e-mailed to: *wsmreis@conus.army.mil.*

**FOR FURTHER INFORMATION CONTACT:** Monte Marlin, Public Affairs Office, Building 1782, Headquarters Avenue, White Sands Missile Range, NM 88002; (575) 678–1134; or e-mail *monte.marlin@us.army.mil.*

**SUPPLEMENTARY INFORMATION:** The proposed action would result in a flexible, capabilities-based land use and airspace plan able to accommodate rapidly evolving customer needs, support current and future mission activities, and support a full range of test and training efforts from individual components up through major joint and multinational programs. The DEIS assesses the environmental impacts associated with the testing, training, and stationing activities under the proposed plan. Testing typically involves activities such as missile flight tests, aerial intercepts, air-delivered munitions tests against ground targets, directed energy and various weapon systems tests. Training involves military personnel using the land for maneuver as well as for field evaluation of weapons, equipment, communication systems, or other objectives. Testing, training and stationing require additional infrastructure such as barracks, motor pools, and administrative buildings. Implementation of the Proposed Action is anticipated in 2009 and would begin following the completion of a Final EIS and signing of a Record of Decision (ROD).

The stationing of an HBCT at WSMR and other force structure realignment actions across the Army were analyzed in the 2007 Final Programmatic Environmental Impact Statement for Army Growth and Force Structure Realignment. The ROD determined that WSMR would receive an HBCT in 2013. The development and implementation of a land use plan and airspace is intended to more fully realize and integrate the capabilities of the WSMR primary mission (research, development, testing, and evaluation (RDTE)) with new training capabilities and Army stationing decisions. Establishing new test and training capabilities requires changing land use designations within the current installation boundaries. These changes would support current and future requirements and allow off-road vehicle maneuver on designated portions of the installation. WSMR will maintain its current RDTE mission and continue to support testing objectives of all military services and federal agencies.

The DEIS evaluates and discloses the environmental effects associated with two alternatives and a no action alternative on the natural, cultural, and man made environments at WSMR and in the southern New Mexico region. The no action alternative includes current test capabilities and land use designations with current levels of operations and activities. It also provides the baseline conditions for comparison to the other alternatives. Alternative 1 changes land use to expand testing and maneuver capabilities to include Future Combat Systems or similar programs. It supports the Grow the Army decision to station an HBCT at WSMR by expanding the cantonment area and adding additional supporting infrastructure. Alternative 2 includes those activities described in Alternative 1 and adds additional off-road maneuver areas for testing and training on WSMR.

The Army invites full public participation to promote open communication and better decision making, including comment on the DEIS and participation in public meetings, which will be announced in advance in local news media. The DEIS is available at local libraries surrounding WSMR and may also be accessed at *http://www.wsmr.army.mil.* A Preferred Alternative has not been selected at this time. Comments from the public will be considered before any decision is made regarding the Preferred Alternative or implementation of the Proposed Action.

Dated: April 27, 2009.

**Addison D. Davis, IV,**

*Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).*

[FR Doc. E9–10603 Filed 5–7–09; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Amended Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Regional Watershed Supply Project, Notice of Additional Public Scoping Meetings and Extension of Scoping Period

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

**ACTION:** Notice; extension of comment period; additional public scoping meetings.

**SUMMARY:** The public scoping comment period for the Intent to Prepare an Environmental Impact Statement for the Regional Watershed Supply Project by Million Conservation Resource Group, published in the **Federal Register** on Friday, March 20, 2009 (74 FR 11920), required comments be submitted by May 19, 2009 following publication in the **Federal Register**. The comment period has been extended to July 27, 2009. In addition, the COE will be conducting two additional public scoping meetings to describe the Project, preliminary alternatives, the NEPA compliance process, and to solicit input on the issues and alternatives to be evaluated and other related matters.

Scoping meetings will be held on:

1. June 10, 2009, 6:30 to 9 p.m., Center of Craig, 601 Yampa Ave, Craig, CO.

2. June 11, 2009, 6:30 to 9 p.m., Mesa County Fairgrounds, 2785 US Hwy 50, Grand Junction, CO.

**FOR FURTHER INFORMATION CONTACT:** Questions and comments regarding the proposed action and EIS should be addressed to Ms. Rena Brand, Project Manager, U.S. Army Corps of Engineers, Denver Regulatory Office, 9307 S.

Wadsworth Blvd., Littleton, CO 80128–6901; (303) 979–4120; *mcrg.eis@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** None.

**Timothy T. Carey,**

*Chief, Denver Regulatory Office.*

[FR Doc. E9–10734 Filed 5–7–09; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Board on Coastal Engineering Research

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

*Name of Committee:* Board on Coastal Engineering Research.

*Date of Meeting:* June 3–4, 2009.

*Place:* Douglas Pavilion A Ballroom, Manchester Grand Hyatt San Diego, One Market Place, San Diego, CA 92101.

*Time:* 8 a.m. to 5:15 p.m. (June 3, 2009); 8 a.m. to 5 p.m. (June 4, 2009).

**FOR FURTHER INFORMATION CONTACT:** Inquiries and notice of intent to attend the meeting may be addressed to COL Gary E. Johnston, Executive Secretary, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

**SUPPLEMENTARY INFORMATION:**

The Board provides broad policy guidance and review of plans and fund requirements for the conduct of research and development of research projects in consonance with the needs of the coastal engineering field and the objectives of the Chief of Engineers.

*Proposed Agenda:* The goal of the meeting is to examine data needs to enable systems-scale decision making for coastal projects and management. Presentations on Wednesday morning, June 3, will consist of Coastal Working Group Meeting Report; Introduction—Overall Vision of Corps as Data Developers and Users; Flood and Coastal—Data Requirements for Coastal Project Planning, Engineering, Construction, and Operations; Emergency Management—Forecasting Hurricane Gustav, from Numerical Models to -time Data; Navigation—Data Requirements for Coastal Navigation Project Planning, Engineering, Construction, and Operations; Coastal, Navigation, and Emergency Response Data Use; Gulf of Mexico Alliance (GOMA)—Multi-state Data Requirements; and National Oceanic and Atmospheric Administration's (NOAA's) Digital Coast. The afternoon presentations will include Data to Support Climate Change Studies; Impact of Data on Marine Transportation System Including Management of Threatened and Endangered Species; National Plan on Ocean and Coastal Mapping (OCM)—Long-term Plans/Direction for OCM; Future of Integrated Ocean Observing System (IOOS)—Long-term Plans/Directions for IOOS; Future Coast—Organized and Sustainable or Chaotic and Dying?—Data Needed to Quantify Conditions and Monitor Change; and Challenges in Future Requirements and Directions: The Way Ahead.

The presentations on Thursday, June 4, 2009, include National Perspective on Gaps in Coastal Data; California Sediment Management—Goals, Relationships, Data Needs; Technical Tools for Regional Sediment Management; Regional Sediment Management Plan Development throughout California, Highlighting the San Diego Region; USGS Data Collection Activities in California; San Francisco District Costal Activities and Coastal Watershed Demonstration at Santa Cruz Harbor; and Los Angeles District Activities and Data Utilization.

Thursday afternoon, June 4, is devoted to a bus field trip for general attendees and the Board Executive Session to discuss ongoing initiatives and actions.

These meetings are open to the public. Participation by the public is scheduled for 12 p.m. on Thursday, June 4.

The entire meeting and field trip are open to the public, but since seating capacity is limited, advance notice of attendance is required. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E9–10736 Filed 5–7–09; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Intelligence Agency National Defense Intelligence College Board of Visitors Closed Meeting

**AGENCY:** Department of Defense, Defense Intelligence Agency, National Defense Intelligence College.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the Defense Intelligence Agency National Defense Intelligence College Board of Visitors has been scheduled as follows:

**DATES:** Tuesday, June 2, 2009 (8 a.m. to 5 p.m.) and Wednesday, June 3, 2009 (8 a.m. to 12 p.m.).

**ADDRESSES:** National Defense Intelligence College, Washington, DC 20340–5100.

**FOR FURTHER INFORMATION CONTACT:** Mr. A. Denis Clift, President, DIA National Defense Intelligence College, Washington, DC 20340–5100 (202/231–3344).

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in section 552b (c) (1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Defense Intelligence College.

Dated: May 5, 2009.

**Patricia L. Toppings,**

*OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. E9–10705 Filed 5–7–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Rescission of Draft Environmental Impact Statement for Proposed Dam Powerhouse Rehabilitations and Possible Operational Changes at the Wolf Creek, Center Hill, and Dale Hollow Dams, Kentucky and Tennessee

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), the

U.S. Army Corps of Engineers (Corps), Nashville District published its intention to prepare a Draft Environmental Impact Statement relating to proposed dam powerhouse rehabilitations and possible operational changes at the Wolf Creek, Center Hill, and Dale Hollow Dams in Kentucky and Tennessee. Instead, the Corps has decided to evaluate impacts associated with Center Hill Dam powerhouse rehabilitation with an Environmental Assessment (EA). Separate EAs will also be prepared for powerhouse rehabilitations at Wolf Creek and Dale Hollow Dams in the future. Each of these rehabilitation projects are unconnected stand-alone projects that will occur at different times and in different geographic areas.

**ADDRESSES:** Send written comments and suggestions concerning this proposed project to Chip Hall, U.S. Army Corps of Engineers, Nashville District, P.O. Box 1070, Nashville, TN 37202–1070. *Electronic mail: hydropower.rehab@Lrn02.usace.army.miL.* Requests to be placed on the mailing list should also be sent to this address.

**FOR FURTHER INFORMATION CONTACT:** Chip Hall, *Telephone:* 615–736–7666.

**SUPPLEMENTARY INFORMATION:**

1. *Background.* The hydropower major rehabilitation evaluation study for Center Hill Dam was conducted under the authorities of ER 1130–2.500, December 27, 1996, Partners and Support (Work Management Policies), Chapter 3—Major Rehabilitation Program; EP 1130–2.500, December 27, 1996, Partners and Support (Work Management Policies), Chapter 3—Major Rehabilitation Program; and EC 11–2–179, March 13, 2000, Corps of Engineers Civil Works Directorate Program, Program Development Guidance, Fiscal Year 2000. Key proposed project features or issues that were evaluated in the DEIS included the following:

a. Rehabilitation of turbines including installation of Auto Venting Turbines to improve dissolved oxygen (DO) levels in the tailwaters.

b. Providing minimum releases to ensure continuous flows between periods of generation.

c. Evaluating the effects of increased tailwater flows on downstream resources, and changes to the hydraulics and hydrology of the rivers.

d. Other alternatives to be studied included: No Action; restoration to the ''original'' 1948 condition; refurbishing existing units; oxygenating water in the dam forebays prior to release; and releasing water through the sluice gates.

2. *Public Participation.* This study was originally initiated in 2003, at which time a Scoping Letter was issued to all known interested individuals and a Notice of Intent (NOI) was published in the **Federal Register** on September 25, 2003 (68 FR 55376). Due to funding constraints the study was stopped in 2004 before a Draft EIS could be prepared. The study was reinitiated in November 2007 and a second NOI published in the **Federal Register** on November 26, 2007 (72 FR 65950). A Draft Environmental Impact Statement (DEIS) was distributed to pertinent federal and state agencies and a Notice of Availability was placed in the **Federal Register** in April 11, 2008 (73 FR 19834).

3. *Changes during the Environmental Review Process.* Since the DEIS was distributed to the public, it was determined that turbine operations, post proposed power plant rehabilitations, would be subject to the existing Water Control Manuals which govern how each Dam and Reservoir Project and the Cumberland System as a whole is operated. The turbines would be capable of discharging more water; however, turbine gate settings will limit discharges under non-spilling operations to previously existing rates. This significantly reduces the potential impacts of the alternatives being evaluated as flows during normal hydropower generation would be unchanged. However, during extreme flood control situations, it is possible that water that was previously spilled from the project could be passed through a turbine. At the onset of the DEIS, potentially higher hydropower discharge rates were being considered for normal post-rehab operations. The DEIS did not take this limitation on flows into account.

It was also determined that because Dale Hollow Dam did not have any specific recommendations or proposals for rehab, it is premature for it to have been included with Center Hill and Wolf Creek projects. Therefore, it was determined that the DEIS should be rescinded and that an Environmental Assessment should be prepared to determine any significant impacts related to Center Hill Hydropower Rehabilitation Project.

4. *Schedule.* It is anticipated that an Environmental Assessment will be prepared for the Center Hill Hydropower Rehabilitation Project and will be available for Public Review by June 2009.

**Bernard R. Lindstrom,**

*Lieutenant Colonel, Corps of Engineers, District Engineer.*

[FR Doc. E9–10731 Filed 5–7–09; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education

**SUMMARY:** The 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 June 8, 2009.

**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 send e-mail to *oira_submission@omb.eop.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 Director, 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: May 5, 2009.

**Angela C. Arrington,**

*Director, IC Clearance Official, Regulatory Information Management Services, Office of Management.*

**Federal Student Aid**

*Type of Review:* Extension.

*Title:* Guaranty Agency Financial Report.

*Frequency:* Monthly & Annually.

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

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 468.

*Burden Hours:* 25,740.

*Abstract:* The Guaranty Agency Financial Report (GAFR), ED Form 2000, is used by the thirty-six (36) guaranty agencies under the FFEL program, authorized by Title IV, Part B of the HEA of 1965, as amended. Guaranty agencies use the GAFR to: (1) Request reinsurance from ED; (2) request payment on death, disability, closed school, and false certification claim payments to lenders; (3) remit to ED refunds on rehabilitated loans and consolidation loans; (4) remit to ED default and wage garnishment collections. ED also uses report data to monitor the guaranty agency's financial activities (agency federal fund and agency operating fund) and each agency's federal receivable balance.

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 3949. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E9–10778 Filed 5–7–09; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

## Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education, FIPSE- Special Focus Competition: The U.S.-Russia Program: Improving Research and Educational Activities in Higher Education; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

**Note:** This notice supersedes the announcement published on April 29, 2009 (74 FR 19540–19543), which instructed applicants to apply for grants using the Department of Education's e-Grant system. This notice instructs applicants to apply for grants, under this program, via the government wide Grants.gov system.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116S.

*Dates:*

*Applications Available:* May 8, 2009.

*Deadline for Transmittal of Applications:* July 7, 2009.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The U.S.-Russia Program encourages cooperative education programs between institutions of higher education (IHEs) in the Russian Federation and the United States of America. The objective of this program is to provide grants that demonstrate partnerships between Russian and American IHEs that contribute to the development and promotion of educational opportunities between the two nations. The aim is to use the educational content as the vehicle for learning languages, cultural appreciation, sharing knowledge, and forming long-term relationships between the two countries. In the context of the modern international society and a global economy, an understanding of the cultural context plays a vital role in education and training.

Thus, this program is designed to support the formation of educational consortia of American and Russian IHEs to encourage mutual socio-cultural-linguistic cooperation; the joint development of curricula, educational materials, and other types of educational and methodological activities; and related educational student and staff mobility (exchanges).

Russian institutions will apply to The Russian Ministry of Education and Science for funding.

*Priority:* Under this competition, we are particularly interested in applications that address the following priority.

*Invitational Priority:* For FY 2009, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

Applicants must select one academic discipline as the subject area for their grant proposal in this U.S.-Russia competition. For the year 2009, the Department and the Russian Ministry have jointly decided to make up to three awards, as follows:

(A) Environmental Science Studies—No more than one award.

(B) Biotechnology—No more than one award.

(C) Any discipline, other than (A) and (B)—No more than one award.

Applications are invited from institutions of higher education with the capacity to contribute to a collaborative project in the areas listed with a Russian institution. The consortium partners, through promoting the study of and communication in foreign languages, are expected to increase awareness and understanding of the two cultures, and to strengthen the professional and scholarly ties between the two countries.

The Russian institutions, as part of a U.S.-Russian consortium, will receive separate but equivalent funding from the Russian Ministry of Education and Science.

*Program Authority:* 20 U.S.C. 1138–1138d.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

**II. Award Information**

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $400,000.

*Estimated Range of Awards:* $100,000–$150,000.

*Estimated Average Size of Awards:* $133,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register.**

*Estimated Number of Awards:* 3.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

**III. Eligibility Information**

1. *Eligible Applicants:* IHEs or combinations of IHEs and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

**IV. Application and Submission Information**

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://e-grants.ed.gov*. To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. *Fax:* (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA Number 84.116S.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative [Part III of the application] is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to the equivalent of no more than 20 typed pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

*Applications Available:* May 8, 2009.

*Deadline for Transmittal of Applications:* July 7, 2009.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR part 74. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the U.S.-Russia program: Improving Research and Educational Activities in Higher Education, CFDA Number 84.116S, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the U.S.-Russia program at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.116, not 84.116S).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• 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. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition, you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Krish Mathur, U.S. Department of Education, 1990 K Street, NW., Room 6155, Washington, DC 20006–8544. *Fax:* (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.116S), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.116S), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

*Selection Criteria:* The selection criteria for evaluating the applications for this program are from 34 CFR 75.210 and are listed in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department will use the following measures to assess the performance of this program:

(a) The percentage of FIPSE grantees reporting project dissemination to others.

(b) The percentage of FIPSE projects reporting institutionalization on their home campuses.

If funded, you will be asked to collect and report data on these measures in your project's annual performance report (34 CFR 75.590). Applicants are also advised to consider these two measures in conceptualizing the design, implementation, and evaluation of the proposed project because of their importance in the application review process. Collection of data on these measures should be part of the project evaluation plan, along with any measures of progress on goals and objectives that are specific to your project.

## VII. Agency Contacts

*For Further Information Contact:* Krish Mathur, FIPSE—Fund for the Improvement of Postsecondary Education, 1990 K Street, NW., Room 6155, Washington, DC 20006–8544. *Telephone:* (202) 502–7512 or by e-mail: *krish.mathur@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

*Delegation of Authority:* The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions of the Assistant Secretary for Postsecondary Education.

Dated: May 5, 2009.

**Daniel T. Madzelan,**

*Director, Forecasting and Policy Analysis.*

[FR Doc. E9–10809 Filed 5–7–09; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

### Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) CFDA No. 84.334S (State Grants) and 84.334A (Partnership Grants)

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice of intent to fund down the fiscal year (FY) 2008 grant slate for the GEAR UP Program.

**SUMMARY:** The Secretary intends to use the grant slate developed in FY 2008 for the GEAR UP Program authorized by Title IV, Part A, of the Higher Education Act of 1965, as amended (HEA), to make new grant awards in FY 2009. The Secretary takes this action because a significant number of high-quality applications remain on last year's grant slate. We expect to use an estimated $9,789,000 for new awards in FY 2009.

**FOR FURTHER INFORMATION CONTACT:** James Davis, U.S. Department of Education, 1990 K Street, NW., room 6109, Washington, DC 20006–8524. *Telephone:* (202) 502–7676 or via *Internet: James.Davis@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:**

## Background

On November 5, 2007, we published a notice in the **Federal Register** (72 FR 62499) inviting applications for new awards under the GEAR UP Program.

In response to this notice, we received a significant number of high-quality applications and made seven new State grant awards and 31 new Partnership grant awards. However, many applications that were awarded high scores by peer reviewers did not receive funding in FY 2008 due to the level of appropriations.

The Department's FY 2009 appropriation is sufficient to allow the Department to make continuation awards to the 38 current grantees, and have funds still available for new awards under this program for FY 2009. Rather than using program funds for a new peer review process, the Department has decided to use the remaining funds after continuation awards are made to select grantees in FY 2009 from the existing slate of applicants. This slate was developed during the FY 2008 competition using the selection criteria referenced in the **Federal Register** notice.

**Note:** To be eligible to receive a grant pursuant to this notice, all applicants being considered for funding based on the funding slate for the FY 2008 competition must meet all statutory and regulatory eligibility criteria and other requirements for this program.

*Program Authority:* 20 U.S.C. 1070a–21—1070–28.

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister*. To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

*Delegation of Authority:* The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions of the Assistant Secretary for Postsecondary Education.

Dated: May 5, 2009.

**Daniel T. Madzelan,**

*Director, Forecasting and Policy Analysis.*

[FR Doc. E9–10810 Filed 5–7–09; 8:45 am]

**BILLING CODE 4000–01–P**

# ELECTION ASSISTANCE COMMISSION

## Sunshine Act Notice

**AGENCY:** U.S. Election Assistance Commission.

**ACTION:** Notice of Virtual Public Forum for EAC Board of Advisors (Amended).

**DATE AND TIME:** Monday, May 11, 2009, 9 a.m. EDT through Friday, May 15, 2009, 9 p.m. EDT.

**PLACE:** EAC Board of Advisors Virtual Meeting Room at *http://www.eac.gov*. Once at the main page of EAC's Web site, viewers should click the link to the Board of Advisors Virtual Meeting Room. The virtual meeting room will open on Monday, May 11, 2009, at 9 a.m. EDT and will close on Friday, May 15, 2009, at 9 p.m. EDT. The site will be available 24 hours per day during that 5-day period.

**PURPOSE:** The EAC Board of Advisors will review and provide comment on Phase I of the draft Election Operations Assessment. Phase I of the project is an information gathering and modeling phase designed to create the framework for the remaining two phases of the project. The scope of the document and the project that created it are geared toward the procedures and equipment that move the ballot through the electoral process. The end goal of the election operations assessment is to create a work product that will allow the EAC to evaluate security risks to various types of voting systems (*i.e.* hand counted paper ballots, Precinct Based Optical Scan, or Remote Electronic Systems, etc.) and in order to better inform their work with future iterations of the Voluntary Voting System Guidelines. In addition, the assessment will allow policy makers and election officials to assess the potential risks to systems that they are looking to purchase in the future.

The EAC Board of Advisors Virtual Meeting Room was established to enable the Board of Advisors to conduct business in an efficient manner in a public forum, including being able to review and discuss draft documents, when it is not feasible for an in-person board meeting. The Board of Advisors will not take any votes or propose any resolutions during the 5-day forum of May 11–15, 2009.

This activity is open to the public. The public may view the Proceedings of this forum by visiting the eac board of advisors Virtual meeting room at *http://www.eac.gov* at any time between Monday, May 11, 2009, 9 a.m. EDT and Friday, May 15, 2009, 9 p.m. EDT. The public also may view the election operations assessment, which will be posted on EAC's Web site beginning May 11, 2009. The public may file written statements to the EAC board of advisors at *boardofadvisors@eac.gov*. Data on EAC's Web site is accessible to visitors with disabilities and meets the requirements of section 508 of the rehabilitation act.

This meeting will be open to the public.

**STATEMENT OF EXCEPTIONAL CIRCUMSTANCES:** The May 5, 2009 notice of the EAC Board of Advisors Virtual Meeting inadvertently omitted the following important information: Notice of the special forum will not be published in the **Federal Register** 15 days prior to the dates that the forum will be open. Late notice was unavoidable due to the short timeline remaining in Phase I of the Elections Operation Assessment project. The timetable for the noticed forum was expedited to allow the EAC Board of Advisors an opportunity to review and comment on the draft document.

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener, *Telephone:* (202) 566–3100.

**Gineen Bresso Beach,**

*Chair, U.S. Election Assistance Commission.*

[FR Doc. E9–10843 Filed 5–6–09; 11:15 am]

**BILLING CODE 6820–KF–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 1881–054]**

### PPL Holtwood, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 1, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Renewed amendment of license to increase the installed capacity.

b. *Project No.:* 1881–054.

c. *Date Filed:* April 9, 2009.

d. *Applicant:* PPL Holtwood, LLC (PPL).

e. *Name of Project:* Holtwood Hydroelectric Project.

f. *Location:* The project is located on the Susquehanna River, in Lancaster and York Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Dennis J. Murphy, Vice President & Chief Operating Officer, PPL Holtwood, LLC, Two North Ninth Street (GENPL6), Allentown, Pennsylvania 18101; telephone (610) 774–4316.

i. *FERC Contact:* Linda Stewart, telephone (202) 502–6680, and e-mail address *linda.stewart@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* June 1, 2009.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–1881–054) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Background:* On December 20, 2007, and supplemented on January 4, February 20, June 19, July 7, August 27, and October 3, 2008, PPL filed an application to amend its license for the Holtwood Project (sub docket P–1881–050). By letter filed December 8, 2008, PPL withdrew its license amendment application. The withdrawal became effective 15 days later, on December 23, 2008.

In its application, PPL proposed to: (1) Construct a new powerhouse and install new turbines that would increase the total installed capacity of the project from 107.2 megawatts (MW) to 195.5 MW; (2) construct a new skimmer wall and larger forebay; (3) reconfigure the existing fish lift, reroute the discharge of Unit 1 in the existing powerhouse, and excavate in the project tailrace and Piney Channel to improve migratory fish passage; (4) provide minimum flows and conduct studies of the effectiveness of the modified fish passage facilities and flow releases; (5) improve existing and construct new recreational facilities; and (6) establish protocols to ensure protection of special status plants, wildlife, and cultural resources during construction.

Because of the substantial costs associated with the proposed modifications, PPL also requested in its license amendment application a 16-year extension of the current license term through August 31, 2030.

l. *Description of Request:* In its renewed application for amendment of license, PPL requests that the Commission incorporate by reference the record fully developed in the proceeding for the previously withdrawn license amendment application (sub docket P–1881–050).

m. Since Commission staff recently completed the Final Environmental Impact Statement (FEIS) for the Holtwood Project No. 1881–050, we believe the environmental record is complete and are not seeking new recommendations, terms and conditions, or fishway prescriptions for the renewed license amendment application. The fishway prescription previously filed by the U.S. Department of the Interior (Interior), as well as the recommendations previously filed by Interior and the Pennsylvania Fish and Boat Commission were analyzed in the FEIS and will remain as part of the renewed amendment application proceeding.

n. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Any entity who intervened in the prior license amendment proceeding (sub docket P–1881–050) need not intervene again.

r. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

s. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file

comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–10699 Filed 5–7–09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP09–165–000 ]**

### ANR Pipeline Company; Notice of Request Under Blanket Authorization

May 1, 2009.

Take notice that on April 23, 2009, ANR Pipeline Company (ANR), 717 Texas Street, Houston, Texas 77002, filed in Docket No. CP09–165–000, an application, pursuant to sections 157.205 and 157.208(c) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to rearrange and replace portions of its natural gas pipeline in Will County, Illinois, under ANR's blanket certificate issued in Docket No. CP82–480–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

ANR proposes to rearrange and replace approximately 2000 feet of pipe on each of the following pipelines: the 22-inch diameter 100 line, the 30-inch diameter 1–100 line, and the 42-inch diameter 2–100 line, all located in Will County. ANR proposes to replace the 22-inch diameter and the 42-inch diameter lines from mile post (MP) 822.27 to MP 822.64 and the 30-inch diameter line from MP 822.31 to MP 822.64. ANR states that Center Point Development (Center Point) is proposing an intermodal project to place 21 rail car spurs over the existing ANR lines listed above. ANR further states that its existing lines are not designed for the proposed rail car load. Thus, ANR proposes to replace the existing lines with the same diameters but with increased wall thickness and grade. ANR states that Center Point would reimburse ANR for the estimated $13,500,000 it would cost to replace the various pipeline segments.

Any questions concerning this application may be directed to Dean Ferguson, Vice President, Marketing and Business Development, ANR Pipeline Company, 717 Texas Street, Houston, Texas 77002, telephone at (832) 320–5503, facsimile at (832) 320–6503, or via e-mail: *dean_ferguson@transcanada.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–10692 Filed 5–7–09; 8:45 am]

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[1] 20 FERC ¶ 62,595 (1982).

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Construction, Operation, and Maintenance of the Proposed Transmission Agency of Northern California Transmission Project, California

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Extension of scoping period.

**SUMMARY:** On February 23, 2009, Western Area Power Administration (Western), an agency of the DOE, announced the Notice of Intent to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the construction, operation, and maintenance of the proposed Transmission Agency of Northern California (TANC) Transmission Project (74 FR 8086). In that notice, Western described the schedule for scoping meetings and advised the public that comments on the scope of the EIS/EIR were due by April 30, 2009. By this notice, Western extends the due date for comments on the scope of the EIS/EIR to May 31, 2009.

**DATES:** The date to provide comments on the scope of the EIS/EIR is extended to May 31, 2009.

**ADDRESSES:** Written comments on the scope of the EIS/EIR should be addressed to Mr. David Young, National Environmental Policy Act (NEPA) Document Manager, Western Area Power Administration, Sierra Nevada Region, 114 Parkshore Drive, Folsom, CA 95630 or e-mail *TTPEIS@wapa.gov.*

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact Mr. David Young, NEPA Document Manager, Western Area Power Administration, Sierra Nevada Region, 114 Parkshore Drive, Folsom, CA 95630, telephone (916) 353–4777, fax (916) 353–4772, or e-mail *TTPEIS@wapa.gov.* Additional information on the proposed Project can also be found and comments submitted at *http://www.wapa.gov/transmission/ttp.htm.* For general information on DOE's NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** On February 23, 2009, Western announced the Notice of Intent to prepare an EIS for the construction, operation, and maintenance of the proposed TANC Transmission Project (74 FR 8086). In that notice, Western described the schedule for scoping meetings for the EIS/EIR, and advised the public that comments regarding the scope of the EIS/EIR were due by April 30, 2009. Western held all public scoping meetings as scheduled. With this notice, Western extends the due date for comments on the scope of the EIS/EIR to May 31, 2009. Comments can be sent to Mr. Young at the addresses above.

Dated: May 1, 2009.

**Timothy J. Meeks,**

*Administrator.*

[FR Doc. E9–10743 Filed 5–7–09; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 400–051–CO]**

### Public Service Company of Colorado; Notice of Availability of Draft Environmental Assessment

May 1, 2009.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new major license for the Ames Hydroelectric Project (FERC No. 400), located on Lake Fork, Howards Fork, and South Fork of the San Miguel River, in San Miguel County, about 6 miles north of Telluride, Colorado. The Ames Project occupies 99 acres of the Uncompahgre National Forest administered by the U.S. Forest Service.

Staff prepared a draft environmental assessment (EA) that analyzes the probable environmental effects of relicensing the project and concludes that relicensing the project, with appropriate staff-recommended environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments on the EA should be filed within 45 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Ames Hydroelectric Project No. 400–051'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact David Turner at (202) 502–6091.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–10691 Filed 5–7–09; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP09–83–000]**

### Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Dominion Hub II Project and Request for Comments on Environmental Issues

May 1, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an Environmental Assessment (EA) that will discuss the environmental impacts of the Dominion Hub II Project involving construction and operation of facilities by Dominion Transmission, Inc. (DTI) in Tompkins County, New York. This EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on June 1, 2009.

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties in this proceeding; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

**Summary of the Proposed Project**

DTI proposes to retire an existing 5,800-horsepower (hp) Dresser-Clark 990 turbine and replace it with a new 10,310-hp Solar Taurus 70 compressor unit at the Borger Compressor Station in Tompkins County, New York. The new unit would be installed in a new compressor building, to be constructed adjacent to the existing compressor building. The retired unit would be taken out of service and used for spare parts. In addition, DTI proposes to replace exhaust silencers on two existing turbines at the Borger Compressor Station to meet facility-wide noise requirements. The location of the Borger Compressor Station is shown in appendix 1.[1]

The proposed facilities would provide a Maximum Daily Transportation Quantity of up to 20,000 dekatherms per day (Dth/d) of new incremental firm transportation service for one customer. The service would have a primary receipt point at Leidy, Pennsylvania, and a primary delivery point at West Schenectady, New York.

**Land Requirements for Construction**

All land disturbed by construction of the proposed compressor unit would be contained entirely within the fenced 58.64-acre Borger Compressor Station. Construction of the unit would temporarily impact about 14.94 acres of land within the station's boundaries, and would include any necessary workspaces, a driveway, and parking areas. Approximately 3.3 acres would be used for operation of the proposed facilities, including a new compressor building and auxiliary facilities.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This

[1] The appendix referenced in this notice is not being published in the **Federal Register.** Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice. Copies of the appendix were sent to all those receiving this notice in the mail.

process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA, we [2] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to the entities on our mailing list (see how to remain on our mailing list under Environmental Mailing List, below). A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the Dominion Hub II Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before June 1, 2009.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances, please reference the project docket number CP09–83–000 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister.*'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, DC 20426; Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1.

**Environmental Mailing List**

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/*

*EventCalendar/EventsList.aspx* along with other related information.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–10693 Filed 5–7–09; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP07–444–000; Docket No. CP07–441–000]**

## Jordan Cove Energy Project, LP; Pacific Connector Gas Pipeline, LP; Notice of Availability of the Final Environmental Impact Statement for the Proposed Jordan Cove LNG Terminal and Pacific Connector Gas Pipeline Project

May 1, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final Environmental Impact Statement (EIS) for the construction and operation of the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities proposed by Jordan Cove Energy Project, LP (Jordan Cove) and Pacific Connector Gas Pipeline, LP (Pacific Connector) in the above-referenced dockets. We [1] call this the Jordan Cove Energy and Pacific Connector Pipeline (JCE & PCGP) Project, or simply the Project. The JCE & PCGP Project facilities would be located in Coos, Douglas, Jackson, and Klamath Counties, Oregon.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The United States (U.S.) Department of Agriculture Forest Service, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Department of Homeland Security Coast Guard, Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation, U.S. Department of the Interior Bureau of Land Management, Bureau of Reclamation, and Fish and Wildlife Service, and Douglas County, Oregon, are cooperating agencies for the development of this EIS. A cooperating agency has jurisdiction by law or special expertise with respect to potential environmental impacts associated with the proposal and is involved in the NEPA analysis.

Based on the analysis included in the final EIS, the FERC staff concludes that the proposed action would have limited adverse environmental impacts. However, if the Project is constructed and operated in accordance with applicable laws and regulations, and with implementation of Jordan Cove's and Pacific Connector's proposed mitigation measures, and the additional mitigation measures recommended by staff, environmental impacts would be substantially reduced.

The purpose of the Project is to provide a new import access point for overseas LNG and provide a new source of natural gas to markets in the Pacific Northwest, northern Nevada, and northern California. Jordan Cove would off-load and store the LNG in specially designed tanks at its terminal, vaporize the LNG back into natural gas, and provide up to 1.0 billion cubic feet per day of natural gas to the region through the Pacific Connector sendout pipeline and interconnections with existing natural gas pipeline systems.

The final EIS addresses the potential environmental effects associated with the construction and operation of the facilities listed below. The Project would include LNG marine traffic into U.S. territorial waters and transit in the waterway to Jordan Cove's proposed LNG import terminal. The terminal would be located on the bay side of the North Spit of Coos Bay, at about Channel Mile 7.5 up the existing Coos Bay navigation channel, in Coos County, Oregon. Jordan Cove's proposed facilities would include:

- An access channel from the existing Coos Bay navigation channel, and a slip;
- LNG unloading berth and transfer pipeline;
- 2 full-containment LNG storage tanks, each with a capacity 160,000 $m^3$ (or 1,006,000 barrels);
- Vapor handling system, and vaporization equipment capable of regasifying the LNG for delivery into the natural gas sendout pipeline;
- Piping, ancillary buildings, safety systems, and other support facilities;
- A natural gas liquids (NGL) extraction facility, with the NGL to be sold to an entity other than Jordan Cove and likely transported from the terminal using existing railroad lines;
- A 37-megawatt, natural gas-fired, simple-cycle combustion turbine powerplant to provide electric power for the LNG terminal; and
- Disposal areas for the storage of excavated and dredged materials resulting from the construction of the access channel and slip.

Pacific Connector's pipeline would extend from the Jordan Cove LNG terminal southeast across Coos, Douglas, Jackson, and Klamath Counties Oregon, to its terminus near Malin, including interconnections with Avista Corporation, Williams Northwest Pipeline Corporation (Williams Northwest), Gas Transmission Northwest Corporation, Tuscarora Gas Transmission Company, and Pacific Gas and Electric Company. The facilities proposed by Pacific Connector would include:

- A 234-mile-long, 36-inch-diameter welded steel underground natural gas pipeline;
- A natural gas compressor station at Butte Falls, in Jackson County, consisting of two new 10,310-horsepower (hp) compressor units;
- 4 natural gas meter stations, including the Jordan Cove Receipt Meter Station in Coos County, Clarks Branch Delivery Meter Station in Douglas County, Shady Cove Delivery Meter Station in Jackson County, and the adjoining Tule Lake, Russell Canyon, and Buck Butte Meter Stations in Klamath County;
- A gas control communication system, consisting of new radio towers at each meter station and the compressor station, use of an existing communication site owned by Williams Northwest and leased space on seven other existing communication towers;
- Mainline block valves (MLV) at approximately 16 locations along the pipeline; and,
- 5 pig [2] launchers and receivers, four co-located with meter stations and the compressor station, and the fifth co-located with a MLV.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Volumes 1 and 2 of the final EIS, containing text of the analysis, were printed in hard copy. Volume 3, containing the appendices, was produced as .pdf files on a compact disk (CD) that can be read by a personal computer with a CD–ROM drive. The CD also contains the text of volumes 1 and 2 as .pdf files. A limited number of hard copies and CDs of the final EIS are available from the FERC's Public Reference Room, identified above. This final EIS is also available for public viewing on the FERC's Internet Web site at *http://www.ferc.gov,* via the eLibrary link.

[1] The pronouns ''we,'' ''us,'' or ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[2] A ''pig'' is a tool for cleaning and inspecting the inside of a pipeline.

Copies of the final EIS have been mailed to federal, state, and local agencies; elected officials; Indian tribes and Native American organizations with an interest in the project area; interveners; regional environmental organizations and public interest groups; affected landowners; local libraries and newspapers; and other interested parties. Hard copies of volumes 1 and 2 were mailed to cooperating agencies; other appropriate federal, state, and local government agencies who participated in interagency meetings; intervenors; and individuals that specifically requested hard copies. All others on the mailing list were sent a single CD containing all volumes of the final EIS.

Additional information about the Project is available from the Commission's Office of External Affairs at 1–866–208–FERC (3372). The administrative public record for this proceeding to date is on the FERC Internet Web site (*http://www.ferc.gov*). Go to Documents & Filings and choose the eLibrary link. Under eLibrary, click on ''General Search,'' and enter the docket number excluding the last three digits in the field (e.g., CP07–441). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at: *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY call 202–502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site (*http:www.ferc.gov/docs-filings/subscription.asp*).

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–10700 Filed 5–7–09; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC09–76–000]**

## Trans Bay Cable LLC; Notice of Filing

May 1, 2009.

Take notice that on April 28, 2009, Trans Bay Cable LLC, pursuant to section 203(a)(1) of the Federal Power Act and Part 33 of the Commission's Regulations, requests Commission authorization for an indirect disposition of the jurisdictional facilities of Applicant that will occur as the result of a transaction in which NMH LP will acquire from Babcock & Brown Infrastructure Group US LLC the sole general partnership interest in the indirect parent company of Applicant.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on May 11, 2009

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–10694 Filed 5–7–09; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 13383–000]**

## Hydro Energy Technologies, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 1, 2009.

On March 5, 2009, Hydro Energy Technologies, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Chagrin Spillway Hydroelectric Project, to be located on the Upper Main Branch Chagrin River, in Cuyahoga County, Ohio.

The proposed Chagrin Spillway Project would be located at: (1) An existing, privately owned mill pond dam, which is 162 feet long and 17 feet high, and (2) an existing reservoir having a maximum surface area of 7 acres, with a water surface elevation of 946.9 feet mean sea level.

The proposed project would consist of: (1) A new powerhouse containing one or more turbine/generators with a total installed capacity of 0.2 megawatts; (2) a new 60-inch-diameter, 75-foot-long penstock; (3) a new 250-foot-long transmission line; and (4) appurtenant facilities. The Chagrin Spillway Project would have an estimated average annual generation of 800 megawatts-hours, which would be sold to a local utility.

*Applicant Contact:* Mr. Anthony J. Marra, Jr., President, 31300 Solon Rd., Suite 12, Solon, Ohio 44139, (440) 498–1000.

*FERC Contact:* John Ramer, (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight

copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13383) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–10696 Filed 5–7–09; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13401–000]**

### Hydro Energy Technologies, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 1, 2009.

On March 19, 2009, Hydro Energy Technologies, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Southerly Waste Water Treatment Plant Hydroelectric Project, to be located on Cuyahoga River, in Cuyahoga County, Ohio.

The proposed Southerly Waste Water Treatment Plant Hydroelectric Project would be located at the existing Southerly Waste Water Treatment Plant outfall and box culvert owned by the Northeast Ohio Regional Sewer District.

The proposed project would consist of: (1) One or more turbine/generators with total installed capacity of 250 megawatts to be attached directly to the treatment plant's outfall; (2) a new 20-foot-long transmission line; and (3) appurtenant facilities. The Southerly Waste Water Treatment Plant Project would have an estimated average annual generation of 1,166 megawatts-hours, which would be sold to a local utility.

Applicant Contact: Mr. Anthony J. Marra Jr., President, Hydro Energy Technologies, LLC, 31300 Solon Rd. Suite 12, Solon, OH 44139, (440) 498–1000.

*FERC Contact:* John Ramer, (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13401) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–10698 Filed 5–7–09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13388–000]**

### Northeast Hydrodevelopment, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 1, 2009.

On March 6, 2009, Northeast Hydrodevelopment, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Milton Three Ponds Dam Hydroelectric Project, to be located on the Salmon Falls River, in Strafford County, New Hampshire.

The proposed Milton Three Ponds Project would be located along the Salmon Falls River channel below an existing electromechanically operated Obermeyer crest gate unit, which is adjacent to an existing gatehouse atop an existing dam owned by the State of New Hampshire Department of Environmental Services. The existing dam is 156 feet long and 19 feet high and impounds the Salmon Falls River to form three distinct ponds: Milton Pond, Northeast Pond, and Town House Pond.

The proposed project would consist of: (1) Either a new approximately 80-foot-long power canal or dual 80-foot-long concrete penstocks located below the existing Obermeyer outlet gate; (2) a new powerhouse containing one or two submersible or tubular-type turbine-generators with a total hydraulic capacity of 300 cubic feet per second and a total installed generating capacity of 0.21 megawatts; (3) a newly excavated 150-foot-long tailrace; (4) an approximately 400-foot-long transmission line; and (5) appurtenant facilities. The Milton Three Ponds Project would have an estimated average annual generation of 1,000 megawatts-hours, which would be sold to Public Service of New Hampshire.

Applicant Contact: Mr. Norm Herbert, Manager, Northeast Hydrodevelopment, LLC, 100 State Route 101A, Building C, Suite 270, Amherst, New Hampshire 03031, (603) 672–8210.

*FERC Contact:* John Ramer, (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/*docs-filing/elibrary.asp. Enter the docket number (P–13388) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–10697 Filed 5–7–09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12611–003]**

### Verdant Power, LLC; Notice Concluding Pre-Filing Process and Approving Process Plan and Schedule

May 1, 2009.

a. *Type of Filing:* Notice of Intent to File Application for License for a Hydrokinetic Pilot Project.

b. *Project No.:* 12611–003.

c. *Dated Filed:* November 25, 2008.

d. *Submitted By:* Verdant Power, LLC.

e. *Name of Project:* Roosevelt Island Tidal Energy (RITE) Project.

f. *Location:* In the east channel of the East River in New York City, New York. The project would not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations

h. *Applicant Contact:* Ronald F. Smith, Verdant Power, LLC, The Octagon, 888 Main Street, New York, NY 10044 (212) 888–8887 ext. 601.

i. *FERC Contact:* Tom Dean (202) 502–6041.

j. Verdant Power, LLC (Verdant Power) has filed with the Commission: (1) A notice of intent (NOI) to file an application for a pilot hydrokinetic hydropower project and a draft license application with monitoring plans; (2) a request for waivers of certain Integrated Licensing Process (ILP) regulations necessary for expedited processing of a license application for a hydrokinetic pilot project; (3) a proposed process plan and schedule; and (4) a request to be designated as the non-federal representative for section 7 of the Endangered Species Act consultation and for section 106 consultation under the National Historic Preservation Act.

k. A notice was issued on December 1, 2008, soliciting comments on the draft license application from agencies and stakeholders. Comments were filed by federal and state agencies, and non-governmental organizations. No comments were filed opposing the request to waive the integrated licensing process regulations or the proposed process plan and schedule.

l. The December 1, 2008, notice approved Verdant Power's request to be designated as the non-federal representative for section 7 of the Endangered Species Act (ESA) with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, and its request to initiate consultation under section 106 of the National Historic Preservation Act with the New York State Historic Preservation Officer.

m. The proposed RITE Project would consist of: (1) A field array of 30 35-kilowatt, 5-meter-diameter axial flow Kinetic Hydropower System (KHPS) turbine-generator units mounted on ten tri-frame mounts with a total capacity of about 1 megawatt; (2) underwater cables from each turbine to five shoreline switchgear vaults that would interconnect to a control room and interconnection points; and (3) appurtenant facilities for navigation safety and operation. The estimated annual generation of the proposed project would be between 1,680 and 2,400 megawatt-hours.

n. The pre-filing process has been concluded and the requisite regulations have been waived such that the process and schedule indicated below can be implemented.

o. Post-filing process schedule. The post-filing process will be conducted pursuant to the following schedule. Revisions to the schedule may be made as needed.

| Milestones | Dates |
|---|---|
| Final license application expected | July 31, 2009. |
| Issue notice of acceptance and ready for environmental analysis and request for interventions | August 17, 2009. |
| Issue biological assessment | August 17, 2009. |
| Comments and interventions due | September 16, 2009. |
| Issue notice of availability of environmental assessment | November 16, 2009. |
| Comments due and 10(j) resolution, if needed | December 16, 2009. |

p. Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–10695 Filed 5–7–09; 8:45 am]

**BILLING CODE P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2003–0162; FRL–8902–8]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Regional Haze Regulations; EPA ICR No. 1813.07, OMB Control No. 2060–0412

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on October 31, 2009. 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 July 7, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0162 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Agency Information Collection Request Activities: Proposed Collection and Comment Request for the Regional Haze Regulations Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., 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 to Docket ID No. EPA–HQ–OAR–2003–0162. 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.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Todd Hawes, Air Quality Policy Division, Office of Air Quality Planning and Standards, (C539–04), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–5591; *fax number:* (919) 541–0824; *e-mail address: hawes.todd@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–OAR–2003–0162, which is available for online viewing at *www.regulations.gov,* or in person at the Air 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 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use *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 Paperwork Reduction Act, 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 any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by 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 state, local and tribal air quality agencies; regional planning organizations; facilities potentially regulated under the regional haze rule.

*Title:* Regional Haze Regulations; EPA ICR No. 1813.07, OMB Control No. 2060–0412

*ICR numbers:* EPA ICR No. 1813.07, OMB Control No. 2060–0412.

*ICR status:* This ICR is currently scheduled to expire on October 31, 2009. 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:* This ICR is for activities related to the implementation of EPA's 1999 regional haze rule, for the time period between October 31, 2009 and October 30, 2012, and renews the previous ICR. The regional haze rule, as authorized by sections 169A and 169B of the Clean Air Act (CAA), requires states to develop implementation plans to protect visibility in 156 federally-protected Class I areas. Tribes may choose to develop implementation plans. For this time period, states will be completing their implementation plans to comply with the rule. Before any agency, department, or instrumentality of the federal government engages in, supports in any way, provides financial assistance for, licenses, permits, or approves any activity, that agency has the affirmative responsibility to ensure that such action conforms to the State Implementation Plan (SIP) required under the regional haze rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and 48 CFR chapter 15. Section 176(c) of the CAA (42 U.S.C. 7401 et seq.) requires that all federal actions conform with the SIP requirements. Depending on the type of action, the federal entities must collect

information themselves, hire consultants to collect the information or require applicants/sponsors of the federal action to provide the information.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 37 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 859.

*Frequency of response:* Annual.

*Estimated total average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 31,841 hours.

*Estimated total annual costs:* $1,965,000. This includes an estimated burden cost of $1,965,000 and an estimated cost of $0 for capital investment or maintenance and operational costs.

**Are There Changes in the Estimates From the Last Approval?**

There are only minor revisions to the cost estimates since the last renewal of this ICR (July 11, 2006; 71 FR 39104). The last collection request anticipated the program progressing from the planning stages to implementation. That transition has been somewhat delayed as most states were late in getting their implementation plans submitted by the December 2007 deadline. Also, the decision by the U.S. Court of Appeals for the D.C. Circuit to vacate (on July 11, 2008) and subsequently remand (on December 23, 2008) the Clean Air Interstate Rule has added much uncertainty to the implementation phase of the program. Consequently, the amount of effort anticipated in July 2006 remains the same today, and burden estimates are essentially unchanged, except for revised labor and wage rates using 2007 cost estimates. Also, in 2006, it was estimated that one tribe would submit a SIP; however no tribes elected to submit SIPs and the number of respondents has been reduced by one.

**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: April 29, 2009.

**Jenny N. Edmonds,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. E9–10763 Filed 5–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–8593–3]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 17, 2009 (74 FR 17860).

**Draft EISs**

EIS No. 20090045, ERP No. D–USN–K11023–00, West Coast Basing of the MV–22 Determining Basing Location(s) and Providing Efficient Training Operations, CA, AZ.

*Summary:* EPA expressed environmental concerns about impacts to air quality from the basing of the MV–22. Rating EC2.

EIS No. 20090057, ERP No. D–AFS–L65567–00, Wallowa-Whitman National Forest Invasive Plants Treatment Project, To Protect Native Vegetation by Controlling, Containing, or Eradicating Invasive Plant, Wallowa, Baker, Malheur, and Grant Counties, OR and Adams and Nez Perce Counties, ID.

*Summary:* EPA expressed environmental concerns about potential adverse impacts from herbicide treatments to water quality, especially for impaired water bodies. The final EIS should include mitigation measures ensuring weed treatments would not degrade water quality. Rating EC2.

EIS No. 20090070, ERP No. DS–AFS–K65312–CA, Pilgrim Vegetation Management Project, Updated Information to Address and Respond to the Specific Issues Identified in the Court Ruling. Implementation, Shasta-Trinity National Forest, Siskiyou County, CA.

*Summary:* EPA expressed environmental concerns about the potential inadvertent exposure of Sporax to humans and non-target species, as well as potential adverse impacts to snag-dependent and late successional species. Rating EC2.

**Final EISs**

EIS No. 20090068, ERP No. F–AFS–L05240–AK, Angoon Hydroelectric Project, Construction and Operation, Special Use Authorization, Thayer Creek, Admiralty Island National Monument, Tongass National Forest, AK.

*Summary:* The Final EIS adequately responded to our comments on environmental impacts to water quality and aquatic habitat; therefore, EPA does not object to this action.

EIS No. 20090072, ERP No. F–USN–E11066–00, Jacksonville Range Complex Project, To Support and Conduct Current and Emerging Training and RDT&E Operations, NC, SC, GA and FL.

*Summary:* EPA continues to have environmental concerns about the deposition of expended training materials and their accumulation over time.

EIS No. 20090119, ERP No. F–NPS–C65006–NY, Governors Island National Monument, General Management Plan, Implementation, New York Harbor, NY.

*Summary:* No formal comment letter was sent to the preparing agency.

EIS No. 20090084, ERP No. FA–BLM–K67011–NV, Betze Pit Expansion Project, Development of New Facilities and Expansion of Existing Open-Pit Gold Mining, Eureka and Elko Counties, NV.

*Summary:* EPA continues to have environmental concerns about potential ecological impacts from the cessation of mine dewatering and tailings closure. EPA recommends the ROD include a specific plan to successfully transition wetlands and irrigated croplands to upland salt-tolerant species at the end of infiltration activities, and describe tailings closure, associated ecological risks, and mitigation measures.

Dated: May 5, 2009.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E9–10772 Filed 5–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8902–5]**

### Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Anaconda Copper Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice, request for public comments.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Order on Consent and Settlement Agreement for Removal Action and Past Response Costs (''Agreement,'' Region 9 Docket No. 9–2009–10) pursuant to Section 122(h) of CERCLA concerning the Anaconda Copper Mine Site (the ''Site''), located in Yerington, Nevada. The settling party is Atlantic Richfield Company (''ARC''). Through the proposed Agreement, ARC will pay to the United States $2.2 million for response costs at the Site, and will conduct approximately $8 million in interim removal actions to mitigate threats from hazardous substances. The response actions that ARC will perform include: Installing caps over former evaporation ponds to help prevent accumulation of acidic ponds and to prevent the migration of hazardous dusts; mitigating threats from soils that contain concentrated amounts of otherwise naturally occurring radiation; removing abandoned asbestos containing pipes; decommissioning abandoned electrical lines; and continuing operation and maintenance of the fluid management system for abandoned heap leach facilities. The Agreement provides ARC with a covenant not to sue and contribution protection for the work performed at the Site, and for the response costs paid.

For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed Agreement. The administrative record and the Agency's response to any comments received will be available for public inspection at EPA's Region IX Superfund Records Center, located at 95 Hawthorne Street, San Francisco, California 94105.

**DATES:** Comments must be submitted on or before June 8, 2009.

**ADDRESSES:** The proposed Agreement may be obtained from the EPA Region IX Superfund Records Center, at 95 Hawthorne Street, San Francisco, California 94105 ((415) 536–2000). Comments regarding the proposed Agreement should be addressed to Andrew Helmlinger at the U.S. Environmental Protection Agency (ORC–3), 75 Hawthorne Street, San Francisco, California 94105, and should reference the Anaconda Copper Agreement, and Region IX Docket No. 9–2009–10.

**FOR FURTHER INFORMATION CONTACT:** Andrew Helmlinger, Office of Regional Counsel, (415) 972–3904, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: April 22, 2009.

**Keith A. Takata,**

*Director, Superfund Division.*

[FR Doc. E9–10764 Filed 5–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2008–0790; FRL–8790–6]**

### Asbestos-Containing Materials in Schools; State Request for Waiver From Requirements; New Hampshire Department of Environmental Services Final Approval To Implement State Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final approval.

**SUMMARY:** EPA is approving a waiver of the requirements of the Federal asbestos-in-schools program for the State of New Hampshire. A waiver request can be granted if EPA determines that the State of New Hampshire is implementing or intends to implement a state program of asbestos inspection and management that is at least as stringent as the federal program. This action approves the waiver request submitted by Governor John H. Lynch to the EPA Region 1 Regional Administrator, on July 15, 2008, via a letter with supporting documentation requesting a full waiver of the requirements of EPA's asbestos-in-schools program pursuant to the AHERA statute and 40 CFR 763.98. EPA published a notice of proposed approval and request for comments on December 19, 2008, with a detailed description of this waiver request. EPA's rationale for approving the waiver was provided in that notice of proposed approval and request for comments and will not be restated here. No comments were received on EPA's proposal.

**DATES:** *Effective Date:* This final approval is effective on May 8, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–HQ–OPPT–2008–0790. 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 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 through the Asbestos Coordinator, Region 1—New England, Environmental Protection Agency, One Congress Street, Suite 1100 Mailcode SEP), Boston, MA 02114–2023. For anyone wishing to physically inspect the material, 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 5, excluding federal holidays.

**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) 564–8182; *e-mail address: TSCA–Hotline@epa.gov.*

*For technical information contact:* James M. Bryson, Asbestos Coordinator, Region 1—New England, Environmental Protection Agency, One Congress Street, Suite 1100 Mailcode SEP, Boston, MA

02114–2023; *Telephone number:* (617) 918–1524; *e-mail address: bryson.jamesm@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. What Action Is the Agency Taking?**

EPA is granting a waiver of the asbestos-in-schools program to the State of New Hampshire. This waiver is issued under section 203(m) of the Toxic Substances Control Act (TSCA) and 40 CFR 763.98. Section 203 is within Title II of TSCA, also known as the Asbestos Hazard Emergency Response Act (AHERA). The Agency recognizes that a waiver granted to any State would not encompass schools operated under the defense dependents' education system (the third type of local education agency (LEA) defined at TSCA section 202(7) and 40 CFR 763.83), which serve dependents in overseas areas, and other elementary and secondary schools outside a State's jurisdiction, which generally includes schools in Indian country. Such schools would remain subject to EPA's asbestos-in-schools program.

On December 19, 2008, (FRL–8754–4) EPA published a notice of proposed approval and request for comments. A detailed description of this waiver request and EPA's rationale for approving it was provided in that notice and is not restated here.

**II. What Is the Agency's Authority for Taking This Action?**

In 1987, under TSCA section 203, the Agency promulgated regulations that require the identification and management of asbestos-containing material by LEAs in the nation's elementary and secondary school buildings: The ''AHERA Schools Rule'' (40 CFR part 763, subpart E). Under section 203(m) of TSCA and 40 CFR 763.98, upon request by a State Governor and after notice and comment and opportunity for a public hearing in the State, EPA may waive, in whole or in part, the requirements of the asbestos-in-schools program (TSCA section 203 and the AHERA Schools Rule) if EPA determines that the State has established and is implementing or intends to implement a program of asbestos inspection and management that contains requirements that are at least as stringent as those in the Agency's asbestos-in-schools program. A State seeking a waiver must submit its request to the EPA Region in which that State is located.

**III. When Did New Hampshire Submit Its Request for a Waiver?**

On July 15, 2008, Governor John H. Lynch submitted to the EPA Region 1 Regional Administrator, a letter with supporting documentation requesting a full waiver of the requirements of EPA's asbestos-in-schools program pursuant to the AHERA statute and 40 CFR 763.98. The EPA Regional Administrator indicated to New Hampshire, by letter dated July 31, 2008, that the request was received. On September 30, 2008, the Manager of EPA's Toxics and Pesticides Unit submitted comments to the New Hampshire Department of Environmental Service's Air Resources Division regarding the AHERA waiver request. The State provided EPA with a response, dated October 10, 2008, in which each of EPA's comments was addressed.

**IV. Materials in the Official Record**

The official record, under Docket ID Number EPA–HQ–OPPT–2008–0790, contains the New Hampshire waiver request, and any other supporting or relevant documents pertaining to the approval, by EPA Region 1, of New Hampshire's AHERA waiver request.

**List of Subjects**

Environmental protection, Asbestos, Hazardous substances, Occupational health and safety, Reporting and recordkeeping requirements, Schools.

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

Dated: March 30, 2009.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA New England.*

[FR Doc. E9–10770 Filed 5–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–8593–2]**

## Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements.

Filed 04/27/2009 Through 05/01/2009.

Pursuant to 40 CFR 1506.9.

*EIS No. 20090136, Draft EIS, USA, AK,* U.S. Army Alaska (USARAK) Project, Proposes the Stationing and Training of Increased Aviation Assets, Fort Wainwright, Fairbank, AK, Comment Period Ends: 06/22/2009, Contact: Jennifer Shore 703–602–4238.

*EIS No. 20090137, Draft EIS, AFS, CA,* Sierra National Forest Travel Management Plan, To Prohibit Motorized Vehicle Travel Off Designated National Forest Transportation System (NFIS) Roads, Trails and Area, Fresno, Mariposa, Madera Counties, CA, Comment Period Ends: 06/22/2009, Contact: Gayne Sears 559–877–2218 Ext. 3182.

*EIS No. 20090138, Second Final Supplement, COE, CA,* Santa Ana River Interceptor (SARI) Protection/Relocation Project, Reduce the Risk of Damage to the SARI to allow for the Operation of Santa Ana River Project (SARP), and Releases from Prado Dam of up to 30,000 cubic feet per second (cfs), Right-of-Way Permit and US COE Section 404 Permit, Orange and Riverside Counties, CA, Wait Period Ends: 06/08/2009, Contact: Raina Fulton 213–452–3872.

*EIS No. 20090139, Draft Supplement, AFS, 00,* PROGRAMMATIC—Kootenai, Idaho Panhandle, and Lolo National Forest Plan Amendments for Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones, Alternative E Updated has been Identified as the Forest Service's Preferred Alternative, ID, WA, MT, Comment Period Ends: 06/22/2009, Contact: Karl Dekome 208–765–7479.

*EIS No. 20090140, Final EIS, NOA, 00,* Amendment 29 Reef Fish Fishery Management Plan, Effort Management in the Commercial Grouper and Tilefish Fisheries, Reducing Overcapacity, Gulf of Mexico, Wait Period Ends: 06/08/2009, Contact: Roy E. Crabtree 727–824–5305.

*EIS No. 20090141, Draft EIS, USA, NM,* White Sands Missile Range (WSMR), Development and Implementation of Range-Wide Mission and Major Capabilities, NM, Comment Period Ends: 06/22/2009, Contact: Jennifer Shore 703–602–4238.

*EIS No. 20090142, Draft EIS, NPS, CA,* Yosemite National Park Project, Construction of Yosemite Institute Environment Education Campus, Implementation, Mariposa County, CA, Comment Period Ends: 07/15/2009, Contact: Ann Roberts 209–379–1383.

*EIS No. 20090143, Final EIS, FRC, OR,* Jordan Cove Energy and Pacific Connector Gas Pipeline Project, Construction and Operation, Liquefied Natural Gas (LNG) Import Terminal and Natural Gas Pipeline Facilities, Coos, Douglas, Jackson and Klamath Counties, OR, Wait Period Ends: 06/08/2009, Contact: Patricia Schaub 1–866–208–3372.

*EIS No. 20090144, Draft EIS, GSA, CA,* San Ysidro Land Port of Entry (LPOE) Improvement Project, Propose the Configuration and Expansion of the Existing (LPOE), San Ysidro, CA,

Comment Period Ends: 06/22/2009, Contact: Osmahn Kadri 415–522–3617.

*EIS No. 20090145, Draft EIS, NPS, IA,* Effigy Mounds National Monument General Management Plan, Implementation, Clayton and Allamakee Counties, IA, Comment Period Ends: 07/08/2009, Contact: Phyllis Ewing 563–873–3491.

*EIS No. 20090146, Final EIS, COE, OH,* Lorain Harbor, Ohio Federal Navigation Project, Dredged Material Management Plan, Implementation, Lorain Harbor, Lorain County, Ohio, Wait Period Ends: 06/08/2009, Contact: Joshua J. Feldmann 716–879–4393.

*EIS No. 20090147, Draft Supplement, NSF, HI,* Advanced Technology Solar Telescope Project, Issuing Special Use Permit to Operate Commercial Vehicles on Haleakala National Park Road during the Construction of Site at the University of Hawai'i Institute for Astronomy, Haleakala High Altitude Observatory (HO) Site, Island of Maui, HI, Comment Period Ends: 06/22/2009, Contact: Craig Foltz, PhD 703–292–4909.

*EIS No. 20090148, Final Supplement, COE, FL,* Rock Mining in the Lake Belt Region Plan, Continuance of Limestone Mining Construction, Section 404 Permit, Miami-Dade County, FL, Wait Period Ends: 06/08/2009, Contact: Leah Oberlin 561–472–3506.

*EIS No. 20090149, Final EIS, NOA, 00,* Amendment 1 to the Tilefish Fishery Management Plan, Proposed Individual Fishing Quota (IFQ) Program, To Reduce Overcapacity in the Commercial Tilefish Fishery, Maine to North Carolina, Wait Period Ends: 06/08/2009, Contact: Patricia A. Kurkul 978–281–9250.

**Amended Notices**

*EIS No. 20090011, Draft EIS, SFW, CA,* Tehachapi Uplands Multiple Species Habitat Conservation Plan (TUMSHCP), Propose Issuance of a 50–Year Incidental Take Permit for 27 Federal- and State-Listed and Unlisted Species, Kern County, CA, Comment Period Ends: 07/07/2009, Contact: Mary Grim 916–414–6464.

Revision to FR Notice Published 01/23/2009: Extending Comment Period from 04/22/2009 to 07/07/2009.

Dated: May 5, 2009.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E9–10768 Filed 5–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 26, 2009

**A. Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

*1. Gary R. Howell, Malta, Montana,* to acquire voting shares of Milk River Banquo, Inc., Malta, Montana, which controls Malta Banquo, Inc., and thereby indirectly gain control of First Security Bank of Malta, Malta,Montana and Valley Bank of Glasgow, Glasgow, Montana

Board of Governors of the Federal Reserve System, May 5, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–10754 Filed 5–7–09; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 2009.

**A. Federal Reserve Bank of Dallas** (E. Anne Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Tall City Bancshares, Inc., Midland, Texas;* to become a bank holding company by acquiring 100 percent of the voting shares of Kent County State Bank, Jayton, Texas.

Board of Governors of the Federal Reserve System, May 5, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–10753 Filed 5–7–09; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 26, 2009.

**A. Federal Reserve Bank of New York** (Ivan J. Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. Morgan Stanley, New York,;* to acquire up to 9.9 percent of the voting shares of the outstanding common stock of United Western Bancorp, Inc., and its subsidiary, United Western Bank, both of Denver, Colorado, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 5, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–10752 Filed 5–7–09; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is 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.:* 012068.

*Title:* Grand Alliance/Zim/HSDG Atlantic Space Charter Agreement.

*Parties:* Hapag-Lloyd AG, Nippon Yusen Kaisha, Orient Overseas Container Lines Inc., Orient Overseas Container Line Limited, Orient Overseas Container Line (Europe) Limited, Zim Integrated Shipping Services Limited, and Hamburg Süd KG.

*Filing Party:* Wayne Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The agreement authorizes Hamburg Süd to charter space from the other parties in the trade between North Europe and the U.S. Atlantic Coast. The parties have requested expedited review.

By Order of the Federal Maritime Commission.

Dated: May 5, 2009.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. E9–10761 Filed 5–7–09; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL TRADE COMMISSION

### Public Workshop: Business Opportunity Rule

### An FTC Workshop Analyzing Business Opportunity Disclosure Form and Other Proposed Changes to the Business Opportunity Rule

*Correction*

In notice document E9-9440 appearing on page 18712 in the issue of April 24, 2009, make the following correction:

On page 18715, in the third column, in the **SUPPLEMENTARY INFORMATION** section, after the word *Secretary* in the eighteenth line, the following Appendix A should be added:

**BILLING CODE 6750–01–S**

**APPENDIX A**

**DISCLOSURE OF IMPORTANT INFORMATION ABOUT BUSINESS OPPORTUNITY**
Required by the Federal Trade Commission, Rule 16 C.F.R. Part 437

Name of Seller: Acme Products, Inc. Address: 1135 17th Street, Suite 400, Baltimore, MD, 21201

Phone: (214) 555-8176 Salesperson: Robert Smith Date: September 15, 2008

Acme Products, Inc. has completed this form, which provides important information about the business opportunity it is offering you. The Federal Trade Commission, an agency of the federal government, requires that Acme Products complete this form and give it to you. However, the Federal Trade Commission has not seen this completed form or checked that the information is true. **Make sure that this information is the same as what the salesperson told you about this opportunity.**

LEGAL ACTIONS: Has Acme Products or any of its key personnel been the subject of a civil or criminal action involving misrepresentation, fraud, securities law violation, or unfair or deceptive practices within the past 10 years?

☑ YES → *If the answer is yes, Acme Products must attach a list of all such legal actions to this form.*

☐ NO

CANCELLATION OR REFUND POLICY: Does Acme Products offer a cancellation or refund policy?

☐ YES → *If the answer is yes, Acme Products must attach a statement describing this policy to this form.*

☑ NO

EARNINGS: Has Acme Products or its salesperson discussed how much money purchasers of this business opportunity can earn or have earned? In other words, have they stated or implied that purchasers can earn a specific level of sales, income, or profit?

☐ YES → *If the answer is yes, Acme Products must attach an Earnings Claims Statement to this form. Read this statement carefully. You may wish to show this information to an advisor or accountant.*

☑ NO

REFERENCES: In the section below, Acme Products must provide you with contact information for at least 10 people who have purchased a business opportunity from them. If fewer than 10 are listed, this is the total list of all purchasers. **You may wish to contact the people below to compare their experiences with what Acme Products told you about the business opportunity.**

Note: If you purchase a business opportunity from Acme Products, your contact information can be disclosed in the future to other potential buyers.

| | Name | City | State | Zip Code | Telephone Number |
|---|---|---|---|---|---|
| 1. | Jonathan Smith | Bethesda | Maryland | 20813 | (301) 555-3472 |
| 2. | Alyssa Robinson | Washington | D.C. | 20003 | (202) 555-2749 |
| 3. | James Johnson | Richmond | Virginia | 23219 | (804) 555-8722 |
| 4. | Elizabeth Williams | Beltsville | Maryland | 20705 | (301) 555-9734 |
| 5. | Maria Lopez | Baltimore | Maryland | 21205 | (410) 555-1785 |
| 6. | Robert Davis | Alexandria | Virginia | 22301 | (703) 555-1921 |

Signature: _____ Date: _____

By signing above, you are acknowledging that you have received this form. This is not a purchase contract. To give you enough time to research this opportunity, the Federal Trade Commission requires that after you receive this form Acme Products must wait at least seven business days before asking you to sign a purchase contract.

**For more information about business opportunities in general:** Visit the FTC's website at www.ftc.gov/bizopps or call 1-877-FTC-HELP (877-382-4357). You can also contact your state's Attorney General.

**Donald S. Clark,**
*Secretary.*
[FR Doc. E9–10812 Filed 5–7–09: 8:45 am]
**BILLING CODE 6750–01–C**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute for Occupational Safety and Health

### Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice concerning the final effect of the HHS decision to designate a class of employees at Westinghouse Atomic Power Development Plant in East Pittsburgh, Pennsylvania, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On March 31, 2009, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at Westinghouse Atomic Power Development Plant in East Pittsburgh, Pennsylvania, from August 13, 1942 through December 31, 1944, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation became effective on April 30, 2009, as provided for under 42 U.S.C. 7384l(14)(C). Hence, beginning on April 30, 2009, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

**FOR FURTHER INFORMATION CONTACT:** Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

**Christine M. Branche,**

*Acting Director, National Institute for Occupational Safety and Health.*

[FR Doc. E9–10829 Filed 5–7–09; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute for Occupational Safety and Health

### Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice concerning the final effect of the HHS decision to designate a class of employees at Tyson Valley Powder Farm near Eureka, Missouri, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On March 31, 2009, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer (AWE) employees who worked at Tyson Valley Powder Farm near Eureka, Missouri, from February 13, 1946 through June 30, 1948, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation became effective on April 30, 2009, as provided for under 42 U.S.C. 7384l(14)(C). Hence, beginning on April 30, 2009, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

**FOR FURTHER INFORMATION CONTACT:** Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

**Christine M. Branche,**

*Acting Director, National Institute for Occupational Safety and Health.*

[FR Doc. E9–10830 Filed 5–7–09; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0635]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Emergency Shortages Data Collection System (formerly ''Emergency Medical Device Shortages Program Survey'')

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by June 8, 2009.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0491. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA published a 30-day notice in the **Federal Register** of March 16, 2009 (74 FR 11116), that: (1) Responded to comments on the information collection provisions received in response to a 60-day notice that published in the **Federal Register** of December 19, 2008 (73 FR 77718), and (2) announced submission of the proposed collection of information to OMB for review and clearance. In response to a request by OMB, FDA is republishing the 30-day notice of the proposed collection of information set forth in this document.

**Emergency Shortages Data Collection System (formerly ''Emergency Medical Device Shortages Program Survey'')—Section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (OMB Control Number 0910–0491)—Extension**

Under section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(d)(2)), the FDA Commissioner is authorized to implement general powers (including conducting research) to carry out effectively the mission of FDA. Subsequent to the events of September 11, 2001, and as part of broader counter-terrorism and emergency preparedness activities, FDA's Center for Devices and Radiological Health (CDRH) began developing operational plans and interventions that would enable CDRH to anticipate and respond to medical device shortages that might arise in the context of federally-declared disasters/emergencies or regulatory actions. In particular, CDRH identified the need to acquire and maintain detailed data on domestic inventory, manufacturing capabilities, distribution plans and raw material constraints for medical devices that would be in high demand, and/or would be vulnerable to shortages in specific disaster/emergency situations, or following specific regulatory actions. Such data could support prospective risk assessment, help inform risk mitigation strategies, and support real-time decisionmaking by the Department of Health and Human Services during actual emergencies or emergency preparedness exercises.

''The Emergency Medical Device Shortages Program Survey'' was developed in 2002 to support the acquisition of such data from medical device manufacturers. In 2004, CDRH changed the process for the data collection, and the electronic database in which the data were stored and was formally renamed the ''Emergency Shortages Data Collection System'' (ESDCS). Recognizing that some of the data collected may be commercially confidential, access to ESDCS is restricted to members of the FDA Emergency Shortage Team (EST) and senior management with a need-to-know. At this time, the need-to-know senior management personnel are limited to 5 senior managers. Further, the data are used by this defined group only for decisionmaking and planning in the context of a federally-declared disaster/emergency, an official emergency preparedness exercise, or a potential public health risk posed by non-disaster-related device shortage.

The data procurement process consists of an initial scripted telephone call to a regulatory officer at a registered manufacturer of one or more key medical devices being tracked in the emergency shortages data collection system. In this initial call, the intent and goals of the data collection effort are described, and the specific data request is made. After the initial call, one or more additional followup calls and/or electronic mail correspondence may be required to verify/validate data sent from the manufacturer, confirm receipt and/or request additional detail. Although the regulatory officer is the agent who is initially contacted, they may designate an alternate representative within their organization to correspond subsequently with the CDRH EST member who is collecting or verifying/validating the data.

Because of the dynamic nature of the medical device industry, particularly with respect to specific product lines, manufacturing capabilities and raw material/subcomponent sourcing, it is necessary to update the data in the ESDCS at regular intervals. This is done on a weekly basis, but efforts are made to limit the frequency of outreach to a specific manufacturer to no more than every 4 months.

The ESDCS will only include those medical devices for which there will likely be high demand during a specific emergency/disaster, or for which there are sufficiently small numbers of manufacturers such that disruption of manufacture or loss of one or more of these manufacturers would create a shortage.

In the **Federal Register** of December 19, 2008 (73 FR 77718), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Section of the Act | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 903(d)(2) | 125 | 3 | 375 | 0.5 | 188 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based the burden estimates in Table 1 of this document on past experience with direct contact with the medical device manufacturers, and anticipated changes in the medical device manufacturing patterns for the specific devices being monitored. FDA estimates that approximately 125 manufacturers would be contacted by telephone and/or electronic mail 3 times per year to either obtain primary data or to verify/validate data. Because the data being requested represent data elements that are monitored or tracked by manufacturers as part of routine inventory management activities, it is anticipated that for most manufacturers, the estimated time required of manufacturers to complete the data request will not exceed 30 minutes per request cycle.

Dated: May 4, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–10816 Filed 5–7–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

**Proposed Projects**

*Title:* Title IV–E Foster Care Eligibility Review and Child and Family Service Reviews; Final Rule.

*OMB No.:* 0970–0214.

*Description:* The following five separate activities are associated with this information collection: Foster Care Eligibility Review (FCER) Program Improvement Plan; Child and Family Services Reviews (CFSR) State agency

Statewide Assessment; CFSR On-site Review; CFSR Program Improvement Plan; and Anti-Discrimination Enforcement Corrective Action Plan. The collection of information for review of Federal payments to States for foster care maintenance payments (45 CFR 1356.71(i)) is authorized by title IV–E of the Social Security Act (the Act), section 474 [42 U.S.C. 674]. The Foster Care Eligibility Reviews (FCER) ensure that States claim title IV–E funds only on behalf of title IV–E eligible children. The collection of information for review of State child and family services programs (45 CFR 1355.33(b), 1355.33(c) and 1355.35(a)) is to determine whether such programs are in substantial conformity with State plan requirements under parts B and E of the Act and is authorized by section 1123(a) [42 U.S.C 1320a–1a] of the Act. The CFSR looks at the outcomes related to safety, permanency and well-being of children served by the child welfare system and at seven systemic factors that support the outcomes. Section 474(d) of the Act [42 U.S.C 674] deploys enforcement provisions (45 CFR 1355.38(b) and (c)) for the requirements at section 4371(a)(18) [42 U.S.C 671], which prohibit the delay or denial of foster and adoptive placements based on the race, color, or national origin of any of the individuals involved. The enforcement provisions include the execution and completion of corrective action plans when a State is in violation of section 471(a)(18) of the Act. The information collection is needed: (1) To ensure compliance with title IV–E foster care eligibility requirements; (2) to monitor State plan requirements under titles IV–B and IV–E of the Act, as required by Federal statute; and (3) to enforce the title IV–E anti-discrimination requirements through State corrective action plans. The resultant information will allow ACF to determine if States are in compliance with State plan requirements and are achieving desired outcomes for children and families, help ensure that claims by States for title IV–E funds are made only on behalf of title IV–E eligible children, and require States to revise applicable statutes, rules, policies and procedures, and provide proper training to staff, through the development and implementation of corrective action plans. These reviews not only address compliance with eligibility requirements but also assist States in enhancing the capacities to serve children and families. In computing the number of burden hours for this information collection, ACF based the annual burden estimates on ACF's and States' experiences in conducting reviews and developing program improvement plans.

*Respondents:* State Title IV–B and Title IV–E Agencies.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| 45 CFR 1356.7 (i) Program Improvement Plan (FCER) | 7 | 1 | 90 | 630 |
| 45 CFR 1366.33 (b) Statewide Assessment (CFSR) | 13 | 1 | 240 | 3,120 |
| 45 CFR 1355.33 (c) On-site Review (CFSR) | 13 | 1 | 1,170 | 15,210 |
| 45 CFR 1355.35 (a) Program Improvement Plan (CFSR) | 13 | 1 | 240 | 3,120 |
| 45 CFR 1355.38 (b) and (c) Corrective Action | 1 | 1 | 780 | 780 |

*Estimated Total Annual Burden Hours:* 22,860

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

*The Department specifically requests comments on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 5, 2009.

**Janean Chambers,**

*Reports Clearance Officer.*

[FR Doc. E9–10703 Filed 5–7–09; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0030]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Investigational New Drug Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by June 8, 2009.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira__submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0014. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Investigational New Drug Regulations—OMB Control Number 0910–0014—Extension**

FDA is requesting OMB approval for the reporting and recordkeeping requirements contained in the FDA regulations ''Investigational New Drug Application'' in part 312 (21 CFR part 312). Part 312 implements provisions of section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) (the act) to issue regulations under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

FDA is charged with implementing statutory requirements that drug products marketed in the United States be shown to be safe and effective, properly manufactured, and properly labeled for their intended uses. Section 505(a) of the act provides that a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has previously approved a new drug application (NDA). FDA approves an NDA only if the sponsor of the application first demonstrates that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. Proof must consist, in part, of adequate and well-controlled studies, including studies in humans, that are conducted by qualified experts. The IND regulations establish reporting requirements that include an initial application as well as amendments to that application, reports on significant revisions of clinical investigation plans, and information on a drug's safety or effectiveness. In addition, the sponsor is required to give FDA an annual summary of the previous year's clinical experience. Submissions are reviewed by medical officers and other agency scientific reviewers assigned responsibility for overseeing the specific study. The IND regulations also contain recordkeeping requirements that pertain to the responsibilities of sponsors and investigators. The detail and complexity of these requirements are dictated by the scientific procedures and human subject safeguards that must be followed in the clinical tests of investigational new drugs.

The IND information collection requirements provide the means by which FDA can do the following: (1) Monitor the safety of ongoing clinical investigations; (2) determine whether the clinical testing of a drug should be authorized; (3) ensure production of reliable data on the metabolism and pharmacological action of the drug in humans; (4) obtain timely information on adverse reactions to the drug; (5) obtain information on side effects associated with increasing doses; (6) obtain information on the drug's effectiveness; (7) ensure the design of well-controlled, scientifically valid studies; (8) obtain other information pertinent to determining whether clinical testing should be continued and information related to the protection of human subjects. Without the information provided by industry in response to the IND regulations, FDA cannot authorize or monitor the clinical investigations which must be conducted prior to authorizing the sale and general use of new drugs. These reports enable FDA to monitor a study's progress, to assure subject safety, to assure that a study will be conducted ethically, and to increase the likelihood that the sponsor will conduct studies that will be useful in determining whether the drug should be marketed and available for use in medical practice.

There are two forms that are required under part 312:

Form FDA–1571—''Investigational New Drug Application.'' A person who intends to conduct a clinical investigation submits this form to FDA. It includes the following information: (1) A cover sheet containing background information on the sponsor and investigator, (2) a table of contents, (3) an introductory statement and general investigational plan, (4) an investigator's brochure describing the drug substance, (5) a protocol for each planned study, (6) chemistry, manufacturing, and control information for each investigation, (7) pharmacology and toxicology information for each investigation, and (8) previous human experience with the investigational drug.

The second form is Form FDA–1572—''Investigator Statement.'' Before permitting an investigator to begin participation in an investigation, the sponsor must obtain and record this form. It includes background information on the investigator and the investigation, and a general outline of the planned investigation and the study protocol.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements in part 312:

TABLE 1.—REPORTING AND RECORDKEEPING REQUIREMENTS IN 21 CFR PART 312

| REPORTING REQUIREMENTS | |
|---|---|
| 21 CFR Section | Requirements |
| . | |
| 312.7(d) | Applications for permission to sell an investigational new drug |
| . | |
| 312.8 | Charging for investigational drugs under an IND |
| 312.10 | Applications for waiver of requirements under part 312; as indicated in § 312.10(a), estimates for this requirement are included under §§ 312.23 and 312.31. In addition, separate requests under § 312.10 are estimated in table 2 of this document. |
| . | |
| 312.20(c) | Applications for investigations involving an exception from informed consent under § 50.24 (21 CFR 50.24); estimates for this requirement are included under § 312.23. |
| . | |
| 312.23 | INDs (content and format) |
| (a)(1) | Cover sheet FDA–1571 |
| (a)(2) | Table of contents |
| (a)(3) | Investigational plan for each planned study |
| (a)(5) | Investigator's brochure |
| (a)(6) | Protocols—Phases 1, 2, and 3 |
| (a)(7) | Chemistry, manufacturing, and control information |
| (a)(7)(iv)(*a*), (*b*), and (*c*) | A description of the drug substance, a list of all components, and any placebo used |

TABLE 1.—REPORTING AND RECORDKEEPING REQUIREMENTS IN 21 CFR PART 312—Continued

| REPORTING REQUIREMENTS | |
|---|---|
| 21 CFR Section | Requirements |
| (a)(7)(iv)(*d*) | Labeling: Copies of labels and labeling to be provided each investigator |
| (a)(7)(iv)(*e*) | Environmental impact analysis regarding drug manufacturing and use |
| (a)(8) | Pharmacological and toxicology information |
| (a)(9) | Previous human experience with the investigational drug |
| (a)(10) | Additional information |
| (a)(11) | Relevant information |
| (f) | Identification of exception from informed consent |
| . | |
| 312.30 | Protocol amendments |
| (a) | New protocol |
| (b) | Change in protocol |
| (c) | New investigator |
| (d) | Content and format |
| (e) | Frequency |
| . | |
| 312.31 | Information amendments |
| (b) | Content and format<br>Chemistry, toxicology, or technical information |
| . | |
| 312.32 | Safety reports |
| (c)(1) | Written reports to FDA and to investigators |
| (c)(2) | Telephone reports to FDA for fatal or life-threatening experience |
| (c)(3) | Format or frequency |
| (d) | Followup submissions |
| . | |
| 312.33 | Annual reports |
| (a) | Individual study information |
| (b) | Summary information |
| (b)(1) | Adverse experiences |
| (b)(2) | Safety report summary |
| (b)(3) | List of fatalities and causes of death |
| (b)(4) | List of discontinuing subjects |
| (b)(5) | Drug action |
| (b)(6) | Preclinical studies and findings |
| (b)(7) | Significant changes |
| (c) | Next year general investigational plan |
| (d) | Brochure revision |
| (e) | Phase I protocol modifications |
| (f) | Foreign marketing developments |
| . | |
| 312.35 | Treatment use of investigational new drugs |
| (a) | Treatment protocol submitted by IND sponsor |
| (b) | Treatment IND submitted by licensed practitioner |
| . | |
| 312.36 | Requests for emergency use of an investigational new drug |
| . | |
| 312.38(b) and (c) | Notification of withdrawal of an IND |
| . | |
| 312.42(e) | Sponsor requests that a clinical hold be removed and submits a complete response to the issues identified in the clinical hold order |
| . | |
| 312.44(c) and (d) | Opportunity for sponsor response to FDA when IND is terminated |
| . | |
| 312.45(a) and (b) | Sponsor request for, or response to, inactive status determination of an IND |
| . | |
| 312.47(b) | ''End-of-Phase 2'' meetings and ''Pre-NDA'' meetings |
| . | |
| 312.53(c) | Investigator information; investigator report (Form FDA–1572) and narrative; investigator's background information; Phase 1 outline of planned investigation; and Phase 2 outline of study protocol |
| . | |
| 312.54(a) and (b) | Sponsor submissions concerning investigations involving an exception from informed consent under § 50.24 |
| . | |
| 312.55(b) | Sponsor reports to investigators on new observations, especially adverse reactions and safe use; only ''new observations'' are estimated under this section; investigator brochures are included under § 312.23 |
| . | |
| 312.56(b), (c), and (d) | Sponsor monitoring of all clinical investigations, investigators, and drug safety; notification to FDA |
| . | |
| 312.58(a) | Sponsor's submission of records to FDA on request |
| . | |
| 312.64 | Investigator reports to the sponsor |

TABLE 1.—REPORTING AND RECORDKEEPING REQUIREMENTS IN 21 CFR PART 312—Continued

| REPORTING REQUIREMENTS | |
|---|---|
| 21 CFR Section | Requirements |
| (a) | Progress reports |
| (b) | Safety reports |
| (c) | Final reports |
| 312.66 | Investigator reports to Institutional Review Board; estimates for this requirement are included under § 312.53 |
| 312.70(a) | Investigator disqualification; opportunity to respond to FDA |
| 312.83 | Sponsor submission of treatment protocol; estimates for this requirement are included under §§ 312.34 and 312.35 |
| 312.85 | Sponsors conducting Phase 4 studies; estimates for this requirement are included under § 312.23 in 0910–0014, and §§ 314.50, 314.70, and 314.81 in 0910–0001 |
| 312.110(b) | Request to export an investigational drug |
| 312.120 | Submissions related to foreign clinical studies not conducted under an IND |
| 312.130(d) | Request for disclosable information for investigations involving an exception from informed consent under § 50.24 |
| RECORDKEEPING REQUIREMENTS | |
| 21 CFR Section | Requirements |
| 312.52(a) | Transfer of obligations to a contract research organization |
| 312.57 | Sponsor recordkeeping |
| 312.59 | Sponsor recordkeeping of disposition of unused supply of drugs; estimates for this requirement are included under § 312.57 |
| 312.62(a) | Investigator recordkeeping of disposition of drugs |
| 312.62(b) | Investigator recordkeeping of case histories of individuals |
| 312.120(d) | Recordkeeping requirements for submissions related to foreign clinical studies not conducted under an IND; estimates for this requirement are included under § 312.57 |
| 312.160(a)(3) | Records maintenance: shipment of drugs for investigational use in laboratory research animals or in vitro tests |
| 312.160(c) | Shipper records of alternative disposition of unused drugs |

In the **Federal Register** of February 11, 2009 (74 FR 6889), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

In tables 2 and 3 of this document, the estimates for ''No. of Respondents,'' ''No. of Responses per Respondent,'' and ''Total Annual Responses'' were obtained from the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) reports and data management systems for submissions received in 2007 and from other sources familiar with the number of submissions received under 21 CFR part 312. The estimates for ''Hours per Response'' were made by CDER and CBER individuals familiar with the burden associated with these reports and from estimates received from the pharmaceutical industry.

FDA estimates the burden of this collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS AND BIOLOGICS (CDER)[1]

| 21 CFR Section | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 312.7(d) | 28 | 1.58 | 44 | 24 | 1,056 |
| 312.10 | 4 | 1 | 4 | 10 | 40 |
| 312.23(a) through (f) | 2,496 | 1.26 | 3,156 | 1,600 | 5,049,600 |
| 312.30(a) through (e) | 2,030 | 8.91 | 18,079 | 284 | 5,134,436 |

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS AND BIOLOGICS (CDER)[1]—Continued

| 21 CFR Section | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 312.31(b) | 153 | 2.97 | 454 | 100 | 45,400 |
| 312.32(c) and (d) | 985 | 23.06 | 22,713 | 32 | 726,816 |
| 312.33(a) through (f) | 2,564 | 2.34 | 5,994 | 360 | 2,157,840 |
| 312.35(a) and (b) | 9 | 1.11 | 10 | 300 | 3,000 |
| 312.36 | 525 | 1.23 | 645 | 16 | 10,320 |
| 312.38(b) and (c) | 654 | 1.34 | 874 | 28 | 24,472 |
| 312.42(e) | 149 | 1.10 | 164 | 284 | 46,576 |
| 312.44(c) and (d) | 159 | 1.13 | 179 | 16 | 2,864 |
| 312.45(a) and (b) | 254 | 1.43 | 362 | 12 | 4,344 |
| 312.47(b) | 281 | 1.8 | 529 | 160 | 84,640 |
| 312.53(c) | 900 | 26.51 | 23,855 | 80 | 1,908,400 |
| 312.54(a) and (b) | 1 | 1 | 1 | 48 | 48 |
| 312.55(b) | 985 | 2,306 | 2,271,300 | 48 | 109,022,400 |
| 312.56(b) ,(c), and (d) | 18 | 1 | 18 | 80 | 1,440 |
| 312.58(a) | 91 | 4.10 | 373 | 8 | 2,984 |
| 312.64 | 141,393 | 1 | 141,393 | 24 | 3,393,432 |
| 312.70(a) | 4 | 1.5 | 6 | 40 | 240 |
| 312.110(b) | 23 | 18.26 | 420 | 75 | 31,500 |
| 312.120[2] | 115 | 5 | 575 | 32 | 18,400 |
| 312.130(d) | 3 | 1 | 3 | 8 | 24 |

[1] There are no capital and startup, or operation, maintenance, and purchase costs associated with the collection of information requirements.
[2] Section 312.120 includes the burden estimate for both CDER and CBER.

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS AND BIOLOGICS (CDER)[1]

| 21 CFR Section | No. of Recordkeepers | No. of Records per Recordkeeper | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 312.52(a) | 683 | 1 | 683 | 2 | 1,366 |
| 312.57 | 75 | 485.28 | 36,396 | 100 | 3,639,600 |
| 312.62(a) | 14,732 | 1 | 14,732 | 40 | 589,280 |
| 312.62(b) | 147,320 | 1 | 147,320 | 40 | 5,892,800 |
| 312.160(a)(3) | 547 | 1.4 | 782 | .5 | 391 |
| 312.160(c) | 547 | 1.4 | 782 | .5 | 391 |

[1] There are no capital and startup, or operation, maintenance, and purchase costs associated with the collection of information requirements.

TABLE 4.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS (CBER)[1]

| 21 CFR Section | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Hours per Responses | Total Hours |
|---|---|---|---|---|---|
| 312.7(d) | 12 | 1.1 | 13 | 24 | 312 |
| 312.23(a) through (f)[2] | 168 | 1.5 | 256 | 1,600 | 409,600 |
| 312.30(a) through (e) | 372 | 6.4 | 2,369 | 284 | 672,796 |

TABLE 4.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS (CBER)[1]—Continued

| 21 CFR Section | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Hours per Responses | Total Hours |
|---|---|---|---|---|---|
| 312.31(b)[2] | 703 | 7.7 | 5,417 | 100 | 541,700 |
| 312.32(c) and (d) | 175 | 14.6 | 2,563 | 32 | 82,016 |
| 312.33(a) through (f) | 512 | 2.3 | 1,168 | 360 | 420,480 |
| 312.35(a) and (b) | 1 | 1 | 1 | 300 | 300 |
| 312.36 | 10 | 4 | 40 | 16 | 640 |
| 312.38(b) and (c) | 81 | 1.5 | 120 | 28 | 3,360 |
| 312.42(e) | 74 | 1.5 | 108 | 284 | 30,672 |
| 312.44(c) and (d) | 34 | 1.1 | 39 | 16 | 624 |
| 312.45(a) and (b) | 41 | 1.4 | 59 | 12 | 708 |
| 312.47(b) | 31 | 1.2 | 37 | 160 | 5,920 |
| 312.53(c) | 243 | 4.95 | 1,203 | 80 | 96,240 |
| 312.54(a) and (b) | 1 | 1 | 1 | 48 | 48 |
| 312.55(b) | 42 | 1 | 43 | 48 | 2,064 |
| 312.56(b), (c), and (d) | 10 | 1.6 | 16 | 80 | 1,280 |
| 312.58(a) | 7 | 1 | 7 | 8 | 56 |
| 312.64 | 2,728 | 3.82 | 10,411 | 24 | 249,864 |
| 312.70(a) | 5 | 1 | 5 | 40 | 200 |
| 312.110(b) | 18 | 1 | 18 | 75 | 1,350 |
| 312.130(d) | 1 | 1 | 1 | 8 | 8 |

[1] There are no capital and startup, or operation, maintenance, and purchase costs associated with the collection of information requirements.
[2] The reporting requirement for § 312.10 is included in the estimates for §§ 312.23 and 312.31.

TABLE 5.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS (CBER)[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 312.52(a) | 52 | 1.4 | 73 | 2 | 146 |
| 312.57 | 168 | 3.05 | 512 | 100 | 51,200 |
| 312.62(a) | 2,560 | 1 | 2,560 | 40 | 102,400 |
| 312.62(b) | 2,560 | 10 | 25,600 | 40 | 1,024,000 |
| 312.160(a)(3) | 55 | 1.4 | 77 | 0.5 | 38.5 |
| 312.160(c) | 55 | 1.4 | 77 | 0.5 | 38.5 |

[1] There are no capital and startup, or operation, maintenance, and purchase costs associated with the collection of information requirements.

TABLE 6.—TOTALS FOR ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDENS FOR CDER AND CBER

| | |
|---|---|
| Reporting Burden | 130,190,510 |
| Recordkeeping | 11,301,652 |
| Total | 141,492,162 |

Dated: May 1, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–10730 Filed 5–7–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2007–E–0048] (formerly Docket No. 2007E–0445)**

### Determination of Regulatory Review Period for Purposes of Patent Extension; NEUPRO TRANSDERMAL SYSTEM

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for NEUPRO TRANSDERMAL SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product NEUPRO TRANSDERMAL SYSTEM (rotigotine). NEUPRO TRANSDERMAL SYSTEM is indicated for the treatment of the signs and symptoms of early-stage idiopathic Parkinson's disease. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for NEUPRO TRANSDERMAL SYSTEM (U.S. Patent No. 6,884,434) from Schwarz Pharma Limited, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 28, 2008, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of NEUPRO TRANSDERMAL SYSTEM represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for NEUPRO TRANSDERMAL SYSTEM is 4,367 days. Of this time, 3,535 days occurred during the testing phase of the regulatory review period, while 832 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 27, 1995. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 27, 1995.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: January 28, 2005. The applicant claims January 19, 2005, as the date the new drug application (NDA) for NEUPRO TRANSDERMAL SYSTEM (NDA 21–829) was initially submitted. However, FDA records indicate that NDA 21–829 was initially submitted on January 28, 2005, the date of receipt by the Agency of a resubmission following a refusal to file.

3. *The date the application was approved*: May 9, 2007. FDA has verified the applicant's claim that NDA 21–829 was approved on May 9, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 744 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 7, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 4, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 6, 2009.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E9–10818 Filed 5–7–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention (CDC)

### Board of Scientific Counselors, National Center for Public Health Informatics (BSC, NCPHI)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC announces the following meeting of the aforementioned committee:

*Time and Date:* 8:30 a.m.–5 p.m., May 26, 2009.

*Place:* Swan & Dolphin Hotel, 1500 Epcot Resorts Boulevard, Lake Buena Vista, Florida 32830. Audio conference call via FTS conferencing. The USA toll free dial in number is 1–866–713–5586, with a participant pass code of 4624038.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The committee will meet to conduct BSC, NCPHI business.

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

Dated: May 4, 2009.

**Elaine L. Baker,**

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

*Matters To Be Discussed:* To discuss BSC, NCPHI-related matters including: update on BioSense; re-formation of three BSC working groups; and various other BSC-related activities. Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Scott McNabb, Ph.D., Designated Federal Officer, NCPHI, CDC, 1600 Clifton Road, NE., Mailstop E–78, Atlanta, Georgia 30333, *Telephone:* (404)498–6427, Fax (404)498–6235.

[FR Doc. E9–10738 Filed 5–7–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

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

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

*Name of Committee:* Neurological Sciences Training Initial Review Group; NST–1 Subcommittee.

*Date:* May 11–12, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Tuscan Inn, 495 Jefferson Street, San Francisco, CA 94109.

*Contact Person:* Raul A. Saavedra, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 4, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–10803 Filed 5–7–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0664]**

### Arthritis Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Arthritis Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on June 16, 2009, from 8:30 a.m. to 4 p.m.

*Location*: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

*Contact Person*: Nicole Vesely, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–6793, FAX: 301–827–6776, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512532. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda*: The committee will discuss biologics license application (BLA) 125293, KRYSTEXXA (pegloticase), Savient Pharmaceuticals, Inc., as a therapy for patients with refractory gout.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 2, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief

statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 22, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 26, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 30, 2009.

**Randall W. Lutter,**

*Deputy Commissioner for Policy.*

[FR Doc. E9–10729 Filed 5–7–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; 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) and552b(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 Center for Research Resources Special Emphasis Panel; BioTechnology 2 SEP.

*Date:* June 25, 2009.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Lee Warren Slice, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, 6701 Democracy Blvd. Room 1068, Bethesda, MD 20892, 301–435–0965.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS).

Dated: May 4, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–10804 Filed 5–7–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### NIH–Sponsored Workshop: ''Soy Protein and Isoflavones Research: Challenges in Designing and Evaluating Intervention Studies''; Notice

The National Institutes of Health (NIH) Office of Dietary Supplements (ODS) is co-sponsoring a workshop entitled ''Soy Protein and Isoflavones Research: Challenges in Designing and Evaluating Intervention Studies'' with other NIH Institutes and Centers (National Center for Complementary and Alternative Medicine, National Cancer Institute, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institute on Aging, and the Division of Nutrition Research Coordination). The workshop will be held on July 28–29 at the Bethesda North Marriott Hotel and Conference Center, Bethesda, Maryland.

**Summary**

NIH has been supporting research on soy in its many forms for a range of outcomes. Questions concerning which forms of soy might be better for studies of specific health outcomes and at what doses led the National Center for Complementary and Alternative Medicine and the Office of Dietary Supplements to commission an evidence-based review of the literature. The resulting report (*http://www.ahrq.gov/clinic/tp/soytp.htm*) found a large, but weak, literature with equivocal findings. Moreover, the National Institute of Environmental Health Sciences provided some troubling data about soy products used in research, which included confounding produced by unanticipated levels of phytoestrogens in animal feed (Heindel *et al. Environmental Health Perspectives* 2008:116(3);389–393). Hence, components of the NIH became concerned about the quality of data from human studies.

The purpose of this workshop, therefore, is to provide guidance for the next generation of soy protein and isoflavone human research. Specifically, the workshop objectives are to identify (1) methodological issues relative to exposures and interventions that may confound study results and interpretation and (2) scientifically sound and useful options and solutions for dealing with these issues in the design, conduct, reporting of results, and interpretation of ongoing and future studies. NIH is seeking input from scientists from multiple disciplines, including nutritionists, physicians, analytical chemists, epidemiologists, biochemists, and clinical trialists from academia, industry, and government. This highly participatory workshop will address issues related to population exposure to soy and other phytoestrogens, factors influencing variability of response to soy interventions and negative consequences of exposure, methods and tools to assess exposure, product composition, and analytic methods to assess soy product constituents and metabolites.

**Registration**

Seating at this workshop is very limited. To register, please e-mail by June 1, 2009, your name, complete contact information (including phone number, e-mail address, and street address), and the dates that you plan to attend to Ms. Tricia Wallich at *wallich@csionweb.com* . If you do not have access to e-mail, please call Ms. Wallich at 301–670–0270 (not a toll-free number). Ms. Wallich will be coordinating the registration for this workshop.

Dated: May 4, 2009.

**Raynard S. Kington,**

*Acting Director, National Institutes of Health.*

[FR Doc. E9–10788 Filed 5–7–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health (MSHRAC, NIOSH)

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

*Time and Date:*

8:15 a.m.—5:15 p.m., June 3, 2009.
8:00 a.m.—1:30 p.m., June 4, 2009.

*Place:* The Madison, a Loews Hotel, 1177 Fifteenth St. NW., Washington, DC 20005, telephone (202)862–1600, fax (202)587–2696.

*Status:* Open to public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Purpose:* This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), section 102(b)(2).

*Matters To Be Discussed:* The meeting will focus on medical surveillance of coal miners, study of lung cancer and diesel exhaust in mines, update on mine escape and rescue topics, rock mechanics and ground control research program, mining machines and update on deep cover retreat mining research.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Jeffery L. Kohler, Ph.D., Executive Secretary, MSHRAC, NIOSH, CDC, 626 Cochrans Mill Road, telephone (412)386–5301, fax (412)386–5300.

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

Dated: May 4, 2009.

**Elaine L. Baker,**

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

[FR Doc. E9–10740 Filed 5–7–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Tribal Management Grant Program

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice; Correction.

**SUMMARY:** The Indian Health Service, HHS, published a document in the **Federal Register** Thursday, April 16, 2009. The document contained two errors.

**FOR FURTHER INFORMATION CONTACT:** Patricia Spotted Horse, Program Analyst, Tribal Management Grant Program, Office of Tribal Programs, Indian Health Service, Reyes Building, 801 Thompson Avenue, Suite 220, Rockville, MD 20852, Telephone (301) 443–1104. (This is not a toll-free number.)

**Correction**

In the **Federal Register** of Thursday, April 16, 2009, in FR Doc. E9–8641 on page 17676, in the third column, second paragraph, first sentence, ''45 CFR Part 75'' should read ''45 CFR Part 74.''

On page 17684, in the first column, regarding the IHS Checklist midway down the column, there is a duplicate signature line: IHS Program Office Signature/Date: ____; delete the duplicate signature line.

Dated: May 1, 2009.

**Robert G. McSwain,**

*Director, Indian Health Service.*

[FR Doc. E9–10601 Filed 5–7–09; 8:45 am]

**BILLING CODE 4165–16–M**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Guam-CNMI Visa Waiver Information

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 30–Day Notice and request for comments; Extension of an existing information collection: 1651–0109.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Guam-CNMI Visa Waiver Information (Form I–736). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 7911) on February 20, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before June 8, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/ Customs and Border Protection, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including 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.

*Title:* Guam-CNMI Visa Waiver Agreement.

*OMB Number:* 1651–0109.

*Form Number:* I–736.

*Abstract:* Public Law 110–229, enacted on May 8th, 2008, provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into Guam or the Commonwealth of the Northern Mariana Islands (CNMI) as a visitor. Applicants must present a completed Form I–736 to CBP in order to enter these territories under these provisions.

*Current Actions:* There are no changes to the information collection. This submission is being made to extend the expiration date.

*Estimated Number of Respondents:* 1,560,000.

Estimated Time per Respondent: 5 minutes.

*Estimated Total Annual Burden Hours:* 129,480.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: May 4, 2009.

**Tracey Denning,**

*Agency Clearance Officer, Customs and Border Protection.*

[FR Doc. E9–10647 Filed 5–7–09; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Application for Extension of Bond for Temporary Importation

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0015.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Extension of Bond for Temporary Importation (Form 3173). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 5668) on January 30, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before June 8, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including 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.

*Title:* Application for Extension of Bond for Temporary Importation.

*OMB Number:* 1651–0015.

*Form Number:* CBP Form-3173.

*Abstract:* Imported merchandise that is to remain in the Customs territory for 1-year or less without duty payment is entered as a temporary importation. The importer may apply for an extension of this period on CBP Form-3173.

*Current Actions:* There are no changes to the information collection. This submission is being made to extend the expiration date with a change to the burden hours resulting from a more accurate estimate of time per response.

*Type of Review:* Extension (with change).

*Estimated Number of Respondents:* 1,200.

*Estimated Number of Annual Respondents per Respondent:* 14.

*Estimated Number of Total Annual Responses:* 16,800.

*Estimated Time per Response:* 13 minutes.

*Estimated Total Annual Burden Hours:* 3,646.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: May 4, 2009.

**Tracey Denning,**

*Agency Clearance Officer, Customs and Border Protection.*

[FR Doc. E9–10650 Filed 5–7–09; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Declaration of Persons Who Performed Repairs or Alterations

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0048.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Declaration of Persons Who Performed Repairs or Alterations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 5669) on January 30, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before June 8, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including 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.

*Title:* Declaration of Person Who Performed Repairs.

*OMB Number:* 1651–0048.

*Form Number:* None.

*Abstract:* The Declaration of Person Who Performed Repairs is used by CBP to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

*Current Actions:* There are no changes to the information collection. This submission is being made to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses or other for-profit institutions.

*Estimated Number of Respondents:* 10,236.

*Estimated Number of Total Annual Responses:* 20,472.

*Estimated Number of Annual Responses per Respondent:* 2.

*Estimated Time Per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 10,236.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC. 20229–1177, at 202–325–0265.

Dated: May 4, 2009.

**Tracey Denning,**

*Agency Clearance Officer, Customs and Border Protection.*

[FR Doc. E9–10649 Filed 5–7–09; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2009–0325]**

### Merchant Marine Personnel Advisory Committee; Vacancies

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for applications.

**SUMMARY:** The Coast Guard seeks applications for membership on the Merchant Marine Personnel Advisory Committee (MERPAC). This Committee advises the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

**DATES:** Completed application forms should reach us on or before July 15, 2009.

**ADDRESSES:** You may request an application form by writing to Mr. Mark Gould, Assistant to the Designated Federal Officer (DFO) for MERPAC, at Commandant (CG–5221), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001. Please submit applications to the same address. Also, a copy of the application form, as well as this notice, is available in our online docket, USCG–2009–0325, at *http://www.regulations.gov.* Send your completed application, along with a personal resume, to the Assistant DFO at the street address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gould, Assistant to DFO of MERPAC; telephone 202–372–1409 or e-mail *mark.c.gould@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** MERPAC is a Federal advisory committee established by authority of the Federal Advisory Committee Act under 5 U.S.C. App. (Pub. L. 92–463). MERPAC advises the Assistant Commandant for Prevention on matters of concern to seamen serving in our merchant marine, such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended.

MERPAC normally meets twice a year, once at or near Coast Guard Headquarters, Washington, DC, and once elsewhere in the country. It may also meet for extraordinary purposes. Its subcommittees and working groups may also meet to consider specific tasks as required.

We will consider applications for seven positions that expire or become vacant on January 31, 2010. To be eligible, you should have experience in the following areas of expertise: marine education in training institutions other than State or Federal maritime academies; maritime education in State maritime academies (2 vacancies); licensed engineering officer with either a limited chief engineer or a designated duty engineer endorsement and who represents a labor point of view; licensed deck officer who has an endorsement for vessels of any gross tonnage upon oceans and who also has tanker experience; unlicensed member of the engine department; and one person who represents the general public. Each member serves for a term of three years. Members may serve consecutive terms if re-appointed. Members serve without compensation from the Federal Government; however, they do receive travel reimbursement and per diem.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member who represents the general public, you will be appointed and serve as a special Government employee (SGE) as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as a SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). A completed OGE Form 450 is not releasable to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official (DAEO) or the DAEO's designate may release a Confidential Financial Disclosure Report.

If you are interested in applying to become a member of MERPAC, send a completed application, along with a personal resume, to Mr. Mark Gould, Assistant to the DFO of MERPAC, at the address above. Send the application in time for it to be received by the DFO on or before July 15, 2009.

A copy of the application form is available in the docket for this notice. To visit our online docket, go to *http://www.regulations.gov,* enter the docket number for this notice (USCG–2009–0325) in the Search box, and click ''Go.''

Dated: May 1, 2009.

**J. G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. E9–10750 Filed 5–7–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Notice of Issuance of Final Determination Concerning USB Flash Devices

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of certain USB flash devices (''UFDs'') which may be offered to the United States Government under an undesignated government procurement contract. Based upon the facts presented, in the final determination CBP concluded that either Israel or the United States is the country of origin of the UFDs for purposes of U.S. Government procurement.

**DATES:** The final determination was issued on May 5, 2009. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within June 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Gerry O'Brien, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–325–0044).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on May 5, 2009, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, Subpart B), CBP issued a final determination concerning the country of origin of certain UFDs which may be offered to the United States Government under an undesignated government procurement contract. This final determination, in HQ H034843, was issued at the request of SanDisk Corporation under procedures set forth at 19 CFR Part 177, Subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, certain goods are substantially transformed in either Israel of the United States, such that either Israel or the United States is the country of origin of the finished article for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: May 5, 2009.

**Sandra L. Bell,**

*Executive Director, Office of Regulations and Rulings,Office of International Trade.*

Attachment

HQ H034843

May 5, 2009

MAR–2–05 OT:RR:CTF:VS H034843 GOB

CATEGORY: Marking

Kevin P. Connelly, Esq., Seyfarth Shaw LLP, 975 F Street, N.W., Washington, D.C. 20004

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of USB Flash Drive

Dear Mr. Connelly: This is in response to your letter of July 17, 2008 requesting a final determination on behalf of the SanDisk Corporation (''SanDisk''), pursuant to subpart B of Part 177, Customs and Border Protection (''CBP'') Regulations (19 CFR 177.21 *et seq.*). Pursuant to our request, you provided additional information on March 10, 2009.

Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government. You state that SanDisk ''either manufactures or imports the merchandise which is the subject of this request.''

This final determination concerns the country of origin of certain encrypted USB flash devices. We note that SanDisk is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

You also request a determination concerning the country-of-origin marking of the subject goods.

FACTS:

You describe the pertinent facts as follows. A USB flash device (''UFD'') is a portable device that stores data in a non-volatile memory. The data is accessed from a host PC when the UFD is connected to its USB port. Flash memory is a form of block-oriented computer memory that can be electronically erased and reprogrammed. Flash memory is based on one of two current principles of operation: NOR flash and NAND flash. NAND-based flash, which is more suitable for mass-data storage devices, has faster erase and write times, but its interface allows only sequential access to data.

Four different items are involved here: Cruzer Professional (Stock Keeping Unit (''SKU'') SDCZ21); Cruzer Enterprise (SKU SDCZ22 and SDCZ35); Cruzer Enterprise FIPS Edition (SKU SDCZ32); and Cruzer Identity (SKU SDCZ31). The subject SanDisk UFDs are intended for organizations which require protection of their data when a UFD is lost or stolen. Cruzer Identity can also be used for managing a user digital identity to authenticate the user to different software systems.

You state that the key hardware component of the UFD is the flash memory chip, which stores the data. A flash chip is created in a generic manufacturing process for semiconductor device fabrication used to create chips and integrated circuits present in electronic devices. The process is a sequence of photographic and chemical processing steps during which electronic circuits are stacked on a wafer made of semiconducting material. Silicon is the most commonly used semiconductor material. The entire manufacturing process, which is performed in highly specialized facilities, takes six to eight weeks. The flash memory chips are manufactured in Japan and are the most expensive hardware component of the UFD.

You state that the UFDs consist of the following components: (1) NAND-based flash memory chips for mass data storage; (2) an application specific integrated circuit (''ASIC''), which acts as the mass storage controller and provides a linear interface to the block-oriented flash memory; (3) a USB connector, which provides the interface with the host computer; (4) a crystal oscillator, which produces the device's clock signal and controls the data output; (5) LEDs, which indicate data transfer in progress; (6) capacitors and

resistors; (7) electrically erasable programmable read-only memory (''EEPROM'') to store secret encryption keys in some of the UFD models; (8) a printed circuit board, which provides the mounting frame and circuitry for the electronic components listed above; and (9) a robust plastic or metal case. Cruzer Identity also contains a USB hub and smartcard.

You further state that the subject UFDs consist of firmware and application software. The firmware is a piece of binary machine code embedded or downloaded to the device using SanDisk's proprietary mass production machines (''MPUs'') after the hardware is manufactured. The firmware is essential to the use of the UFD. The firmware is responsible for the following: transferring data into and out of the flash memory chips; determining the storage algorithm; transferring data to and from the host PC through the USB port by implementing the USB different protocols; controlling the hardware encryption core in decisions such as determining which encryption key to use; and establishing secure encrypted communication sessions with a related software agent running on the host PC. During the manufacturing step of embedding the firmware, the production system is responsible for provisioning randomly generated encryption keys that are stored in the controller internal memory cache. The encryption keys are also crucial for the operation of the UFD.

The application software is responsible for functions such as login and user interface. Without it, the UFD does not exhibit its security features and behaves like any standard off the shelf USB flash drive for storing files in a non-protected manner. Without the application software, one cannot access information already stored in the protected encrypted form. The application software code is stored in the UFD during the manufacturing process in a read only storage area.

The current versions of the firmware and the application software were developed at SanDisk's site in Israel. SanDisk estimates that at least 70 man year hours were invested in the development of the firmware and the application software and that at least 20 more man years are invested each year in its continuing development. The process of software development (firmware and application software) is composed of requirements analysis, design, code writing, quality assurance testing, bug fixing and maintenance and support. The entire development process of the firmware and application software is performed in Israel.

The UFDs are intended for organizations that require protection of their data when a UFD is lost or stolen. They add security by encrypting the data secured on them via a cryptographic hardware core. The UFD user must provide a login password to access the data. Cruzer Identity may be used for managing a user digital identity to authenticate the user to different software systems.

The UFDs are manufactured in a manufacturing process, which requires approximately five minutes for each device. You state that SanDisk will perform the first three manufacturing operations in China and that it will perform the final three manufacturing operations in either Israel or the United States:

1. Initial Quality Control. SanDisk personnel assemble and visually inspect the components.

2. Component Mounting. SanDisk prints a bare circuit board with circuits and populates it with various electronic components through a solder paste surface mounting and reflow process (Surface Mounted Technology or ''SMT'') to form a printed circuit board assembly (''PCBA''). Assembly of the PCBA is performed in a standard SMT process. The PCBA is visually inspected and tested to verify that all components have been properly mounted and the connections and power circuitry are functioning.

3. Device Housing. The PCBA is joined with a metal USB connector and sealed in a plastic case to form the device through an ultrasonic housing process. The device then undergoes quality control to verify that it has not been harmed in the ultrasonic housing process.

4. Software Installation and Customization. The proprietary software (firmware and application software) is downloaded and the device is tested for functionality. Additional software, such as security software, can be added at this time or later. During this operation, device enumeration and identification to the operating system, device configuration, and content loading occur. Depending on the customer's unique requirements, some or all of the following configurable parameters are accomplished during this step: device enumeration and identification to the operating system; device configuration; and content. The process is slightly different for Cruzer Identity, as it contains the controllers, one for storage and one for the smartcode reader. Cruzer Identity provides capability (two-factor authentication (password and certificate)) which the Cruzer Professional, Cruzer Enterprise, and Cruzer Enterprise FIPS Edition do not have.

5. System Diagnostics and Test. The device undergoes a systems test consisting of many tests that are performed with ''Read Only'' diagnostics software and test vectors to verify product definition and functionality.

6. Packaging. After the firmware and application software are downloaded and the system is tested, the completed products are packaged and prepared for shipment.

The components used by SanDisk to manufacture Cruzer Professional and Cruzer Enterprise are a printed circuit board, USB connector, LED, crystal oscillator, flash memory chip, ASIC controller chip, capacitors and resistors, and plastic parts for the case. Cruzer Enterprise FIPS Edition consists of the same components with the addition of an EEPROM and epoxy glue, coating part of the PCBA. The components used to manufacture Cruzer Identity consist of a printed circuit board, USB connector, two LEDs, crystal oscillator, flash memory chips, two ASIC controller chips, USB hub, EEPROM, smartcard, capacitors and resistors, and plastic parts used to make the case.

As stated above, the flash memory chip is manufactured in Japan. The other hardware components are manufactured in Korea, Taiwan, or China.

You state that the addition of the security capabilities of the UFDs, through the firmware and application software installation and customization process, add significant capability and value to the UFDs. The software installation and customization currently drive the price of the UFDs, as the price of a UFD with security is currently somewhere between seven to nine times the price of a UFD without security.

ISSUES:

What is the country of origin of the UFDs for the purpose of U.S. Government procurement?

What is the country of origin of the UFDs for the purpose of marking?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law

or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR § 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens* v. *United States,* 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See, C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. In C.S.D. 85–25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences (''GSP''), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

The courts and CBP have also considered the essential character of the imported article in making these determinations. *See,* for example, *Uniroyal, Inc.* v. *United States,* 542 F. Supp. 1026, 3 CIT 220, 224–225 (1982) (where it was determined that imported uppers were the essence of a completed shoe) and *National Juice Products Association, et al* v. *United States,* 628 F. Supp. 978, 10 CIT 48, 61 (1986) (where the court addressed each of the factors (name, character, and use) in finding that no substantial transformation occurred in the production of retail juice products from manufacturing concentrate).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process may be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Data General* v. *United States,* 4 CIT 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States, the programming of a foreign PROM (Programmable Read-Only Memory chip) substantially transformed the PROM into a U.S. article. The court noted that it is undisputed that programming alters the character of a PROM. Programming changes the pattern of interconnections within the PROM. A distinct physical change is effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, may be discerned by electronic testing of the PROM. The essence of the article, its interconnections or stored memory, is established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device possessing a desired distinctive circuit pattern is no less a ''substantial transformation'' than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In C.S.D. 84–86, CBP stated:

> We are of the opinion that the rationale of the court in the *Data General* case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming * * * [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

In HQ 563012, dated May 4, 2004, CBP considered whether components of various origins were substantially transformed when assembled to form a fabric switch which involved a combination of computer hardware and software. Most of the assembly of computer hardware was performed in China. Then, in either Hong Kong or the U.S., the hardware was completed and the U.S.-origin software was downloaded onto the hardware. CBP noted that the U.S.-developed software provided the finished product with its ''distinctive functional characteristics.'' In making the determination that the product was substantially transformed in the U.S., where the fabric switch was assembled to completion, CBP considered both the assembly process that occurred in the U.S. and the configuration operations that required U.S.-origin software. In the scenario where the fabric switch was assembled to completion in Hong Kong, CBP determined the origin for marking purposes was Hong Kong.

In HQ 559255, dated August 21, 1995, a device referred to as a ''CardDock'' was under consideration for country of origin marking purposes. The CardDock was a device which was installed in IBM PC compatible computers. After installation, the units were able to accept PCMCIA cards for the purpose of interfacing such PCMCIA cards with the computer in which the CardDock unit was installed. The CardDock units were partially assembled abroad but completed in the United States. The overseas processing included manufacturing the product's injection molded plastic frame and installing integrated circuits onto a circuit board along with various diodes, resistors and capacitors. After such operations, these items were shipped to the United States for further processing that included mating a U.S.-origin circuit board to the foreign-origin frame and board. The assembled units were thereafter subjected to various testing procedures. In consideration of the foregoing, CBP held that the foreign-origin components, i.e., the ISA boards, frame assemblies and connector cables, were substantially transformed when assembled to completion in the United States. In finding that the name, character, and use of the foreign-origin components had changed during processing in the United States, CBP noted that the components had lost their separate identity during assembly and had become an integral part of a new and distinct item which was visibly different from any of the individual foreign-origin components.

In HQ 735027, dated September 7, 1993, a device that software companies used to protect their software from piracy was under consideration for country of origin marking purposes. The device, referred to as the ''MemoPlug,'' was assembled in Israel from parts that were obtained from Taiwan (such as various connectors and an Electronically Erasable Programmable Read Only Memory, or ''EEPROM'') and Israel (such as an internal circuit board). After assembly, these components were shipped to a processing facility in the United States where the EEPROM was programmed with special software. Such processing in the United States accounted for approximately 50 percent of the final selling price of the MemoPlugs. In finding that the foreign-origin components were substantially transformed in the United States, CBP noted that the U.S. processing transformed a blank media, the EEPROM, into a device that performed functions necessary to the prevention of software piracy.

We make our determination herein based on the totality of the circumstances. In doing so, we take particular note of the fact that the installation of the firmware and the application software makes the UFDs functional and executes the security features. In addition, the installation and customization of the firmware and application software greatly increase the value of a UFD without security.

Based upon the above precedents and the totality of the circumstances, we determine that there is a substantial transformation of the component parts in either Israel or the United States, the location where the final three manufacturing operations, including installation and customization of the firmware and application software, occur, i.e., if the final three manufacturing operations occur in Israel, there is a substantial transformation in Israel and if the final three manufacturing operations occur in the United States, there is a substantial transformation in the United States. Therefore, the country of origin for government procurement purposes is such location, either Israel or the United States.

*Country of Origin Marking*

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, CBP Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.1(b), CBP Regulations (19 CFR 134.1(b)), defines the country of origin of an article as the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the country of origin for country of origin marking purposes.

Based upon our determination, above, with respect to substantial transformation of the UFDs, the country of origin for marking of these goods is Israel or the United States if the final three manufacturing steps, described above, are performed in either of these countries. If the final three manufacturing steps are performed in Israel, the UFDs should be marked ''Made in Israel.'' For a determination as to whether SanDisk may mark the UFDs ''Made in the United States'' when the final three manufacturing operations are performed in the U.S., please contact the Federal Trade Commission, Division of Enforcement, 6th Street and Pennsylvania Ave., NW., Washington, DC 20580.

Holdings

There is a substantial transformation of the component parts in either Israel or the United States, the location where the final three operations, including the installation and customization of the firmware and application software, occur. Therefore, the country of origin for government procurement purposes is such location, either Israel or the United States.

The country of origin of the UFDs is Israel or the United States if the final three manufacturing steps, described above, are performed in these countries. If the final three manufacturing steps are performed in Israel, the UFDs should be marked ''Made in Israel.'' For a determination as to whether SanDisk may mark the UFDs ''Made in the United States'' when the final three manufacturing operations are performed in the United States, please contact the Federal Trade Commission.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested the final determination may request, pursuant to 19 CFR § 177.31, that CBP reexamine the matter anew and issue a new final determination.

Any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,
Sandra L. Bell,
Executive Director, Office of Regulations and Rulings, Office of International Trade

[FR Doc. E9–10813 Filed 5–7–09; 8:45 am]
**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5281–N–34]**

## Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Homelessness Prevention and Rapid Re-Housing Program (HPRP)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice of proposed information collection.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date: May 15, 2009.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Ms. Kimberly P. Nelson, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20502; *e-mail: Kimberly_P._Nelson@omb.eop.gov; fax:* (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; *e-mail: Lillian.L.Deitzer@hud.gov;* telephone (202) 402–8048. This is not a toll-free number. Copies of available documents should be submitted to OMB and may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to

OMB, for emergency processing, a proposed information collection for the Homelessness Prevention Fund, which is authorized under the American Recovery and Reinvestment Act (Recovery Act) of 2009, and is hereafter called the Homelessness Prevention and Rapid Re-housing Program (HPRP). Title XII of Division A of the Recovery Act appropriated $1.5 billion for this program. These funds will be distributed to 360 grantees that received Emergency Shelter Grants Program (ESG) funding in Fiscal Year (FY) 2009 as well as 180 metropolitan cities and urban counties that did not qualify for an ESG allocation in FY09. HUD will administer these funds as the Homelessness Prevention and Rapid Re-housing Program (HPRP) and will require a substantial amendment to the grantee's 2008 annual action plan as a condition of receiving funds. The formulas for the allocation of HPRP are the same as the formulas used for the annual allocation of ESG funds to the States, urban counties, metropolitan cities, and insular areas, except that the minimum allocation was reduced. On March 19, 2009, HUD published the HPRP Notice, including the list of HPRP allocations. This Notice may be found at *http://www.hud.gov/recovery/hrp-notice.pdf.*

In addition, section 1512 of the Recovery Act requires that not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains: (1) The total amount of recovery funds received from that agency; (2) the amount of recovery funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including the name of the project or activity; a description of the project or activity; an evaluation of the completion status of the project or activity; an estimate of the number of jobs created and the number of jobs retained by the project or activity; and for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act and name of the person to contact at the agency if there are concerns with the infrastructure investment. Not later than 30 calendar days after the end of each calendar quarter, each agency that made Recovery Act funds available to any recipient shall make the information in reports submitted publicly available by posting the information on a Web site.

This Notice also lists the following information:

*Title of Proposal:* Homelessness Prevention and Rapid Re-housing Program (HPRP).

*Description of Information Collection:* This is a new information collection. The Department of Housing and Urban Development is seeking emergency review of the Paperwork Reduction Act Requirements associated with the Homelessness Prevention and Rapid Re-housing Program.

*OMB Control Number:* Pending.

*Agency Form Numbers:* None.

*Members of the Affected Public:* Eligible HPRP grantees.

*Estimation of the total numbers of hours needed to prepare the information collection including number of responses, frequency of responses, and hours of responses:* An estimation of the total number of reporting hours is 210 per grantee. The number of grantees is 540. The total hours requested for the preparation of the Quarterly Reports is 113,652. The number of hours requested for both document preparation and reporting is 114,624.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 1, 2009.

**Stephen A. Hill,**

*Acting Director Policy and E–GOV.*

[FR Doc. E9–10702 Filed 5–7–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5280–N–17]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by

GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., Suite 1, San Antonio, TX 78226; (210) 925–3047; *Army:* Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202; (703) 601–2545; *Coast Guard:* Commandant, United States Coast Guard, Attn: Melissa Evans, 1900 Half St., SW, CG–431, Washington, DC 20593–0001; (202) 475–5628; *COE:* Ms. Kim Shelton, Army Corps of Engineers, Office of Counsel, CECC–R, 441 G Street, NW., Washington, DC 20314; (202) 761–7696; *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–5422; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS2603, Washington, DC 20240; (202) 208–5399; *Navy:* Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: April 30, 2009.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 05/08/2009**

**Suitable/Available Properties**

*Building*

Arizona

Bldg. 90551
Fort Huachuca
Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200920001
Status: Excess
Comments: 1270 sq. ft., most recent use—office, off-site use only

Arkansas

Job Corps Center
2020 Vance St.
Little Rock AR 72206
Landholding Agency: GSA
Property Number: 54200920003
Status: Surplus
GSA Number: 7–L–AR–0573
Comments: 74,570 sq. ft., 6 bldgs. most recent use—office/residential

California

Facility 1
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830012
Status: Unutilized
Comments: 7920 sq. ft., most recent use—communications

Facility 2
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830014
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Facilities 3, 4
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830015
Status: Unutilized
Comments: 4160 sq. ft. each, most recent use—communications

Facility 1
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830016
Status: Unutilized
Comments: 16566 sq. ft., most recent use—communications

Facility 2
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830017
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Facility 4
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830018
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—communications

Facility 6
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830019
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—transmitter bldg.

Hawaii

Bldg. 849
Bellows AFS
Bellows AFS HI
Landholding Agency: Air Force
Property Number: 18200330008
Status: Unutilized
Comments: 462 sq. ft., concrete storage facility, off-site use only

Maine

Bldgs 1, 2, 3, 4
OTH–B Radar Site
Columbia Falls ME
Landholding Agency: Air Force
Property Number: 18200840009
Status: Unutilized
Comments: various sq. ft., most recent use—storage/office

Bldg. 1105
Acadia National Park
47 Fabbri Drive
Bar Harbor ME 04609
Landholding Agency: Interior
Property Number: 61200920001
Status: Unutilized
Comments: 4874 sq. ft., presence of asbestos/lead paint, most recent use—food service, off-site use only, removal must comply w/applicable env. protection & historic preservation laws

Bldg. 1084
Acadia National Park
48 Fabbri Drive
Bar Harbor ME 04609
Landholding Agency: Interior
Property Number: 61200920002
Status: Unutilized
Comments: 37,027 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only, removal must comply w/applicable env. protection & historic preservation laws

Bldg. 1138
Acadia National Park
29 Musetti Dr.
Bar Harbor ME 04609
Landholding Agency: Interior
Property Number: 61200920003
Status: Unutilized
Comments: 16,291 sq. ft., presence of asbestos/lead paint, most recent use—recreational, off-site use only, removal must comply w/applicable env. protection & historic preservation laws

Maryland

Federal Office Building
7550 Wisconsin Ave.
Bethesda MD 20814
Landholding Agency: GSA
Property Number: 54200920007
Status: Surplus
GSA Number: GMR–1101–1
Comments: 10,000 sq. ft., 10-story, requires major renovation, limited parking

Minnesota

2 Single Family Homes
41937 Hwy 89
Pinecreek MN 56751
Landholding Agency: GSA
Property Number: 54200920002
Status: Excess
GSA Number: 1–X–MN–0589AB
Comments: 1200 sq. ft. each, most recent use—housing, off-site use only

New Hampshire

Federal Building
719 Main St.
Parcel ID: 424–124–78
Laconia NH 03246
Landholding Agency: GSA
Property Number: 54200920006
Status: Excess
GSA Number: 1–G–NH–0503
Comments: 31,271 sq. ft., most recent use—office bldg., National Register nomination pending

New York

Bldg. 240
Rome Lab
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Number: 18200340023
Status: Unutilized
Comments: 39108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 247
Rome Lab
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Number: 18200340024
Status: Unutilized
Comments: 13199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 248
Rome Lab
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Number: 18200340025
Status: Unutilized
Comments: 4000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 302
Rome Lab
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Number: 18200340026
Status: Unutilized
Comments: 10288 sq. ft., presence of asbestos, most recent use—communications facility

Oklahoma

Bldg. 07480
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200920002
Status: Unutilized
Comments: 1200 sq. ft., most recent use—recreation, off-site use only

Rhode Island

Former SSA Bldg.
Broad & Exchange Streets
Pawtucket RI
Landholding Agency: GSA
Property Number: 54200920008
Status: Excess
GSA Number: 1–G–RI–0518
Comments: 6254 sq. ft., most recent use—office

South Carolina

256 Housing Units
Charleston AFB
South Side Housing
Charleston SC
Landholding Agency: Air Force
Property Number: 18200920001
Status: Excess
Comments: various sq. ft., presence of asbestos/lead paint, off-site use only

Tennessee

Bldg. Trail
Fort Campbell
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920010
Status: Excess
Comments: 2104 sq. ft., double-wide trailer, off-site use only

Washington

10 Manufactured Homes
1500 S. Keys Rd.
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200920004
Status: Unutilized
Comments: various sq. ft., single & double-wide, off-site use only

West Restroom/Shower Bldg.
1500 S. Keys Rd.
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200920005
Status: Unutilized
Comments: 876 sq. ft., possible asbestos/lead paint, off-site use only

Building
1500 S. Keys Rd.
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200920006
Status: Unutilized
Comments: laundry room, work shop, laundry equip room, store room, possible asbestos/lead paint, off-site use only

Building
1500 S. Keys Rd.
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200920007
Status: Unutilized
Comments: office/store/restrooms on 1st floor, apartment on 2nd floor, possible asbestos/lead paint, off-site use only

Building
1500 S. Keys Rd.
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200920008
Status: Unutilized
Comments: rec room/storage garage/apartment/equip storage, possible asbestos/lead paint, off-site use only

10 cabins
Former KOA Kampground
1500 S. Keys Rd.
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200920016
Status: Unutilized
Comments: 155 sq. ft. & 216 sq. ft., off-site use only

*Land*

Arizona

Salt River Project
Pecos/Alma School Road
#USBR–08–020
Chander AZ 85225
Landholding Agency: GSA
Property Number: 54200920001
Status: Surplus
GSA Number: 9–I–AZ–0850
Comments: approx. 34,183 sq. ft., ranges from 10–20 ft. wide, very long and narrow

Tracts SG–2–8a, 8b
Portion
Apache Junction AZ 85220
Landholding Agency: Interior
Property Number: 61200920009
Status: Excess
Comments: 1.36 acre, water treatment plant access

California

Parcels L1 & L2
George AFB
Victorville CA 92394
Landholding Agency: Air Force Property Number: 18200820034
Status: Excess
Comments: 157 acres/desert, pump-and-treat system, groundwater restrictions, AF access rights, access restrictions, environmental concerns

Connecticut

MYQ Outer Marker Facility
Enfield CT 06082
Landholding Agency: GSA
Property Number: 54200920004
Status: Surplus
GSA Number: 1–U–CT–0561–1A
Comments: 0.341 acres, only accessible via right of way easement

Massachusetts

FAA Locator Antenna LOM
Coleman Road
Southhampton MA 01073
Landholding Agency: GSA
Property Number: 54200920005
Status: Excess
GSA Number: MA–0913–AA
Comments: 1.41 acres

Missouri

Communications Site
County Road 424
Dexter Co: Stoddard MO
Landholding Agency: Air Force Property Number: 18200710001
Status: Unutilized
Comments: 10.63 acres

North Carolina

0.14 acres

Pope AFB
Pope AFB NC
Landholding Agency: Air Force Property Number: 18200810001
Status: Excess
Comments: most recent use—middle marker, easement for entry

Tennessee

Parcel No. 1
Fort Campbell
Tract No. 13M–3
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920003
Status: Excess
Comments: 6.89 acres/thick vegetation

Parcel No. 2
Fort Campbell
Tract Nos.12M–16B & 13M–3
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920004
Status: Excess
Comments: 3.41 acres/wooded

Parcel No. 3
Fort Campbell
Tract No. 12M–4
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920005
Status: Excess
Comments: 6.56 acre/wooded

Parcel No. 4
Fort Campbell
Tract Nos10M–22 &10M–23
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920006
Status: Excess
Comments: 5.73 acres/wooded

Parcel No. 5
Fort Campbell
Tract No. 10M–20
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920007
Status: Excess
Comments: 3.86 acres/wooded

Parcel No. 7
Fort Campbell
Tract No. 10M–10
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920008
Status: Excess
Comments: 9.47 acres/wooded

Parcel No. 8
Fort Campbell
Tract No. 8M–7
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920009
Status: Excess
Comments: 15.13 acres/wooded

Texas

0.13 acres
DYAB, Dyess AFB
Tye Co: Taylor TX 79563
Landholding Agency: Air Force
Property Number: 18200810002
Status: Unutilized
Comments: most recent use—middle marker, access limitation

**Suitable/Unavailable Properties**

*Building*

Washington

Bldg. 404/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420002
Status: Unutilized
Comments: 1996 sq. ft., possible asbestos/lead paint, most recent use—residential

11 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420003
Status: Unutilized
Comments: 2134 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 297/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420004
Status: Unutilized
Comments: 1425 sq. ft., possible asbestos/lead paint, most recent use—residential

9 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420005
Status: Unutilized
Comments: 1620 sq. ft., possible asbestos/lead paint, most recent use—residential

22 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420006
Status: Unutilized
Comments: 2850 sq. ft., possible asbestos/lead paint, most recent use—residential

51 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420007
Status: Unutilized
Comments: 2574 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 402/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420008
Status: Unutilized
Comments: 2451 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB
222, 224, 271, 295, 260
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420009
Status: Unutilized
Comments: 3043 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB
102, 183, 118, 136, 113
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420010
Status: Unutilized
Comments: 2599 sq. ft., possible asbestos/lead paint, most recent use—residential

*Land*

South Dakota

Tract 133
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Landholding Agency: Air Force
Property Number: 18200310004
Status: Unutilized
Comments: 53.23 acres

Tract 67
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Landholding Agency: Air Force
Property Number: 18200310005
Status: Unutilized
Comments: 121 acres, bentonite layer in soil, causes movement

**Unsuitable Properties**

*Building*

Alabama

Bldgs. 04122, 04184
Redstone Arsenal
Madison AL 35898
Landholding Agency: Army
Property Number: 21200920011
Status: Unutilized
Reasons: Secured Area

Alaska

Bldg. 9485
Elmendorf AFB
Elmendorf AK
Landholding Agency: Air Force
Property Number: 18200730001
Status: Unutilized
Reasons: Secured Area

Bldg. 70500
Seward AFB
Seward AK 99664
Landholding Agency: Air Force
Property Number: 18200820001
Status: Unutilized
Reasons: Secured Area

Bldg. 3224 Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18200820002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 1437, 1190, 2375
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830002
Status: Unutilized
Directions: 3300, 3301, 3315, 3347, 3383
Reasons: Extensive deterioration, Secured Area

4 Bldgs.

Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830003
Status: Unutilized
Directions: 4040, 4332, 4333, 4480
Reasons: Secured Area, Extensive deterioration

Bldgs. 6122, 6205
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830004
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 8128
Elmendorf AFB
Elmendorf AK 99506
Landholding Agency: Air Force
Property Number: 18200830005
Status: Underutilized
Reasons: Secured Area

Bldgs. 8130, 8132, 17637
Elmendorf AFB
Anchorage AK 99506
Landholding Agency: Air Force
Property Number: 18200920002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 7111
Elmendorf AFB
Anchorage AK
Landholding Agency: Air Force
Property Number: 18200920014
Status: Unutilized
Reasons: Secured Area

Bldgs. 615, 617, 751, 753
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18200920015
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within airport runway clear zone, Within 2000 ft. of flammable or explosive material

Transmitter Bldg. B4A
Loran Station
St. Paul AK 99660
Landholding Agency: Coast Guard
Property Number: 88200920001
Status: Excess
Reasons: Contamination

Arizona

Railroad Spur
Davis-Monthan AFB
Tucson AZ 85707
Landholding Agency: Air Force
Property Number: 18200730002
Status: Excess
Reasons: Within airport runway clear zone

California

Bldgs. 5001 thru 5082
Edwards AFB
Area A
Los Angeles CA 93524
Landholding Agency: Air Force
Property Number: 18200620002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Garages 25001 thru 25100
Edwards AFB
Area A
Los Angeles CA 93524
Landholding Agency: Air Force
Property Number: 18200620003
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 00275
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200730003
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within airport runway clear zone

Bldgs. 02845, 05331, 06790
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200740001
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 07173, 07175, 07980
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200740002
Status: Unutilized
Reasons: Secured Area

Bldg. 5308
Edwards AFB
Kern CA 93523
Landholding Agency: Air Force
Property Number: 18200810003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facility 100
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200810004
Status: Excess
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Vandenberg AFB
1521, 1522, 1523, 1753, 1826
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820006
Status: Unutilized
Reasons: Secured Area

Bldgs. 1952, 1953, 1957, 1958
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820007
Status: Unutilized
Reasons: Secured Area

Bldgs. 1992, 1995
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820008
Status: Unutilized
Reasons: Secured Area

Bldgs. 10755, 11008
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820009
Status: Unutilized
Reasons: Secured Area

Bldg. 16133
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820011
Status: Unutilized
Reasons: Secured Area

5 Bldgs.
Pt. Arena AF Station
101, 102, 104, 105, 108
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820019
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 160, 161, 166
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820020
Status: Excess
Reasons: Extensive deterioration, Secured Area

8 Bldgs.
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820021
Status: Excess
Directions: 201, 202, 203, 206, 215, 216, 217, 218
Reasons: Extensive deterioration, Secured Area

7 Bldgs.
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820022
Status: Excess
Directions: 220, 221, 222, 223, 225, 226, 228
Reasons: Extensive deterioration, Secured Area

Bldg. 408
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820023
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 601 thru 610
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820024
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 611–619
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820025
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 620 thru 627
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820026
Status: Excess

Reasons: Secured Area, Extensive deterioration
Bldgs. 654, 655, 690
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820027
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 300, 387
Pt Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820029
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 700, 707, 796, 797
Pt. Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820030
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 748, 838
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820033
Status: Unutilized
Reasons: Secured Area

Bldgs. 1412, 2422, 3514
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200840001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 417
Fort MacArthur
Fort MacArthur CA
Landholding Agency: Air Force
Property Number: 18200920003
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 3094
Yosemite National Park
Yosemite CA 95318
Landholding Agency: Interior
Property Number: 61200920010
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 3493
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200920001
Status: Unutilized
Reasons: Secured Area

Bldgs. 2245, 2513T, 5509
Marine Corps Air Station
Miramar CA
Landholding Agency: Navy
Property Number: 77200920002
Status: Excess
Reasons: Extensive deterioration, Secured Area

8 Bldgs.
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200920003
Status: Excess
Directions: 1255, 1490, 14121, 14122, 14125, 14127, 62432, 140135
Reasons: Secured Area, Extensive deterioration

4 Bldgs.
Naval Air Weapons Station
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77200920004
Status: Excess
Directions: 02702, 02703, 02704, 02705
Reasons: Secured Area, Extensive deterioration

Bldgs. PM3–4, PM153
Naval Base
Point Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200920005
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

11 Bldgs.
Naval Base
San Nicholas Island Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200920006
Status: Unutilized
Directions: SNI11, 16, 22, 45, 49, 71, 72, 141, 202, 213, 229
Reasons: Extensive deterioration, Secured Area

Bldgs. PM126, 327, 327–A
Naval Base
Point Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200920007
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. PH 462
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200920008
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

14 Bldgs.
Naval Base
Point Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200920009
Status: Unutilized
Directions: PM4–4, 4–27, 4–30, 6–817, 37, 42, 223, 401, 733, 793, 803, 841, 842, 855
Reasons: Extensive deterioration, Secured Area

Bldgs. PH274, 462, 808, 837
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200920010
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Colorado

Bldg. 9038
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18200920004
Status: Unutilized
Reasons: Extensive deterioration

Florida

Bldg. 01248
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200740003
Status: Unutilized
Reasons: Secured Area

Bldg. 44426
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200740004
Status: Unutilized
Reasons: Secured Area

Bldg. 85406
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200740005
Status: Unutilized
Reasons: Secured Area

Bldg. 82
Air Force Range
Avon Park FL 33825
Landholding Agency: Air Force
Property Number: 18200840002
Status: Unutilized
Reasons: Secured Area, Contamination

Tracts 104–10, 104–16
Canaveral Natl Seashore
Volusia FL
Landholding Agency: Interior
Property Number: 61200920017
Status: Unutilized
Reasons: Extensive deterioration

Georgia

6 Cabins
QSRG Grassy Pond Rec Annex
Lake Park GA 31636
Landholding Agency: Air Force
Property Number: 18200730004
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 101, 102, 103
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200810006
Status: Excess
Reasons: Extensive deterioration

Bldgs. 330, 331, 332, 333
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200810007
Status: Excess
Reasons: Extensive deterioration

Bldgs. 794, 1541
Moody AFB
Lowndes GA
Landholding Agency: Air Force
Property Number: 18200820012
Status: Unutilized
Reasons: Secured Area

Bldg. 970
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200840003
Status: Unutilized

Reasons: Secured Area

Bldg. 205
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200920005
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 104, 118, 739, 742, 973
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200920016
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 00705, 00706, 00803
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200920012
Status: Excess
Reasons: Secured Area

5 Bldgs.
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200920013
Status: Excess
Directions: 00270, 00272, 00276, 00277, 00616, 00718
Reasons: Secured Area

Bldgs. 314, 315, 9225
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200920014
Status: Excess
Reasons: Extensive deterioration, Secured Area

9 Comfort Stations
Hartwell Lake & Dam
Hartwell GA 30643
Landholding Agency: COE
Property Number: 31200920001
Status: Unutilized
Directions: HAR 16099, 16100, 16102, 16555, 16920, 16838, 18482, 18483
Reasons: Extensive deterioration

RBR–19069
Richard B. Russell Lake
Elberton GA 30635
Landholding Agency: COE
Property Number: 31200920002
Status: Unutilized
Reasons: Extensive deterioration

Guam

Bldg. 1094
AAFB Yigo
Yigo GU 96543
Landholding Agency: Air Force
Property Number: 18200830007
Status: Unutilized
Reasons: Extensive deterioration

15 Bldgs.
Andersen AFB
Yigo GU 96543
Landholding Agency: Air Force
Property Number: 18200920006
Status: Excess
Reasons: Secured Area

Bldgs. 72, 73, 74
Andersen AFB
Mount Santa Rosa GU
Landholding Agency: Air Force
Property Number: 18200920017
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 101, 102
Andersen AFB
Pots Junction GU
Landholding Agency: Air Force
Property Number: 18200920018
Status: Excess
Reasons: Extensive deterioration

Hawaii

Bldg. 1815
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200730005
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 1028, 1029
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200740006
Status: Unutilized
Reasons: Secured Area

Bldgs. 1710, 1711
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200740007
Status: Unutilized
Reasons: Secured Area

Bldg. 1713
Hickam AFB
Hickam HI
Landholding Agency: Air Force
Property Number: 18200830008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1843
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200920019
Status: Unutilized
Reasons: Extensive deterioration

6 Bldgs.
Schofield Barracks
Wahiawa HI 96786
Landholding Agency: Army
Property Number: 21200920015
Status: Unutilized
Directions: 03920, 03930, 03932, 03934, 03938, 03940
Reasons: Secured Area

Bldgs. A3, 391A, 392
Naval Station
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77200920013
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 3
Opana Reg. Relay Facility
Kahuku HI 96731
Landholding Agency: Navy
Property Number: 77200920014
Status: Excess
Reasons: Extensive deterioration, Secured Area

Illinois

Repair Unit Land
400 Old Rock Rd.
Granite City IL 62040
Landholding Agency: COE
Property Number: 31200920005
Status: Unutilized
Reasons: Extensive deterioration

Iowa

4 Bldgs.
Island View Park
Centerville IA 52544
Landholding Agency: COE
Property Number: 31200920003
Status: Excess
Directions: RTHBUN 29375, 29371, 29366, 29364
Reasons: Extensive deterioration

Bldg. RTHBUN 29308
Bridge View Park
Melrose IA 52569
Landholding Agency: COE
Property Number: 31200920004
Status: Excess
Reasons: Extensive deterioration

Kansas

14 Bldgs.
Elk City Lake
Cherryvale KS 67335
Landholding Agency: COE
Property Number: 31200920006
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 25007, 25035, 25036
Lucas Park
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200920007
Status: Excess
Reasons: Extensive deterioration

Louisiana

Barksdale Middle Marker
Bossier LA 71112
Landholding Agency: Air Force
Property Number: 18200730006
Status: Excess
Reasons: Extensive deterioration

Maine

Facilities 1, 2, 3, 4 OTH–B Site
Moscow ME 04920
Landholding Agency: Air Force
Property Number: 18200730007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

OTH–B Site
Bldgs 1, 2, 3
Moscow ME 04920
Landholding Agency: GSA
Property Number: 54200920010
Status: Excess
GSA Number: 1–D–ME–068
Reasons: Secured Area

Robb House, Tract 1–105
Saint Croix Island
International Historic Site
Calais ME 04619
Landholding Agency: Interior
Property Number: 61200920012
Status: Unutilized
Reasons: Extensive deterioration

Maryland

6 Bldgs.
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920016
Status: Unutilized
Directions: 00099, 00664, E2338, E2340, E5441, 05650
Reasons: Secured Area

Bldgs. 200–216
Naval Air Station
Solomons MD
Landholding Agency: Navy
Property Number: 77200920011
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 23, 69
Naval Air Station
Solomons MD
Landholding Agency: Navy
Property Number: 77200920012
Status: Excess
Reasons: Secured Area, Extensive deterioration

Massachusetts

Tract 01–8726, FORACS
Cape Code Natl Seashore
Provincetown MA 02657
Landholding Agency: Interior
Property Number: 61200920011
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs.
USCG Air Station
3434, 3435, 3436, 5424, 5451
Bourne MA 02542
Landholding Agency: Coast Guard
Property Number: 88200920002
Status: Excess
Reasons: Secured Area, Extensive deterioration

Michigan

Bldg. 001
USCG Sector
Sault Ste Marie MI 49783
Landholding Agency: Coast Guard
Property Number: 88200920003
Status: Unutilized
Reasons: Secured Area

Missouri

Bldg. 13018
Harry S. Truman Reservoir
Clinton MO 64735
Landholding Agency: COE
Property Number: 31200920008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 2300Z
Masters Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200920009
Status: Excess
Reasons: Extensive deterioration

Montana

Bldgs. 1600, 1601
Malmstrom AFB
Cascade MT 59402
Landholding Agency: Air Force
Property Number: 18200920020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Nevada

Bldg. 33400
Ely
Ely NV 89301
Landholding Agency: Air Force
Property Number: 18200820014
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

New Hampshire

Bldgs. 122, 153, 501, 502
New Boston AF Station
Hillsborough NH
Landholding Agency: Air Force
Property Number: 18200820015
Status: Unutilized
Reasons: Secured Area

Bldg. 152
Pease Internatl Tradeport
Newington NH 03803
Landholding Agency: Air Force
Property Number: 18200920007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 131
Portsmouth Naval Shipyard
Portsmouth NH
Landholding Agency: Navy
Property Number: 77200920015
Status: Excess
Reasons: Secured Area

New Jersey

6 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21200920017
Status: Unutilized
Directions: 00080, 00630, 00633, 00635, 00636, 0636C
Reasons: Secured Area

New Mexico

Bldg. 1016
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200730008
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 40, 841
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200820016
Status: Underutilized
Reasons: Secured Area

Bldgs. 436, 437
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200820017
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

6 Bldgs.
Cannon AFB
Curry NM 88102
Landholding Agency: Air Force
Property Number: 18200830009
Status: Underutilized
Directions: 1156, 1160, 1245, 1256, 1258, 1260
Reasons: Secured Area

Bldgs. 20612, 29071, 37505
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200830010
Status: Unutilized
Reasons: Secured Area

Bldgs. 88, 89
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 312, 322
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830021
Status: Unutilized
Reasons: Secured Area

Bldg. 569
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830022
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 807, 833
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1245
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830024
Status: Unutilized
Reasons: Secured Area

5 Bldgs.
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200840004
Status: Unutilized
Directions: 1201, 1202, 1203, 1205, 1207
Reasons: Secured Area

5 Bldgs.
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200920008
Status: Unutilized
Directions: 71, 1187, 1200, 1284, 1285
Reasons: Secured Area

Bldg. 6596
Sandia National Labs
Albuquerque NM 87185

Landholding Agency: Energy
Property Number: 41200920001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

New York

8 Bldgs.
Fort Drum
Jefferson NY 13601
Landholding Agency: Army
Property Number: 21200920018
Status: Unutilized
Directions: T–377, T–378, T–531, T–537, T–538, T–597, T–598, T–599
Reasons: Secured Area

4 Bldgs.
Fort Drum
Jefferson NY 13601
Landholding Agency: Army
Property Number: 21200920019
Status: Unutilized
Directions: T1642, T1644, T1647, T2216
Reasons: Secured Area

Bldgs. 680B, 680C
Brookhaven Natl Lab
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200920002
Status: Excess
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

North Dakota

Bldgs. 1612, 1741
Grand Forks AFB
Grand Forks ND 58205
Landholding Agency: Air Force
Property Number: 18200720023
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Oklahoma

Bldg. 43446, Keystone
Washington Irving Rec Area
Sand Springs OK 74063
Landholding Agency: COE
Property Number: 31200920010
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 43611, 43612, 43545
Kaw Lake
Coon Creek
Ponca City OK 74604
Landholding Agency: COE
Property Number: 31200920011
Status: Unutilized
Reasons: Extensive deterioration

9 Bldgs.
Eufaula Lake
Stigler OK 74462
Landholding Agency: COE
Property Number: 31200920012
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 44065
Fort Gibson
Taylor Ferry South
Ft. Gibson OK 74434
Landholding Agency: COE
Property Number: 31200920013
Status: Unutilized
Reasons: Extensive deterioration

10 Bldgs.
Flat Rock Creek
Fort Gibson OK 74434
Landholding Agency: COE
Property Number: 31200920014
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 44763
Canton Lake
Canton OK 73724
Landholding Agency: COE
Property Number: 31200920015
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 43302, 43303
Newt Graham Lock & Dam
Inola OK 74036
Landholding Agency: COE
Property Number: 31200920016
Status: Unutilized
Reasons: Extensive deterioration

Oregon

Bldg. 1001
ANG Base
Portland OR 97218
Landholding Agency: Air Force
Property Number: 18200820018
Status: Underutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Pennsylvania

Rose Cottage, Tract 101–14
Valley Forge National
Historic Park
Malvern PA 19355
Landholding Agency: Interior
Property Number: 61200920013
Status: Excess
Reasons: Extensive deterioration

South Carolina

Bldgs. 19, 20, 23
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730009
Status: Underutilized
Reasons: Secured Area

Bldgs. 27, 28, 29
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730010
Status: Underutilized
Reasons: Secured Area

Bldgs. 30, 39
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730011
Status: Underutilized
Reasons: Secured Area

8 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200920021
Status: Unutilized
Directions: B14, B22, B31, B116, B218, B232, B343, B3403
Reasons: Secured Area

36 Bldgs.
J. Strom Thurmond Lake
Clarks Hill SC 29821
Landholding Agency: COE
Property Number: 31200920017
Status: Unutilized
Reasons: Extensive deterioration

Bldg. JST 17244
J. Strom Thurmond Lake
Clarks Hill SC 29821
Landholding Agency: COE
Property Number: 31200920018
Status: Unutilized
Reasons: Extensive deterioration

South Dakota

Bldg. 2306
Ellsworth AFB
Meade SD 57706
Landholding Agency: Air Force
Property Number: 18200740008
Status: Underutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 6927
Ellsworth AFB
Meade SD 57706
Landholding Agency: Air Force
Property Number: 18200830011
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Tennessee

13 Bldgs.
Y–12 Natl Security Complex
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200920003
Status: Unutilized
Directions: 9404–02, 9404–04, 9409–04, 9409–30, 9416–18, 9416–21, 9709, 9709–19, 9720–19A, 9720–19B, 9724–01, 9766, 9983–FE
Reasons: Secured Area

Texas

Bldg. 1001
FNXC, Dyess AFB
Tye Co: Taylor TX 79563
Landholding Agency: Air Force
Property Number: 18200810008
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840005
Status: Unutilized
Directions: B–4003, 4120, B–4124, 4127, 4130
Reasons: Secured Area

4 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840006
Status: Unutilized
Directions: 7225, 7226, 7227, 7313
Reasons: Secured Area

4 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840007
Status: Unutilized
Directions: 8050, 8054, 8129, 8133
Reasons: Secured Area

5 Bldgs.

Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840008
Status: Unutilized
Directions: B–9032, 9107, 9114, B–9140, 11900
Reasons: Secured Area

Bldg. B–4228
FNWZ Dyess AFB
Taylor TX 79607
Landholding Agency: Air Force
Property Number: 18200920009
Status: Unutilized
Reasons: Secured Area

Bldgs. B–3701, B–3702
FNWZ Dyess AFB
Pecos TX 79772
Landholding Agency: Air Force
Property Number: 18200920010
Status: Unutilized
Reasons: Secured Area

Bldgs. 1, 2, 3, 4
Tethered Aerostat Radar Site
Matagorda TX 77457
Landholding Agency: Air Force
Property Number: 18200920023
Status: Excess
Reasons: Secured Area

Bldg. 154
Goodfellow AFB
Goodfellow TX 76908
Landholding Agency: Air Force
Property Number: 18200920024
Status: Unutilized
Reasons: Secured Area

Bldg. 34008
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200920020
Status: Excess
Reasons: Secured Area

Bldgs. 2430, 2431, 2629
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200920021
Status: Unutilized
Reasons: Extensive deterioration

6 Bldgs.
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200920022
Status: Unutilized
Directions: 2931, 2932, 2941, 2942, 2984, 2994
Reasons: Extensive deterioration

Bldg. 6960
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200920023
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 42466, 42508
Johnson Creek/Caney Creek
Denison TX
Landholding Agency: COE
Property Number: 31200920019
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
Lake Texoma
42558, 42473, 42543, 42496 Denison TX
Landholding Agency: COE
Property Number: 31200920020
Status: Unutilized
Reasons: Extensive deterioration

6 Bldgs.
Pantex Plant
Amarillo TX 79121
Landholding Agency: Energy
Property Number: 41200920004
Status: Unutilized
Directions: 09–056, 11–R–016, 11–030, 12–023, 12–045, 12–047, 12–005G3
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Virginia

12 Bldgs
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18200920012
Status: Unutilized
Directions: 35, 36, 903, 905, 1013, 1020, 1033, 1050, 1066, 1067, 1069, 1075
Reasons: Secured Area, Floodway

4 Bldgs.
Philpott Lake
16232, 16233, 16234, 16235
Bassett VA 24055
Landholding Agency: COE
Property Number: 31200920021
Status: Unutilized
Reasons: Extensive deterioration

6 Bldgs.
John H. Kerr Lake & Dam
Mecklenburg VA 23917
Landholding Agency: COE
Property Number: 31200920022
Status: Unutilized
Directions: ID# JHK 15776, 16754, 16810, 17051, 17845, 18244
Reasons: Extensive deterioration

Five Forks Visitor Station
Petersburg Natl Battlefield
Dinwiddie VA 23841
Landholding Agency: Interior
Property Number: 61200920014
Status: Excess
Reasons: Extensive deterioration

Tract 01–131
Appomattox Court House
National Historic Park
Appomattox VA 24522
Landholding Agency: Interior
Property Number: 61200920015
Status: Excess
Reasons: Extensive deterioration

Bldg. 1834
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200920016
Status: Excess
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Washington

Madame Dorion Vault Toilet
McNary Lock & Dam
Walla Walla WA
Landholding Agency: COE
Property Number: 31200920023
Status: Unutilized
Reasons: Extensive deterioration

Chiawana Park Restroom
McNary Lock & Dam
Pasco WA 99301
Landholding Agency: COE
Property Number: 31200920024
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 113
Naval Air Station
Whidbey Island WA 98278
Landholding Agency: Navy
Property Number: 77200920017
Status: Excess
Reasons: Secured Area

6 Bldgs.
Naval Air Station
Whidbey Island WA 98278
Landholding Agency: Navy
Property Number: 77200920018
Status: Unutilized
Directions: 175, 855, 2601, 2602, 2603, 2604
Reasons: Secured Area, Extensive deterioration

Bldg. 1013
Naval Base Kitsap
Bangor WA
Landholding Agency: Navy
Property Number: 77200920019
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

West Virginia

Bldgs. 102, 106, 111
Air National Guard
Martinsburg WV 25405
Landholding Agency: Air Force
Property Number: 18200920013
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Wisconsin

Bldgs. 01000, D1147, 02162
Fort McCoy
Monroe WI 54656
Landholding Agency: Army
Property Number: 21200920024
Status: Unutilized
Reasons: Extensive deterioration

Wyoming

Bldg. 00012
Cheyenne RAP
Laramie WY 82009
Landholding Agency: Air Force
Property Number: 18200730013
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

California

Facilities 99001 thru 99006
Pt Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820028
Status: Excess
Reasons: Secured Area

7 Facilities
Pt. Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820031

Status: Excess
Directions: 99001, 99003, 99004, 99005, 99006, 99007, 99008
Reasons: Secured Area

Facilities 99002 thru 99014
Pt. Arena Water Sys Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820032
Status: Excess
Reasons: Secured Area

Florida

Defense Fuel Supply Point
Lynn Haven FL 32444
Landholding Agency: Air Force
Property Number: 18200740009
Status: Excess
Reasons: Floodway

New Jersey

Ludlam Beach Light Land
31st St.
Sea Isle NJ 08243
Landholding Agency: GSA
Property Number: 54200920009
Status: Surplus
GSA Number: 1–X–NJ–0665–AA
Reasons: Floodway

Texas

Rattlesnake ESS
FNWZ, Dyess AFB
Pecos TX 79772
Landholding Agency: Air Force
Property Number: 18200920011
Status: Unutilized
Reasons: Secured Area

24 acres
Tethered Aerostate Radar Site
Matagorda TX 77457
Landholding Agency: Air Force
Property Number: 18200920022
Status: Excess
Reasons: Secured Area

[FR Doc. E9–10443 Filed 5–7–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

## U.S. Geological Survey

## Agency Information Collection Activity; USGS Societal Uses and Benefits of Moderate-Resolution Satellite Imagery Survey

**AGENCY:** United States Geological Survey (USGS), Interior.

**ACTION:** Notice of a new information collection.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) a new information collection request (ICR) for approval of the paperwork requirements for the study on the Societal Uses and Benefits of Moderate-Resolution Satellite Imagery.

**DATES:** You must submit comments on or before June 8, 2009.

**ADDRESSES:** Please submit comments on this information collection directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via e-mail [*OIRA_DOCKET@omb.eop.gov*] or fax (202) 395–5806; and identify your submission as 1028—NEW. Please also submit a copy of your comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028—NEW, LANDSAT in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Earlene Swann by mail at U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525 or by telephone at (970) 226–9346.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The U.S. Geological Survey (USGS) is responsible for maintaining the national archive of Landsat data and distributing data to users. The Landsat Program benefits a wide community of users, including federal, state, and local governments, the global change research community, national security agencies, academia, and private sector users. The USGS Land Remote Sensing Program (LRS) initiated this information collection as part of a regulation mandate to lead efforts to develop a long-term plan to achieve technical, financial, and managerial stability for operational land imaging. To address this data need this information collection is designed to: (1) Better understand the uses and applications of moderate-resolution satellite imagery, (2) identify and classify the breadth and depth of the users of these imagery, and (3) determine the societal benefits of Landsat. This information collection will be conducted by scientists and staff in the Policy Analysis and Science Assistance Branch (PASA) of the USGS. The information collection will be conducted online and utilizes five forms.

### II. Data

*OMB Control Number:* 1028—NEW.

*Title:* The Societal Uses and Benefits of Moderate-Resolution Satellite Imagery.

*Respondent Obligation:* Voluntary.

*Frequency of Collection:* One-time.

*Estimated Annual Number of and Description of Respondents:* 3983. State and Local Government, private individuals, state and local land management officials, scientists, and geographic researchers.

| | Annual number of responses | Estimated completion time per respondent (min) | Estimated annual burden |
|---|---|---|---|
| Form 1 | 971 | 35 | 567 |
| Form 2 | 971 | 25 | 404 |
| Forms 3 and 4 | 1941 | 15 | 486 |
| Form 5 | 100 | 3 | 5 |
| Total | 3983 | ..... | 1462 |

*Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'':* There are no ''non-hour cost'' burdens associated with this collection of information.

### III. Request for Comments

On September 4, 2008, we published a **Federal Register** notice (73 FR 51645) announcing that we would submit this information collection to OMB for approval. The notice provided a 60-day comment period ending on November 4, 2008. We did not receive any comments in response to that notice.

*We again invite comments concerning this ICR on:* (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is

useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at anytime. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 4, 2009.

**Bruce K. Quirk,**

*Land Remote Sensing Program Coordinator.*

[FR Doc. E9–10714 Filed 5–7–09; 8:45 am]

**BILLING CODE 4311–AM–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Final Environmental Impact Statement: Mountain Lakes Fisheries Management Plan; North Cascades National Park Complex, Skagit and Whatcom Counties, WA; Notice of Approval of Record of Decision

*Summary:* Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR Part 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement (FEIS) for the *Mountain Lakes Fisheries Management Plan,* prepared pursuant to a 1991 Consent Decree between the North Cascades Conservation Council and the National Park Service. The FEIS and Draft EIS were prepared in cooperation with the Washington Department of Fish and Wildlife (WDFW). The requisite no-action ''wait period'' was initiated July 18, 2008, with the Environmental Protection Agency's notification of the filing of the FEIS published in the **Federal Register**.

*Decision:* North Cascades National Park Complex, in concert with the WDFW, will undertake a suite of actions necessary to conserve native biological integrity, while providing for a spectrum of recreational opportunities, including sport fishing and wilderness visitor experience. Key steps for successfully implementing the selected alternative (Management Alternative B as detailed in the FEIS) include but are not limited to:

- Lakes which are currently fishless will remain so in the future;
- High densities of reproducing fish will be removed from up to 27 lakes;
- Stocking will continue in up to 42 lakes, with a long-term goal of utilizing only fish incapable of reproducing and establishing self-sustaining populations; and
- Long term monitoring of the status of native species, including amphibians and benthic macro vertebrates, will be maintained.

Implementation of Management Alternative B requires authorization from Congress that fish stocking is appropriate within North Cascades National Park Complex. In addition to the selected alternative, the Draft EIS and FEIS also assessed the foreseeable environmental consequences a No Action alternative and two additional ''action'' alternatives. As documented in the Draft EIS and FEIS, Management Alternative D was deemed to be the ''environmentally preferred'' course of action.

*Copies:* Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, North Cascades National Park Complex, 810 State Route 20, Sedro Woolley, Washington, CA 98284 or via telephone request at (360) 854–7300.

Dated: December 10, 2008.

**George J. Turnbull,**

*Acting Regional Director, Pacific West Region.*

**Editorial Note:** This document was received in the Office of the Federal Register on May 5, 2009.

[FR Doc. E9–10765 Filed 5–7–09; 8:45 am]

**BILLING CODE 4312–HJ–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0071]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Notification to Fire Safety Authority of Storage of Explosive Materials.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 40 page 9266–9267, on March 3, 2008, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 8, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notification to Fire Safety Authority of Storage of Explosive Materials.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: Farms, State, Local, or Tribal Government, Individuals or households. *Abstract:* The information is necessary for the safety of emergency response personnel responding to fires at sites where explosives are stored. The information is provided both orally and in writing to the authority having jurisdiction for fire safety in the locality in which explosives are stored.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 5,000 respondents, who will complete the notification within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 2,500 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: May 4, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–10760 Filed 5–7–09; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

**[OMB Number 1110–0045]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-day Notice of Information Collection Under Review: Customer Satisfaction Assessment.

The Department of Justice, Federal Bureau of Investigation, Laboratory Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 7, 2009. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Catherine E. Theisen, Quality Manager, FBI Laboratory, 2501 Investigation Parkway, Quantico, Virginia 22135.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including the use of automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of information collection:* Customer survey.

2. *The title of the form/collection:* Customer Satisfaction Assessment.

3. *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form (form number to be assigned by the forms desk); Laboratory Division, Federal Bureau of Investigation, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—Local and State law enforcement agencies. This collection is needed to evaluate the quality of services provided by the FBI Laboratory.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there will be 5,000 respondents at 5 minutes per form.

6. *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 416 hours annual burden associated with this information collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Justice Management Division, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 5, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–10762 Filed 5–7–09; 8:45 am]

**BILLING CODE 4410–02–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

*Applicant/Location:* Stinger Welding, Inc./Libby, Montana.

*Principal Product/Purpose:* The loan, guarantee, or grant application is to enable an existing manufacturer to open a new branch or facility to fabricate structural metal for bridges. The NAICS industry code for this enterprise is: 332312 Fabricated Structural Metal Manufacturing.

**DATES:** All interested parties may submit comments in writing no later than May 22, 2009. Copies of adverse comments received will be forwarded to the applicant noted above.

**ADDRESSES:** Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via

fax (202) 693–3015 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC, this 1st of May, 2009.

**Gay M. Gilbert,**

*Administrator, Office of Workforce Investment, Employment and Training Administration.*

[FR Doc. E9–10669 Filed 5–7–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meeting of National Council on the Humanities

**AGENCY:** The National Endowment for the Humanities.

**ACTION:** Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on May 21–22, 2009.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC A portion of the morning and afternoon sessions on May 21–22, 2009, will not be open to the public pursuant to subsections (c)(4),(c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of whichwould be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

*The agenda for the sessions on May 21, 2009 will be as follows:*

**Committee Meetings**

(Open to the Public)
*Policy Discussion:*
9–10:30 a.m.
Digital Humanities and Public Programs—Room 421
Education Programs—Room 415
Federal/State Partnership and Preservation and Access—Room 510A
Research Programs—Room 315
(Closed to the Public)
Discussion of specific grant applications and programs before the Council
10:30 a.m. until Adjourned
Digital Humanities and Public Programs—Room 421
Education Programs—Room 415
Federal/State Partnership and Preservation and Access—Room 510A
Research Programs—Room 315

The morning session of the meeting on May 22, 2009 will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting
B. Reports
1. Introductory Remarks
2. Staff Report
3. Congressional Report
4. Budget Report
5. Reports on Policy and General Matters
a. Digital Humanities
b. Public Programs
c. Education Programs
d. Federal/State Partnership
e. Preservation and Access
f. Research Programs

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

**Michael P. McDonald,**

*Advisory Committee Management Officer.*

[FR Doc. E9–10701 Filed 5–7–09; 8:45 am]

**BILLING CODE 7536–01–P**

## NATIONAL SCIENCE FOUNDATION

### Supplemental Draft Environmental Impact Statement (SDEIS)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Supplemental Draft Environmental Impact Statement (SDEIS).

**SUMMARY:** The National Science Foundation (NSF), through an award to the National Solar Observatory, plans to fund construction of the proposed Advanced Technology Solar Telescope (ATST) Project at the Kaleakalā High Altitude Observatory site on the Island of Maui, Hawai'i. The NSF has prepared a Supplemental Draft Environmental Impact Statement (SDEIS) for the proposed ATST Project. This SDEIS is a joint Federal and State of Hawai'i document prepared in compliance with the Federal National Environmental Policy Act (NEPA) and the State of Hawai'i Chapter 343, Hawai'i Revised Statutes. This SDEIS is also being prepared to evaluate the potential environmental impacts associated with issuing a National Park Service Special Use Permit application, pursuant to 36 CFR 5.6 to operate commercial vehicles on the Haleakalā National Park road during the construction and operation of the proposed ATST Project, if approved. The SDEIS is available at all Maui public libraries and on the Internet at: *http://atst.nso.edu/.*

**DATES:** Please submit comments during the 45-day public comment period

beginning May 8, 2009, and ending on June 22, 2009.

**ADDRESSES: Original** comments should be sent to the applicant: Craig Foltz, Ph.D., ATST Program Manager, National Science Foundation, Division of Astronomical Sciences, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230, *Telephone:* 703–292–4909, *Fax:* 703–292–9034, *E-mail: cfoltz@nsf.gov*. **Copies** of comments should also be sent to:

1. Dept. of Health, Office of Environmental Quality Control, REF: ATST, 235 South Beretania Street, Room 702, Honolulu, HI 96813, Fax: 808–586–4186.

2. Mr. Mike Maberry, Associate Director, University of Hawai'i Institute for Astronomy, 34 Ohia Ku Street, Pukalani, HI 96768, Fax: 808–573–9557.

3. Charlie Fein, Ph.D., KC Environmental, Inc., P.O. Box 1208, Makawao, HI 96768, Fax: 808–573–7837, *E-mail: charlie@kcenv.com.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Foltz at the address listed above.

**SUPPLEMENTARY INFORMATION:**

**NEPA SDEIS Public Comment Hearings**

*Public Comment Period:* The NSF welcomes Federal, State, and County agencies, and the public to participate in *the 45-day comment period beginning May 8, 2009, and ending on June 22, 2009.* Comments must be received or postmarked by June 22, 2009. Public comment hearings will take place, as follows:

1. Cameron Center Auditorium, 95 Mahalani Street, Wailuku, Maui, HI, June 3, 2009, Wednesday, 5 p.m. to 8 p.m.

2. Hannibal Tavares (Pukalani) Community Center, Pukalani Street, Room MHT #1 (downstairs), Pukalani, Maui, HI, June 4, 2009, Thursday, 7 p.m. to 10 p.m.

**NHPA Consultation Meetings**

Consultation meetings to solicit public input under Section 106 of the National Historic Preservation Act (NHPA) will be held on Maui by the National Science Foundation and Haleakalā National Park as follows:

1. June 8, 2009, Monday, 1 to 4 p.m., Kula Community Center, E. Lower Kula Road, Kula, Maui.

2. June 9, 2009, Tuesday, 10 a.m. to 1 p.m., Haiku Community Center, Hana Highway at Pilialoha Street, Haiku, Maui.

3. June 10, 2009, Wednesday, 3 to 6 p.m., Maui Community College, 310 W. Kaahumanu Avenue, Pilina Building—Multi-purpose Room, Kahului, Maui.

You are invited to participate in these meetings to provide feedback and comments on the area of potential effect, identification and evaluation of cultural, historic and archeological resources, and measures to avoid, minimize, and/or mitigate potential adverse impacts to these resources. For questions or information about the consultation meetings, call Elizabeth Gordon, Haleakalā National Park Cultural Resources Program Manager at (808) 572–4424 or e-mail at *elizabeth_gordon@nps.gov.* Information about the project is online at *http://www.atst.nso.edu/library/36CFR800* and *http://www.nps.gov/hale.*

Dated: April 30, 2009.

**Craig Foltz,**

*ATST Program Manager.*

[FR Doc. E9–10561 Filed 5–7–09; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0201; DOCKET NO. 03003754]**

## Notice of Consideration of Amendment Request for Decommissioning of ABB Inc.'s CE Windsor Site In Windsor, CT, and Opportunity to Request a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of amendment request and opportunity to request a hearing.

**DATES:** A request for a hearing must be filed by July 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** James Schmidt, Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5276; fax number (610) 337–5269; or by *e-mail: jim.schmidt@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Materials License No. 06–00217–06 issued to ABB Inc. (the Licensee), to authorize remediation and decommissioning of several Formally Utilized Sites Remedial Action Program (FUSRAP) areas of its CE Windsor Site (the Facility) in Windsor, Connecticut. The clean-up work for the FUSRAP areas will be performed under a proposed revision to the Licensee's previously approved Decommissioning Plan (DP), under which decommissioning work has been performed at the Facility's non-FUSRAP areas. Authorization for the Licensee to conduct decommissioning activities for the FUSRAP areas—which ordinarily would be done by the U.S. Army Corps of Engineers (USACE)—was established between NRC and USACE by agreement dated August 15, 2007. The Licensee requested the action to initiate the FUSRAP area decommissioning activities by a filing dated December 31, 2008. Revision I to the DP is currently under technical review by the NRC staff.

If the NRC approves the revised DP, the approval will be documented in an amendment to NRC License No. 06–00217–06. However, before approving the proposed amendment, the NRC will need to make the safety findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report. The NRC will separately evaluate the environmental aspects of the proposed action, pursuant to its 10 CFR part 51 requirements. The Licensee's revised DP continues to propose eventual release of the Facility for unrestricted use. This would occur following completion of all decommissioning activities and verification by the NRC that the radiological criteria for license termination have been met.

**II. Opportunity to Request a Hearing**

The NRC hereby provides notice that this is a proceeding on the Licensee's application dated December 31, 2008. In accordance with the general requirements in subpart C of 10 CFR part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) A digital ID certificate, which allows the participant (or its counsel or

representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding [even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate]. Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E–Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MHSD.Resource@nrc.gov.* Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by July 7, 2009.

In addition to meeting the above requirements, a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial, or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the hearing request is filed.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

**III. Further Information**

Documents related to this action, including the application for 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 Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

A. NRC to USACE letter dated August 15, 2007, ''Proposed Process to Decommission and Cleanup the ABB Windsor Site'' (ML072210979),

B. ABB to NRC letter, with attachments, dated December 31, 2008, ''Application for Amendment of Materials License No. 06–00217–06'' (ML090160123, ML090160128, ML090160370, and ML090160378),

C. ABB report ''CE Windsor Decommissioning Plan, Revision 1 (Previously Identified FUSRAP Areas Except Debris Piles and Site Brook)'' dated December 2008 (ML090160381, ML090160388, and ML090160396), and

D. ABB report ''CE Windsor Site Development of Building DCGLs'' dated December 2008 (ML090160458, ML090160469, ML090160478, and ML090160487).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia, PA, this 1st day of May, 2009.

For The Nuclear Regulatory Commission.

**Randolph C. Ragland, Jr.,**

*Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E9–10720 Filed 5–7–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–391; NRC–2008–0369]**

### Tennessee Valley Authority Notice of Receipt of Update to Application for Facility Operating License and Notice of Opportunity for Hearing for the Watts Bar Nuclear Plant, Unit 2 and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

In accordance with the Commission's direction in its Staff Requirements Memorandum SECY–07–0096, ''Staff Requirements—Possible Reactivation of Construction and Licensing Activities for the Watts Bar Nuclear Plant Unit 2,'' dated July 25, 2007, and pursuant to the Atomic Energy Act of 1954 (the Act), as amended, and the regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR Part 50, ''Domestic Licensing of production and Utilization Facilities,'' notice is hereby given that, on March 4, 2009, the U.S. Nuclear Regulatory Commission (NRC, the Commission) has received an update to the application for a facility operating license (OL) from the Tennessee Valley Authority (TVA or the applicant) that would authorize TVA to possess, use, and operate a second light-water nuclear reactor (the facility), Watts Bar Nuclear Plant (WBN) Unit 2, located on the applicant's site in Rhea County, Tennessee. The unit would operate at a steady-state power level of 3411 megawatts thermal. The original application dated June 30, 1976, was found acceptable for docketing on September 15, 1976, and ''Notice of Receipt of Application for Facility Operating Licenses; Notice of Consideration of Issuance of Facility Operating Licenses; and Notice of Opportunity for Hearing'' for WBN Units 1 and 2 was published in the **Federal Register** on December 27, 1976 (41 FR 56244). On February 7, 1996, the NRC issued a full-power OL to TVA to operate WBN Unit 1 at this site. However, TVA has not completed construction of WBN Unit 2. Construction of the facility was authorized by Construction Permit No. CPPR–92, issued by the Commission on January 23, 1973. TVA has stated that it expects to complete construction prior to April 1, 2012.

Pursuant to the National Environmental Policy Act, as amended, and the Commission's regulations in 10 CFR Part 51, on February 15, 2008, TVA submitted to the NRC ''Watts Bar Nuclear Plant (WBN)—Unit 2—Final Supplemental Environmental Impact Statement [FSEIS] for the Completion and Operation of Unit 2,'' to the NRC in support of its OL application for WBN Unit 2. By letter dated January 27, 2009, TVA submitted its ''Final Supplemental Environmental Impact Statement—Severe Accident Management Alternatives [SAMA],'' to supplement its FSEIS. After the staff has completed its review of TVA's FSEIS, the NRC will prepare a draft supplement to environmental impact statement related to the operation of WBN Unit 2 (SEIS–OL). Upon preparation of the draft SEIS–OL, the Commission will, among other things, cause to be published in the **Federal Register**, a notice of availability of the draft supplement, requesting comments from interested persons on the draft SEIS–OL. The notice will also contain a statement to the effect that any comments of Federal agencies and State and local officials will be made available when received. The draft SEIS–OL will focus on matters that differ from those previously discussed in the final environmental statement prepared in connection with the issuance of the construction permits and the WBN Unit 1 OL. Upon consideration of comments submitted with respect to the draft SEIS–OL, the Commission's staff will prepare a final SEIS–OL, the availability of which will be published in the **Federal Register**.

The NRC staff will complete a detailed technical review of the application and will document its findings in Supplements to NUREG–0847, ''Safety Evaluation Report Related to the Operation of Watts Bar Nuclear Plant, Unit 2.''

The Commission will consider the issuance of the facility OL to TVA, which would authorize the applicant to possess, use and operate the WBN Unit 2 in accordance with the provisions of the license and the technical specifications appended thereto, upon: (1) The completion of a favorable safety evaluation of the application by the Commission's staff; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; (3) the receipt of a report on the applicants application for the facility OL by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for the facility licenses, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I.

The OL will not be issued until the Commission has made the findings

reflecting its review of the application under the Act, which will be set forth in the proposed license, and has concluded that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.

Within 60 days after the date of initial publication of this notice in the **Federal Register** on May 1, 2009 (74 FR 20350), any person(s) whose interest may be affected by this action and who desires to participate as a party to this action may file a written request for a hearing and a petition to intervene with respect to whether an OL should be issued. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, ''Hearing Requests, Petitions To Intervene, Requirements for Standing, and Contentions,'' which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. Although the notice of the application will be published once each week for 4 consecutive weeks in the **Federal Register**, the 60-day period will only begin upon the date of the first publication of the notice.

If a request for a hearing or petition for leave to intervene is filed within 60 days of the date of the initial notice, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene or request for hearing shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the licensing action under consideration. The scope of the hearing and intervention request is limited to TVA's application for an OL. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene shall become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E–Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E–Filing, at least 10 days prior to the filing deadline, the requestor should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov* or by calling (301) 415–1677, to request (1) a digital identification (ID) certificate that allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any NRC proceeding in which it is participating or (2) the creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE) viewer, which is a component of the E–Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about how to apply for a digital ID certificate is also available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he or she can then submit a request for a hearing through EIE. Submissions should be in portable document format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits the document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. eastern time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Electronic Filing Help Desk, which is available between 8 a.m. and 8 p.m., eastern time, Monday through Friday, excluding government holidays. The toll-free help line number is (866) 672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC Electronic Filing Help Desk at *MSHD.resource@nrc.gov*.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted (1) by first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or (2) by courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of the deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. eastern time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless they are excluded under an order of the Commission, the Atomic Safety and Licensing Board, or a presiding officer. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or home telephone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a ''fair use'' application, participants are requested not to include copyrighted materials in their submission.

For further details pertinent to the matters under consideration, see the application for the facility OL dated June 30, 1975, as supplemented on September 27, 1976, and as updated on March 4, 2009, which are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically through the ADAMS Public Electronic Reading Room link on the internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. Certain documents included in the OL application contain sensitive unclassified non-safeguards information and safeguards information. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resources@nrc.gov*. The OL application and its supplement and update are available at *http://www.nrc.gov/reactors/plant-specific-items/watts-bar.html*. The ADAMS accession numbers for the OL application cover letter and supplement cover letter are ML073400595 and ML073381112, respectively. The ADAMS accession number for the update to the application is ML090700378. The ADAMS accession number for Supplement 21 to NUREG–0847 is ML090570741. The ADAMS accession number for the final safety analysis report, as redacted under 10 CFR 2.390(d)(1), is ML090980525. The redactions were made in compliance with the NRC's criteria on sensitive information, as specified in SECY–04–0191, ''Withholding Sensitive Unclassified Information Concerning Nuclear Power Reactors from Public Disclosure,'' dated October 19, 2004 (ADAMS accession number ML042310663), as modified by the NRC Commission Staff Requirements Memorandum SECY–04–0191, dated November 9, 2004 (ADAMS accession number ML043140175). To search for other related documents in ADAMS using the Watts Bar Nuclear Plant Unit 2 OL application docket number, 50–391, enter the term ''05000391'' in the ''Docket Number'' field when using either the Web-based search (advanced search) engine or the ADAMS find tool in Citrix.

Attorney for the applicant: Maureen H. Dunn, Executive Vice President and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902.

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation, Tennessee Valley Authority Watts Bar Nuclear Plant, Unit 2, Located in Rhea County, Tennessee; Docket No. 50–391**

1. This order contains instructions regarding how potential parties to the proceedings listed above may request access to documents containing sensitive unclassified non-safeguards information and safeguards information (SUNSI and SGI).

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *hearing.docket@nrc.gov* and *ogcmailcenter.resource@nrc.gov*, respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal**

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E–Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

**Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a);

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' Form FD–258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF–85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–492–3524.[2] The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of $200.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the Office of Administration, Security Processing Unit, Mail Stop TWB–05 B32M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. Note: copies of these forms do *not* need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding[3] and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[4] Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[5] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within ten (10) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an

[2] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

[3] Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

[4] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[5] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (*e.g.*, as with proprietary information).

adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within ten (10) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within ten (10) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 1st day of May 2009.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING

| Day | Event/Activity |
|---|---|
| 0 | Publication of notice of receipt of update to application for facility operating license and notice of opportunity for hearing, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to SUNSI and/or SGI with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check. |
| 60 | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply). |
| 20 | NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections. |
| 25 | If NRC staff finds no ''need,'' ''need to know,'' or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| 190 | (Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. |
| 205 | Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer. |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI. |

[6] As of October 15, 2007, the NRC's final ''E-Filing Rule'' became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING—Continued

| Day | Event/Activity |
|---|---|
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers |
| B | Decision on contention admission. |

[FR Doc. E9–10744 Filed 5–7–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 03005594;NRC–2009–0199]**

## Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 32–00426–02, for Termination of the License and Unrestricted Release of the United States Department of Commerce's Facility in Beaufort, NC

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

**FOR FURTHER INFORMATION CONTACT:** Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5366; fax number 610–337–5269 or by *e-mail: dennis.lawyer@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 32–00426–02. This license is held by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service (the Licensee), for its Center for Coastal Fisheries and Habitat Research Facility, located at 101 Pivers Island Road, Beaufort, North Carolina (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated September 10, 2008. 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 September 10, 2008, license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. 32–00426–02 was issued on October 29, 1958, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities as defined in 10 CFR 30.4 on laboratory bench tops and in hoods.

The Licensee, in their renewal application dated May 17, 2004, mistakenly requested the addition of 26 grams of uranyl acetate and uranyl nitrate to the license when these materials were possessed under the general license described in 10 CFR 40.22. These materials were appropriately removed from the license with Amendment No. 51 of the license issued on April 3, 2009.

The Facility is located in a two-story building consisting of 50,000 square feet of office space and laboratories. The Facility is located on 13 acres of land in a mixed residential/commercial area. Within the Facility, use of licensed materials was confined to 14,583 square feet of space within the 50,000 square foot building.

In July 2007, the Licensee ceased licensed activities and initiated a survey and decontamination of the Facility. 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 it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for license termination.

*Need for the Proposed Action*

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

*Environmental Impacts of the Proposed Action*

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen 3 and mixed beta gamma isotopes of atomic number 3 through 83 (primarily carbon 14). Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides. The Licensee conducted a final status survey on October 5, 2008. This survey covered the affected areas: Rooms 2–107; 2–112; 2–202; 2–204; 2–205; 2–208; and 9–902. The final status survey report was attached to the Licensee's letter dated December 5, 2008. Additional survey information was attached to the Licensee's letters dated December 16 and 30, 2008, January 22, and February 20, 2009. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which 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 requirements in Subpart E of 10 CFR Part 20 for unrestricted release. 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 at the Facility. 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 Facility. 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 the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human 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 the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. 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 release 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*

NRC provided a draft of this Environmental Assessment to the State of North Carolina's Division of Environmental Health for review on March 9, 2009. On March 9, 2009, the State of North Carolina's Division of Environmental Health responded by electronic mail. The State agreed with the conclusions of the EA and otherwise had no comments.

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 has 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 Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance'';

2. Title 10, *Code of Federal Regulations,* Part 20, Subpart E, ''Radiological Criteria for License Termination'';

3. Title 10, *Code of Federal Regulations,* Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions'';

4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities'';

5. Department of Commerce, Renewal Application Letter dated May 17, 2004 (ML041560224);

6. Department of Commerce, Termination Request Letter dated September 10, 2008 (ML082630844);

7. Department of Commerce, Additional Information Letter dated December 5, 2008 (ML083450114);

8. Department of Commerce, Additional Information Letter dated December 16, 2008 (ML090020482);

9. Department of Commerce, Additional Information Letter dated December 30, 2008 (ML090130188);

10. Department of Commerce, Additional Information Letter dated January 22, 2009 (ML090300317);

11. Department of Commerce, Additional Information Letter dated February 20, 2009 (ML090620298); and

12. License No. 32–00426–02, Amendment No 51 dated April 3, 2009 (ML090960698).

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.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia this 30th day of April 2009.

For the Nuclear Regulatory Commission.

**James P. Dwyer,**

*Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E9–10718 Filed 5–7–09; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 27f-1 and Form N–27F–1, SEC File No. 270–487, OMB Control No. 3235–0546.

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 (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 27(f) of the Investment Company Act of 1940 (''Act'') (15 U.S.C. 80a–27(f)) provides that ''[w]ith respect to any periodic payment plan (other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment), the custodian bank for such plan shall mail to each certificate holder, within sixty days after the issuance of the certificate, a statement of charges to be deducted from the projected payments on the certificate and a notice of his right of withdrawal as specified in this section.'' [1] The certificate holder then has forty-five days from the mailing of the notice to surrender his or her certificate and receive ''in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from the underwriter or depositor, equal to the difference between the gross payments made and the net amount invested.''

Section 27(f) authorizes the Securities and Exchange Commission (''Commission'') to ''make rules specifying the method, form, and contents of the notice required by this subsection.'' Rule 27f–1 (17 CFR 270.27f–1) under the Act, entitled ''Notice of Right of Withdrawal Required to be Mailed to Periodic Payment Plan Certificate Holders and Exemption from Section 27(f) for Certain Periodic Payment Plan Certificates,'' provides instructions for the delivery of the notice required by section 27(f).

Rule 27f–1(d) prescribes Form N–27F–1 (17 CFR 274.127f–1), which sets forth the language that custodian banks for periodic payment plans must use in informing certificate holders of their withdrawal right pursuant to section 27(f). The instructions to the form provide that the notice must be on the sender's letterhead. The Commission does not receive a copy of the form N–27F–1 notice.

The Form N–27F–1 notice informs certificate holders of their rights in connection with the certificates they hold. Specifically, it is intended to encourage new purchasers of plan certificates to reassess the costs and benefits of their investment and to provide them with an opportunity to recover their initial investment without penalty. The disclosure assists certificate holders in making careful and fully informed decisions about whether to invest in periodic payment plan certificates.

Complying with the collection of information requirements of rule 27f–1 is mandatory for custodian banks of periodic payment plans for which the sales load deducted from any payment exceeds 9 percent of the payment.[2] The information provided pursuant to rule 27f–1 will be provided to third parties and, therefore, will not be kept confidential. 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.

Effective October 27, 2006, the Military Personnel Financial Services Protection Act banned the issuance or sale of new periodic payment plans. Accordingly, the staff estimates that there is no information collection burden associated with rule 27f–1 and Form N–27F–1. For administrative purposes, however, we are requesting approval for an information collection burden of one hour per year. This estimate of burden hours is not derived from a comprehensive or necessarily even representative study of the cost of the Commission's rules and forms

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: April 30, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–10690 Filed 5–7–09; 8:45 am]

**BILLING CODE P**

[1] As discussed below, the Military Personnel Financial Services Protection Act banned the issuance or sale of new periodic payment plans, effective October 2006.

[2] The rule also permits the issuer, its principal underwriter, its depositor, or its record-keeping agent to mail the notice if the custodian bank has delegated the mailing of the notice to any of them or if the issuer has been permitted to operate without a custodian bank by Commission order. *See* 17 CFR 270.27f–1.

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of Wade Cook Financial Corp., Warning Management Services, Inc., Weldotron Corp., Western Microwave, Inc., Wickes, Inc., Worldwide Technologies, Inc., and Worldwide Xceed Group, Inc. (n/k/a Liquidating WXG, Inc.); Order of Suspension of Trading

May 6, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wade Cook Financial Corp. because it has not filed any periodic reports since the period ended September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Warning Management Services, Inc. because it has not filed any periodic reports since the period ended December 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Weldotron Corp. because it has not filed any periodic reports since February 28, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Western Microwave, Inc. because it has not filed any periodic reports since the period ended March 31, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wickes, Inc. because it has not filed any periodic reports since the period ended June 28, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Worldwide Technologies, Inc. because it has not filed any periodic reports since the period ended June 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Worldwide Xceed Group, Inc. (n/k/a Liquidating WXG, Inc.) because it has not filed any periodic reports since the period ended February 28, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

*Therefore, it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 6, 2009, through 11:59 p.m. EDT on May 19, 2009.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–10933 Filed 5–6–09; 4:15 pm]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59854; File No. SR–NYSEArca–2009–29]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. That Suspends NYSE Arca's Stock Price Continued Listing Standard

May 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 17, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to amend its rules governing NYSE Arca, LLC (also referred to as the ''NYSE Arca Marketplace'') by suspending through June 30, 2009, the application of its price criteria for capital and common stock set forth in NYSE Arca Equities Rule 5.5(b)(2).The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In recent months, the U.S. and global equities markets have experienced extreme volatility and a precipitous decline in trading prices of many securities. In response to these unusual market conditions, the NYSE and NASDAQ have suspended the application of their respective dollar price continued listing requirements.[3] NYSE Arca proposes to suspend through June 30, 2009, its own dollar price requirement as set forth in NYSE Arca Equities Rule 5.5(b)(2). This proposed suspension will provide temporary relief to companies in response to the extreme volatility and a precipitous decline in trading prices of many securities experienced in the U.S. and global equities markets, which the Commission had acknowledged constituted a threat to the fair and orderly functioning of the securities markets and could lead to a crisis of confidence among investors regarding the viability of companies whose stock prices have declined significantly.[4]

Under the proposed suspension of the Exchange's stock price continued listing standard, companies will not be notified of new events of noncompliance with the price requirement during the suspension period. Companies that are in a compliance period at the time of commencement of the suspension [5] will still be deemed to have regained compliance during the rule suspension period if, at the expiration of their respective six-month cure periods

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59510 (March 4, 2009), 74 FR 10636 (March 11, 2009) (SR–NYSE–2009–21), which suspends the NYSE's dollar price continued listing requirement set forth in Section 802.01C of the Listed Company Manual through [sic] June 30, 2009 (the ''NYSE Amendment''). *See* Securities Exchange Act Release 58809 (October 17, 2008), 73 FR 63222 (October 23, 2008) (SR–NASDAQ–2008–082) for the suspension of NASDAQ's bid price and market value of publicly held shares through January 16, 2009 (the ''NASDAQ Amendment''). *See, also,* Securities Exchange Act Release 59219 (January 8, 2009), 74 FR 2640 (January 15, 2009), extending the application of the NASDAQ Amendment to April 19, 2009. *See, also,* SR–NASDAQ–2009–026 (filed March 18, 2009), proposing to further extend the application of the NASDAQ Amendment through July 19, 2009. NASDAQ's continued listing requirements relating to bid price are set forth in NASAQ Marketplace Rules 4310(c)(4), 4320(e)(2)(E)(ii), 4450(a)(5), 4450(b)(4), and 4450(h)(3) and the related compliance periods are set forth in NASDAQ Marketplace Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii), and 4450(e)(2). NASDAQ's continued listing requirements relating to market value of publicly held shares are set forth in NASDAQ Marketplace Rules 4310(c)(7), 4320(e)(5), 450(a)(2), 4450(b)(3) and 4450(h)(2) and the related compliance periods are set forth in Rules 4310(c)(8)(B) and 4450(e)(1).

[4] *See, e.g.,* Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) (''The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.'').

[5] The Exchange notes that there is currently one company in a compliance period for noncompliance with the dollar price requirement and there are not currently any companies in the Exchange's delisting appeal process that have been sent a delisting notification for noncompliance with the dollar price continued listing requirement. The Exchange also notes that it would continue to identify companies in a compliance period as below compliance for price, including by continuing to append an indicator to the company's stock ticker to identify it as being below compliance for price and including the company on a list of companies that are below compliance for price posted to the Exchange's Web site, unless the company regains compliance during the suspension. A company would continue to be subject to delisting for failure to comply with other listing requirements.

established prior to the commencement of the rule suspension, they have a $1.00 closing share price on the last trading day of the period and a $1.00 average share price based on the preceding 30 trading days. In addition, any company that is in a compliance period at the time of commencement of the rule suspension can return to compliance during the suspension if at the end of any calendar month during the suspension such company has a $1.00 closing share price on the last trading day of such month and a $1.00 average share price based on the 30 trading days preceding the end of such month.[6] Any company that is in a compliance period at the time of commencement of the rule suspension that does not regain compliance during the suspension period will recommence its compliance period upon reinstitution of the stock price continued listing standard and receive the remaining balance of its compliance period.[7] Following the temporary rule suspension, any new events of noncompliance with the Exchange's stock price continued listing standard would be determined based on a consecutive 30 trading-day period commencing on July 1, 2009.

The proposed suspension of the Exchange's price continued listing requirement will enable companies to remain listed in the current difficult market conditions with the prospect of a future recovery in their stock prices enabling them to comply with the applicable listing requirements upon the standards' reinstatement. During the period between now and June 30, 2009, the Exchange will consider whether it is appropriate to propose further revisions to its continued listing requirements.

The Exchange notes that this filing is based on a NYSE filing, pursuant to which the NYSE responded to the current market conditions by temporarily suspending its dollar price continued listing requirements through [sic] June 30, 2009.[8] The NYSE dollar price test (as set forth in Section 802.01C of the Listed Company Manual) is identical to NYSE Arca's price test set forth in NYSE Arca Equities Rule 5.5(b)(2).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to remove uncertainty regarding the ability of certain companies to remain listed on NYSE Arca during the current highly unusual market conditions, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NYSE Arca to immediately implement a temporary measure, through June 30, 2009, to suspend its $1.00 price continued listing requirement to respond to recent market volatility and conditions. The Commission notes that this will provide certain companies with immediate relief from receiving a non-compliance or delisting notification, or from being delisted, as a result of the current market conditions. The Commission notes that this action is temporary in nature, and that following the suspension, companies currently in the compliance period will resume at the same stage and receive the remaining balance of their compliance periods if they remain non-compliant with these standards. This will ensure that the temporary suspension addresses the concerns to companies and investors caused by the current market conditions, and that may result in a company's securities becoming non-compliant with the $1.00 price requirement, or unable to cure such a deficiency, due to these market conditions. The Commission also notes that the proposed rule change is substantially similar to the recent Nasdaq and NYSE filings to suspend their respective $1.00 price continued listing requirements, and thus, raises no new regulatory issues.[15] For these reasons, the Commission designates that

[6] A company would continue to be subject to delisting for failure to comply with other listing requirements.

[7] For example, if a company is four months into its compliance period for noncompliance with the price continued listing standard when the suspension starts and the company does not regain compliance during the suspension, the company would have an additional two months starting on July 1, 2009, to regain compliance.

[8] The Commission notes that NYSE suspended its dollar price continued listing requirement *until* June 30, 2009, not through June 30, 2009. Accordingly, as stated in NYSE's filing, following the temporary suspension, any new events of noncompliance with the NYSE's stock price continued listing standard will be determined based on a consecutive 30 trading-day period commencing on June 30, 2009. *See* NYSE Amendment, *supra* note 3. In contrast, NYSE Arca's suspension will be *through* June 30, 2009, and following the temporary rule suspension, any new events of noncompliance with the Exchange's stock price continued listing standard would be determined based on a consecutive 30 trading-day period commencing on July 1, 2009.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] See *supra* note 3.

the proposed rule change become operative immediately upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–29 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–NYSEArca–2009–29 and should be submitted on or before May 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–10689 Filed 5–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2009–0019 (Notice No. 09–2)]**

### Information Collection Activities Under OMB Review; 2009 Renewals

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requests (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comments. The ICRs describe the nature of the information collections and their expected burden. A **Federal Register** Notice with a 60-day comment period soliciting comments on these collections of information was published in the **Federal Register** on February 5, 2009 [74 FR 6215] under Docket No. PHMS–2009–0019 (Notice No. 09–1).

**DATES:** Interested persons are invited to submit comments on or before June 8, 2009.

**ADDRESSES:** Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget (OMB), *Attention:* Desk Officer for PHMSA, 725 17th Street, NW., Washington, DC 20503. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Deborah Boothe or Steven Andrews, U.S. Department of Transportation, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC. 20590–0001, Telephone (202) 366–8553.

**SUPPLEMENTARY INFORMATION:** Section 1320.8 (d), Title 5, Code of Federal Regulations requires Federal agencies to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR Parts 105, 106, 107 and the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) abstract of the information collection activity; (4) description of affected persons; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register.**

PHMSA requests comments on the following information collections:

*Title:* Rulemaking, Special Permits, and Preemption Requirements.

*OMB Control Number:* 2137–0051.

*Summary:* This collection of information applies to the agency's procedures for developing rulemaking, granting special permits, and addressing preemption. Specific areas covered in this information collection include Part 105, Subpart A and Subpart B,

''Hazardous Materials Program Definitions and General Procedures;'' Part 106, Subpart B, ''Participating in the Rulemaking Process;'' Part 107, Subpart B, ''Special Permits;'' and Part 107, Subpart C, ''Preemption.'' The Federal hazardous materials transportation law directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. We are authorized to accept petitions for rulemaking and appeals, as well as applications for exemptions, preemption determinations and waivers of preemption. The types of information collected include:

(1) *Petitions for Rulemaking:* Any person may petition the Office of Hazardous Materials Standards to add, amend, or delete a regulation in Parts 110, 130, or 171 through 180, or may petition the Office of the Chief Counsel to add, amend, or delete a regulation in Parts 105, 106 or 107.

(2) *Appeals:* Except as provided in § 106.40(e), any person may submit an appeal to our actions in accordance with the Appeals procedures found in §§ 106.110 through 106.130.

(3) *Application for Special Permit:* Any person applying for a special permit must include the citation of the specific regulation from which the applicant seeks relief; specification of the proposed mode or modes of transportation; detailed description of the proposed special permit (*e.g.,* alternative packaging, test, procedure or activity), including as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents, etc.

(4) *Application for Preemption Determination:* With the exception of highway routing matters covered under 49 U.S.C. 5125(c), any person directly affected by any requirement of a State, political subdivision, or Indian tribe may apply to the Chief Counsel for a determination whether that requirement is preempted by § 107.202(a), (b) or (c). The application must include the text of the State or political subdivision or Indian tribe requirement for which the determination is sought; specify each requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security with which the applicant seeks the State or political subdivision or Indian tribe requirement to be compared; explain why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of § 107.202; and state how the applicant is affected by the State or political subdivision or Indian tribe requirement.

(5) *Waivers of Preemption:* With the exception of requirements preempted under 49 U.S.C. 5125(c), any person may apply to the Chief Counsel for a waiver of preemption with respect to any requirement that: (1) The State or political subdivision thereof or Indian tribe acknowledges to be preempted under the Federal hazardous materials transportation law, or (2) that has been determined by a court of competent jurisdiction to be so preempted. The Chief Counsel may waive preemption with respect to such requirement upon a determination that such requirement affords an equal or greater level of protection to the public than is afforded by the requirements of the Federal hazardous materials transportation law or the regulations issued thereunder, and does not unreasonably burden commerce.

The information collected under these application procedures is used by PHMSA to determine the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for special permits, preemption determinations and waivers of preemption. The procedures governing petitions for rulemaking and for reconsideration of rulemakings are covered in Subpart B of Part 106. Applications for special permits, preemption determinations and waivers of preemption are covered under Subparts B and C of Part 107. Information collected under rulemaking procedures enables PHMSA to determine if a rule change is warranted and consistent with public interest. Information collected under special permit procedures is used to determine if the requested relief provides for a comparable level of safety as provided by the HMR or is consistent with the public interest. Preemption procedures provide information for PHMSA to determine whether a requirement of a State, political subdivision, or Indian tribe is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued.

One person submitted comments pertaining to the renewal of the Special Permit aspect of this information collection in response to the **Federal Register** Notice published on February 5, 2009. In its comment, the Institute of Makers of Explosives (IME) provided suggestions for administrative improvements to the Special Permits and Competent Authority Approval programs. These comments are beyond the scope of this notice, but PHMSA will evaluate the recommendations and consider program changes as necessary and appropriate.

*Affected Public:* Shippers, carriers, packaging manufacturers, and other affected entities.

*Recordkeeping:*

*Number of Respondents:* 3,304.

*Total Annual Responses:* 4,294.

*Total Annual Burden Hours:* 4,219.

*Frequency of Collection:* On occasion.

*Title:* Radioactive Materials (RAM) Transportation Requirements.

*OMB Control Number:* 2137–0510.

*Summary:* This information collection consolidates and describes the information collection provisions in the HMR involving the transportation of radioactive materials in commerce. Information collection requirements for RAM include: (1) Shipper notification to consignees of the dates of shipment of RAM; (2) expected arrival; (3) special loading/unloading instructions; (4) verification that shippers using foreign-made packages hold a foreign competent authority certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and (5) specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM and packages of RAM which emit high levels of external radiation. These information collection requirements help to ensure that proper packages are used for the type of radioactive material being transported; external radiation levels do not exceed prescribed limits; and packages are handled appropriately and delivered in a timely manner, so as to protect the safety of the general public, transport workers, and emergency responders.

*Affected Public:* Shippers and carriers of radioactive materials in commerce.

*Recordkeeping:*

*Number of Respondents:* 3,817.

*Total Annual Responses:* 21,519.

*Total Annual Burden Hours:* 15,270.

*Frequency of Collection:* On occasion.

*Title:* Subsidiary Hazard Class and Number/Type of Packagings.

*OMB Control Number:* 2137–0613.

*Summary:* The HMR require that shipping papers and emergency response information accompany each shipment of hazardous materials in commerce. In addition to the basic shipping description information, we also require the subsidiary hazard class or subsidiary division number(s) to be entered in parentheses following the primary hazard class or division number on shipping papers. This requirement

was originally required only for transportation by vessel. However, the absence of this information for other transport modes posed problems with regard to compliance with segregation, separation, and placarding requirements, resulting in a reduced level of safety. For example, if a motor vehicle were transporting a material with a subsidiary hazard that necessitates special handling procedures or additional regulatory requirements, the lack of information on the subsidiary hazard could result in improper loading or handling by transport workers or inadequate or ineffective emergency response in an accident. Therefore, the HMR require the subsidiary hazard class or subsidiary division number(s) to be entered on the shipping paper. Shipping papers must also include an indication of the number and type of packagings to be indicated on the shipping paper.

Shipping papers serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to refer to the shipping papers when responding to hazardous materials transportation emergencies. The availability of accurate information concerning the hazardous materials being transported significantly improves response efforts in these types of emergencies. The additional information on subsidiary hazards and the number and types of packagings being transported aids emergency responders by more clearly identifying the hazard that must be addressed.

*Affected Public:* Shippers and carriers of hazardous materials in commerce.

*Recordkeeping:*

*Number of Respondents:* 250,000.

*Total Annual Responses:* 6,337,500.

*Total Annual Burden Hours:* 17,604.

*Frequency of collection:* On occasion.

Issued in Washington, DC on Monday, May 4, 2009.

**Edward T. Mazzullo,**

*Director, Office of Hazardous Materials Standards.*

[FR Doc. E9–10684 Filed 5–7–09; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34936; STB Finance Docket No. 34936 (Sub-No. 1)]**

### Port of Moses Lake—Construction Exemption—Moses Lake, WA; Port of Moses Lake—Acquisition Exemption—Moses Lake, WA

*Co-Lead Agencies:* Surface Transportation Board and Washington State Department of Transportation.

**ACTION:** Notice of Availability of Final Environmental Assessment.

**SUMMARY:** By petition filed on August 28, 2008, the Port of Moses Lake (Port) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct rail lines in Grant County, Washington. In the same petition, the Port also seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to acquire an existing segment of rail line from Columbia Basin Railroad Company, Inc. The proposed project, known as the Northern Columbia Basin Railroad Project, includes the construction of two new rail line segments and the acquisition and refurbishment of an existing rail segment to provide rail access to land designated and zoned for industrial uses along Wheeler Road (Road 3 NE) and at the Grant County International Airport. The entire proposed route would extend approximately 11.5 miles.

The Board, pursuant to 49 U.S.C. 10901, is the agency responsible for granting authority for the construction and operation of new rail line facilities. The Board's Section of Environmental Analysis (SEA) and the Washington State Department of Transportation (WSDOT), as co-lead agencies responsible for the environmental review of the proposed rail project, issued an Environmental Assessment (EA) on November 7, 2008. The EA was made available to Federal, state and local agencies; tribes; the public; and interested parties for a 30-day public comment period, and SEA and WSDOT received 29 comments. The Final Environmental Assessment (Final EA) responds to comments; considers new alternatives, including an alignment modification; clarifies, corrects or adds to information that was in the EA, primarily regarding impacts to wetlands, impacts to irrigated farmland, and cumulative impacts; and makes final environmental recommendations to the Board.

Based on an independent analysis of all information available to date, SEA and WSDOT conclude that the proposed action would not result in any significant environmental impacts if the mitigation measures recommended in the Final EA are imposed and implemented. Accordingly, SEA recommends that any decision by the Board approving the proposed action impose conditions requiring the Port to comply with the mitigation measures set forth in Chapter Five of the Final EA. Because the proposed action, as mitigated, would not have the potential for significant environmental effects, preparation of an EA for this case is appropriate and the full Environmental Impact Statement process is unnecessary.

The Board will now consider the entire environmental record, including the final recommended mitigation measures and all environmental comments received in this proceeding, in making its final decision as to whether to approve the proposed action, and if so, what mitigation to impose.

Copies of the Final EA have been served on all interested parties and will be made available to additional parties upon request. The entire Final EA is also available for review on the Board's Web site (*http://www.stb.dot.gov*) by going to ''E–LIBRARY,'' clicking on the ''Decisions and Notices'' link, and then searching by the Service Date (May 8, 2009) or Docket Number (FD 34936).

**FOR FURTHER INFORMATION CONTACT:** Christa Dean, Attorney and Project Manager, at (202) 245–0299; *e-mail: christa.dean@stb.dot.gov,* or Elizabeth Phinney, WSDOT Rail Environmental Manager, at (360) 705–7902; *e-mail: phinnee@wsdot.wa.gov.* Federal Information Relay Service for the hearing impaired: 1–800–877–8339.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Decided: May 8, 2009.

**Kulunie L. Cannon,**

*Clearance Clerk.*

[FR Doc. E9–10667 Filed 5–7–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee.

**DATES:** The meeting will be on June 10, 2009, at 10 a.m.

**ADDRESS:** The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 10th floor, MacCracken Room.

**FOR FURTHER INFORMATION CONTACT:** Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9678; fax (202) 267–5075; e-mail *Gerri.Robinson@faa.gov.*

**SUPPLEMENTARY INFORMATION:** Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee taking place on June 10, 2008, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The agenda includes:

1. Leadership Transition, Executive Committee Officers
2. Rescue and Firefighting Requirements Working Group Report
3. New ARAC task—Maintenance Requirements for Commercial Air Tour Operations
4. Issue Area Status Reports from Assistant Chairs
5. Continuous Improvement (Committee Process)
6. Off-agenda remarks from other EXCOM members

Attendance is open to the interested public but limited to the space available. The FAA will arrange teleconference service for individuals wishing to join in by teleconference if we receive notice by June 1. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by June 1 to present oral statements at the meeting. Members of the public may present written statements to the executive committee by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC on May 5, 2009.

**Pamela A. Hamilton-Powell,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. E9–10748 Filed 5–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35241]**

### Illinois Central Railroad Company—Trackage Rights Exemption—Grand Trunk Western Railroad Company

Pursuant to a written trackage rights agreement entered into between Illinois Central Railroad Company (IC) and Grand Trunk Western Railroad Company (GTW) on April 16, 2009,[1] IC has agreed to grant GTW non-exclusive overhead and interchange trackage rights: (1) Over IC's line of railroad between IC's connection with GTW at or near milepost 19.9 (North Junction) at Harvey, IL, and milepost 1.5 (16th Street) at Chicago, IL, on IC's Chicago Subdivision; (2) over IC's line of railroad between milepost 2.1 (16th Street) at Chicago, IL, and milepost 4.4 (Bridgeport) at Chicago, IL, on IC's Freeport Subdivision; and (3) over IC's line of railroad between milepost 3.5 (Bridgeport) at Chicago, IL, and IC's connection with the Indiana Harbor Belt Railroad Company at or near milepost 13.1 (CP Canal) at Argo, IL, on IC's Joliet Subdivision, a total distance of approximately 30.3 miles, all in the State of Illinois.[2]

The transaction is scheduled to be consummated on or about May 23, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable GTW to efficiently handle overhead and interchange freight movements between Harvey and Argo. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks. Under the trackage rights agreement, GTW shall not perform any local freight service on the subject trackage.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by May 15, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35241, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: May 4, 2009.

[1] A redacted version of the trackage rights agreement between IC and GTW was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

[2] The Board recently approved the acquisition of control by Canadian National Railway Company and Grand Trunk Corporation (collectively, CN) of EJ&E West Company (EJ&EW), a wholly owned, noncarrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E), with EJ&EW acquiring certain land and rail line assets from EJ&E, including EJ&E's name, and becoming a rail carrier prior to CN acquiring control of it. *See Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* STB Finance Docket No. 35087, (STB served Dec. 24, 2008). GTW states that, during recent exercises to implement EJ&E into CN's operations around the Chicago area, it was determined that the rights documented in this trackage rights agreement were established several years ago, implementing agreements were negotiated and executed with the affected unions, and operations were commenced. According to GTW, this filing is being made to assure that all necessary Board authorization has been secured.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9–10732 Filed 5–7–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35244]**

### Illinois Central Railroad Company—Trackage Rights Exemption—Wisconsin Central Ltd.

Pursuant to a written trackage rights agreement dated April 16, 2009, Illinois Central Railroad Company (IC) has agreed to grant nonexclusive overhead and interchange trackage rights to Wisconsin Central Ltd. (WCL) [1] on: (1) IC's Chicago Subdivision extending between the connection with Grand Trunk Western Railroad Company trackage at or near milepost 19.9 (North Junction) at Harvey, IL, and milepost 1.5 (16th Street) at Chicago, IL; (2) IC's Freeport Subdivision extending between milepost 2.1 (16th Street) at Chicago, IL, and the connection with The Belt Railway Company of Chicago trackage and the Chicago, Central & Pacific Railroad Company trackage at milepost 8.3 (Belt Crossing) at Chicago, IL; and (3) IC's Joliet Subdivision extending between milepost 3.5 (Bridgeport) at Chicago, IL, and the connection with the Indiana Harbor Belt Railway Company trackage at or near milepost 13.1 (CP Canal) at Argo, IL, a distance of approximately 34.2 miles, all in the State of Illinois.[2]

The transaction is scheduled to be consummated on or about May 23, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights agreement is to enable WCL to efficiently handle overhead and interchange freight movements between Harvey and Argo. The transaction also extends to all industry spurs, connecting tracks, and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks. Under the trackage rights agreement, WCL shall not perform any local freight service on the subject trackage.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by May 15, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35244, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Ave., Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: May 4, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9–10746 Filed 5–7–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35243]**

### Grand Trunk Western Railroad Company—Trackage Rights Exemption—Wisconsin Central Ltd.

Pursuant to a written trackage rights agreement dated April 16, 2009, Grand Trunk Western Railroad Company (GTW) has agreed to grant nonexclusive overhead and interchange trackage rights to Wisconsin Central Ltd. (WCL) [1] over a line of railroad known as GTW's Elsdon Subdivision extending between the connection with Illinois Central Railroad Company trackage at or near milepost 23.2 (CN Junction) at Harvey, IL, and the connection with The Belt Railway Company of Chicago trackage at milepost 11.8 (Hayford Jct.) at Chicago, IL, a distance of approximately 11.4 miles, all in the State of Illinois.[2]

The transaction is scheduled to be consummated on or about May 23, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable WCL to efficiently handle overhead and interchange freight movements between Harvey and Hayford Jct. The transaction also extends to all industry spurs, connecting tracks, and sidings now

[1] A redacted version of the trackage rights agreement between IC and WCL was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

[2] The Board recently approved the acquisition of control by Canadian National Railway Company and Grand Trunk Corporation (collectively, CN) of EJ&E West Company (EJ&EW), a wholly owned, noncarrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E), with EJ&EW acquiring certain land and rail line assets from EJ&E, including EJ&E's name, and becoming a rail carrier prior to CN acquiring control of it. *See Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* STB Finance Docket No. 35087, (STB served Dec. 24, 2008). WCL states that, during recent exercises to implement EJ&E into CN's operations around the Chicago area, it was determined that the rights documented in this trackage rights agreement were established several years ago, implementing agreements were negotiated and executed with the affected unions, and operations were commenced. According to WCL, this filing is being made to assure that all necessary Board authorization has been secured.

[1] A redacted version of the trackage rights agreement between GTW and WCL was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

[2] The Board recently approved the acquisition of control by Canadian National Railway Company and Grand Trunk Corporation (collectively, CN) of EJ&E West Company (EJ&EW), a wholly owned, noncarrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E), with EJ&EW acquiring certain land and rail line assets from EJ&E, including EJ&E's name, and becoming a rail carrier prior to CN acquiring control of it. *See Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* STB Finance Docket No. 35087, (STB served Dec. 24, 2008). WCL states that, during recent exercises to implement EJ&E into CN's operations around the Chicago area, it was determined that the rights documented in this trackage rights agreement were established several years ago, implementing agreements were negotiated and executed with the affected unions, and operations were commenced. According to WCL, this filing is being made to assure that all necessary Board authorization has been secured.

existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks. Under the trackage rights agreement, WCL shall not perform any local freight service on the subject trackage.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by May 15, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35243, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Ave., Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: May 4, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9–10742 Filed 5–7–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35242]**

### Chicago Central & Pacific Railroad Company—Trackage Rights Exemption—Wisconsin Central Ltd.

Pursuant to a written trackage rights agreement entered into between Chicago Central & Pacific Railroad Company (CCP) and Wisconsin Central Ltd. (WCL) on April 16, 2009,[1] CCP has agreed to grant WCL nonexclusive overhead and interchange trackage rights between CCP's connection with the Elgin, Joliet & Eastern Railway Company (EJ&E) at or near CCP's milepost 35.7 at Munger, IL, and CCP's connection with The Belt Railway Company of Chicago and the Illinois Central Railroad Company at or near CCP's milepost 8.3 (Belt Crossing) at Chicago, IL, on CCP's Freeport Subdivision, a distance of approximately 27.4 miles, all in the State of Illinois.[2]

The transaction is scheduled to be consummated on or about May 23, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable WCL to efficiently handle overhead and interchange freight movements between Munger and Belt Crossing at Chicago. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks. Under the trackage rights agreement, WCL shall not perform any local freight service on the subject trackage.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by May 15, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35242, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: May 4, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9–10735 Filed 5–7–09; 8:45 am]

**BILLING CODE 4915–01–P**

[1] A redacted version of the trackage rights agreement between CCP and WCL was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

[2] The Board recently approved the acquisition of control by Canadian National Railway Company and Grand Trunk Corporation (collectively, CN) of EJ&E West Company (EJ&EW), a wholly owned, noncarrier subsidiary of EJ&E, with EJ&EW acquiring certain land and rail line assets from EJ&E, including EJ&E's name, and becoming a rail carrier prior to CN acquiring control of it. *See Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* STB Finance Docket No. 35087, (STB served Dec. 24, 2008). WCL states that, during recent exercises to implement EJ&E into CN's operations around the Chicago area, it was determined that the rights documented in this trackage rights agreement were established several years ago, implementing agreements were negotiated and executed with the affected unions, and operations were commenced. According to WCL, this filing is being made to assure that all necessary Board authorization has been secured.

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Form of Request for Payment of United States Savings and Retirement Securities Where Use of a Detached Request is Authorized.

**DATES:** Written comments should be received on or before July 6, 2009, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, or *judi.owens@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Special Form of Request for Payment of United States Savings and Retirement Securities Where Use of a Detached Request is Authorized.

*OMB Number:* 1535–0004.

*Form Number:* PD F 1522.

*Abstract:* The information is requested to establish ownership and request for payment of United States Savings Bonds/Retirement Securities.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 56,000.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 14,000.

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 2009.

**Judi Owens,**

*Manager, Information Management Branch.*

[FR Doc. E9–10717 Filed 5–7–09; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Comptroller of the Currency

### Agency Information Collection Activities: Proposed Information Collection; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Investment Securities.''

**DATES:** You should submit written comments by July 7, 2009.

**ADDRESSES:** Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, *Attention:* 1557–0205, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0205, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval, without change, of the following information collection:

*Title:* Investment Securities.

*OMB Control No.:* 1557–0205.

*Description:* This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 1 are as follows:

Under 12 CFR 1.3(h)(2), a national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment Company Act of 1940 [1] if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC uses the information contained in the request as a basis for determining that the bank's investment is consistent with its investment authority under applicable law and does not pose unacceptable risk.

Under 12 CFR 1.7(b), a national bank may request OCC approval to extend the five-year holding period of securities held in satisfaction of debts previously contracted (DPC) for up to an additional five years. The bank must provide a clearly convincing demonstration of why any additional holding period is needed. The OCC uses the information in the request to ensure, on a case-by-case basis, that the bank's purpose in retaining the securities is not speculative and that the bank's reasons for requesting the extension are adequate, and to evaluate the risks to the bank of extending the holding period, including potential effects on bank safety and soundness.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 25.

*Estimated Total Annual Responses:* 25.

[1] 15 U.S.C. 80a–3(c)(1).

*Estimated Total Annual Burden:* 460 hours.

*Frequency of Response:* On occasion.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 2009.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. E9–10773 Filed 5–7–09; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Proposed Information Collection; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Bank Activities and Operations.''

**DATES:** You should submit written comments by July 7, 2009.

**ADDRESSES:** Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0204, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0204, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval, without change, of the following information collection:

*Title:* Bank Activities and Operations—12 CFR 7.

*OMB Control No.:* 1557–0204.

*Description:* This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements ensure that national banks conduct their operations in a safe and sound manner and in accordance with applicable Federal banking statutes and regulations. The information is necessary for regulatory and examination purposes.

The information collection requirements in part 7 are as follows:

- 12 CFR 7.1000(d)(1) (National bank ownership of property—Lease financing of public facilities): National bank lease agreements must provide that the lessee will become the owner of the building or facility upon the expiration of the lease.
- 12 CFR 7.1014 (Sale of money orders at nonbanking outlets): A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and its agent should be defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent.
- 12 CFR 7.2000(b) (Corporate governance procedures—Other sources of guidance): A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.
- 12 CFR 7.2004 (Honorary directors or advisory boards): Any listing of a national bank's honorary or advisory directors must distinguish between them and the bank's board of directors or indicate their advisory status.
- 12 CFR 7.2014(b) (Indemnification of institution-affiliated parties—Administrative proceeding or civil actions not initiated by a Federal agency): A national bank shall designate in its bylaws the body of law selected for making indemnification payments.
- 12 CFR 7.2024(a) Staggered terms for national bank directors—Any national bank may adopt bylaws that provide for staggering the terms of its directors. National banks shall provide the OCC with copies of any bylaws so amended.
- 12 CFR 7.2024(c) Size of bank board—A national bank seeking to increase the number of its directors must notify the OCC any time the proposed size would exceed 25 directors.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 1,300.

*Estimated Total Annual Responses:* 1,300.

*Estimated Total Annual Burden:* 418 hours.

*Frequency of Response:* On occasion.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including

through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 2009.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. E9–10776 Filed 5–7–09; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Report/Application for Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individuals)

**DATES:** Written comments should be received on or before July 6, 2009, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, or *judi.owens@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Report/Application For Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individuals).

*OMB Number:* 1535–0016.

*Form Number:* PD F 1022–1.

*Abstract:* The information is requested to establish ownership and support a request for relief because of the loss, theft, or destruction of United States Bearer Securities owned by individuals.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 100.

*Estimated Time per Respondent:* 55 minutes.

*Estimated Total Annual Burden Hours:* 92.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 2009.

**Judi Owens,**

*Manager, Information Management Branch.*

[FR Doc. E9–10727 Filed 5–7–09; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Proposed Information Collection; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).''

**DATES:** You should submit comments by July 7, 2009.

**ADDRESSES:** Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, *Attention:* 1557–0237, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0237, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval of the following information collection:

*Title:* Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

*OMB Number:* 1557–0237.

*Description:* 12 CFR 41.90, 41.91, 41.82 and Appendix J to part 41 implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Pub. L. 108–159 (2003).

Section 114 amended section 615 of the Fair Credit Reporting Act (FCRA) to require the OCC, FRB, FDIC, OTS, NCUA, and FTC (Agencies) to issue jointly (i) guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers; (ii) regulations requiring each financial institution and creditor to establish reasonable policies and procedures for implementing the guidelines to identify possible risks to account holders or customers or to the safety and

soundness of the institution or creditor; and (iii) regulations generally requiring credit and debit card issuers to assess the validity of change of address requests under certain circumstances. Section 315 amended section 605 of the FCRA to require the Agencies to issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency (CRA).

The information collections in § 41.90 require each financial institution and creditor that offers or maintains one or more covered accounts to develop and implement a written Identity Theft Prevention Program (Program). In developing the Program, financial institutions and creditors are required to consider the guidelines in Appendix J to part 41 and include those that are appropriate. The initial Program must be approved by the board of directors or an appropriate committee thereof and the board, an appropriate committee thereof or a designated employee at the level of senior management must be involved in the oversight of the Program. In addition, staff must be trained to carry out the Program. Pursuant to § 41.91, each credit and debit card issuer is required to establish and implement policies and procedures to assess the validity of a change of address request under certain circumstances. Before issuing an additional or replacement card, the card issuer must notify the cardholder or use another means to assess the validity of the change of address.

The information collections in § 41.82 require each user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it requested the report when the user receives a notice of address discrepancy from a CRA. A user of consumer reports must also develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed to be accurate to the CRA from which it receives a notice of address discrepancy when (1) the user can form a reasonable belief that the consumer report relates to the consumer about whom the user has requested the report; (2) the user establishes a continuing relationship with the consumer; and (3) the user regularly and in the ordinary course of business furnishes information to the CRA from which it received the notice of address discrepancy.

*Type of Review:* Regular.

*Affected Public:* Individuals; Businesses or other for-profit.

*Estimated Number of Respondents:* 1,661.

*Estimated Total Annual Responses:* 6,674.

*Estimated Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 173,074 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 2009.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. E9–10777 Filed 5–7–09; 8:45 am]

**BILLING CODE 4810–33–P**

## U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

### Notice of Open Public Hearing

**AGENCY:** U.S.-China Economic and Security Review Commission.

**ACTION:** Notice of open public hearing—May 20, 2009, Washington, DC.

**SUMMARY:** Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

*Name:* Carolyn Bartholomew, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.''

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on May 20, 2009 to address ''The Impact of China's Economic and Security Interests in Continental Asia on the United States.''

**Background**

This event is the fifth in a series of public hearings the Commission will hold during its 2009 report cycle to collect input from leading academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The May 20 hearing will examine China's interests in the war in Afghanistan, China's military and security relationship with Pakistan, China's energy interests and strategy in Continental Asia, China's trade and investment in Continental Asia, and the impact of these interests and activities in the United States.

The May 20 hearing will be Co-chaired by Commissioners Daniel Blumenthal and Jeffrey Fiedler.

Information on hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web site *http://www.uscc.gov.*

Copies of the hearing agenda will be made available on the Commission's Web site *http://www.uscc.gov* as soon as available. Any interested party may file a written statement by May 20, 2009, by mailing to the contact below. On May 20, the hearing will be held in two sessions, one in the morning and one in the afternoon. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

**DATE AND TIME:** Wednesday, May 20, 2009, 9 a.m. to 4:30 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* in the near future.

**ADDRESSES:** The hearing will be held on Capitol Hill in Room 562 of the Dirksen Senate Office Building located at First Street and Constitution Avenues, NE., Washington, DC 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; *phone:* 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

**Authority:** Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: May 5, 2009.

**Kathleen J. Michels,**

*Associate Director, U.S.-China Economic and Security Review Commission.*

[FR Doc. E9–10759 Filed 5–7–09; 8:45 am]

**BILLING CODE 1137–00–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of Amendment to System of Records.

**SUMMARY:** As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled ''Telephone Service for Clinical Care Records-VA'' (113VA112) as set forth in the **Federal Register** 67 FR 63497. VA is amending the system of records by revising the System Name, Routine Uses of Records Maintained in the System Including Categories of Users and the Purpose of Such Uses, Storage, Safeguards, and System Manager and Address. VA is republishing the system notice in its entirety.

**DATES:** Comments on the amendment of this system of records must be received no later than June 8, 2009 If no public comment is received, the amended system will become effective June 8, 2009.

**ADDRESSES:** Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

**SUPPLEMENTARY INFORMATION:**

#### I. Description of Proposed System of Records

The primary purpose of telephone care and service function is to provide veterans with clinical advice and education related to symptoms or problems an enrolled veteran caller may be experiencing. Calls may be made by family members but records of the calls will be maintained in the enrolled veteran's record. Except in the case of emergencies, clinical advice and education may only be provided to enrolled veterans. In order to better track and retrieve information about previous calls, all records of calls will be maintained under the name of the enrolled veteran. Records will not be retrievable by the name of the caller. Telephone care and service provides another mode of access for veterans that is available 24 hours a day, seven days a week from any place in the country. The telephone care function acts as a part of the primary and ambulatory care delivery system and augments that system by providing advice to callers over the telephone. When patients or family members call with a concern or request, a record of the call is developed, whether it is a clinical or administrative issue.

Clinical symptom calls are managed through the use of pre-approved clinical algorithms that ask a series of questions and based on the answers to each question moves to the next question, which eventually leads to the advice that is to be provided to the caller. The record of the call captures the questions asked, answers given, particularly those answers that reflect something abnormal, and the advice provided. Documentation of this type of information is consistent with standard requirements for medical record documentation, which captures symptoms and findings as they relate to how specific questions are answered and a plan of action established. This information is also recorded in the patient's medical record. At a minimum, documentation includes the complaint(s) and symptoms of the enrolled veteran, the algorithm and/or protocol used and the advice given. Information is recorded either electronically in the progress notes of the medical record and in the Call Center database. Acting as a part of the primary and ambulatory care delivery system, the telephone care function may provide private sector providers or facilities with relevant clinical information about enrolled veterans in urgent or emergent situations. Information such as allergies, results of recent lab tests, medications, recent health history or procedures may be provided. Telephone care and service for clinical symptom calls are provided in a number of ways, including contracts with private sector vendors, contracts with VA facilities or Networks that have developed clinical Call Centers, or through medical center-based Call Centers in primary care and other types of clinics. A number of VA facilities and Networks are providing access to telephone care and service through clinics or medical center-based Call Centers during the day and through Network or contracted Call Centers during non-administrative hours. Protocols or algorithms are used at any of these sites when advice is given by a registered nurse without first consulting with a clinician and all of these calls must be documented in the medical record and Call Center database. Keeping records of all calls to a clinical Call Center in a separate database is the standard of practice for clinical Call Centers and is a required accreditation standard of the Utilization Review Accreditation Commission (URAC) for clinical Call Centers. Accreditation by URAC or another clinical Call Center accrediting body, if one should become available, is required for Regional or VISN call centers by the VHA Directive 2007–033 Telephone Service for Clinical Care. This system allows a record of all previous calls made by or for a veteran to be accessed whenever patients or family members call, which improves both the quality and the timeliness of addressing callers' concerns. Records are generally collected and stored electronically for ease of retrieval by the veteran's name or other personal identifier. The primary purpose of the data in this system of records is for rapid retrieval and ease of access to a record of all calls made by or for veterans, including the complaints of the patient, the findings according to the algorithms and the advice provided. This information is also used for follow-up calls to some patients. Information is also used for aggregation of data for the purposes of monitoring and improving quality. Though information is retrievable by individual patient identifier, when reporting aggregate information for purposes, such as quality, patient identifiers are not

provided. Access to such records provide Call Center staff with information about previous contacts and the clinical symptoms reported by veterans in those contacts. The protocol used, education provided, advice given and actions taken by the caller in previous calls are readily available to Call Center staff each time a veteran or family member calls, which improves the quality of the services. Access to patient-specific information located in Call Center databases and storage areas is restricted to VA employees and contract personnel on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA Call Center file areas are locked after normal duty hours or when the Call Center is closed and the facilities are protected from outside access by the Federal Protective Service or other security personnel. VA and contracted Call Centers are held to the Department of Veterans Affairs Computer Security Policy and all free standing and contracted Call Centers are required to develop and implement a Computer Security Policy that is consistent with the National Policy. Call Centers located within a medical center are required to meet the requirements of that medical center's computer security policy. Access to VA and contracted Call Centers and computer rooms is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Information in the Veterans Health Information Systems and Technology Architecture (VistA) may be accessed by authorized VA employees or authorized contract employees. Access to file information is controlled at two levels; the systems recognize authorized employees or contract employees by a series of individually unique passwords/codes as a part of each data message, and personnel are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on VA databases is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA and contract locations is controlled by individually unique passwords/codes. Remote access to VHA information in VistA is provided to those Call Center employees, either VA or contract staff, that require access to information stored in the medical record. Access to this information is protected through hardened user access and is controlled by individual unique passwords. Additionally, contracted Call Centers, either VA or private sector, are required to have a separate computer security plan that meets national information security requirements.

**II. Compatibility of the Proposed Routine Uses**

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Routine use 14 was added to disclose information to the National Archives and Record Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.).

NARA and GSA are responsible for management of old records no longer actively used, but which may be appropriate for preservation, and for the physical maintenance of the Federal Government's records. VA must be able to provide the records to NARA and GSA in order to determine the proper disposition of such records.

Routine use 15 was added to disclose information to other Federal agencies that may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information and/or documentation related to or in support of the reported incident.

Routine use 16 was added so that the VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

Approved: April 21, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

**113VA112**

**SYSTEM NAME:**

Telephone Service for Clinical Care Records—VA.

**SYSTEM LOCATION:**

Records are located at each Call Center, which are operated at VA health care facilities or at contractor locations. Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances. In addition, information from clinical symptom calls is maintained in the patient's medical record at VA health care facilities and at the Department of Veterans Affairs (VA), 810 Vermont Avenue, NW., Washington, DC; Veterans Integrated Service Network Offices (VISNs); and Employee Education Systems.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The records include information concerning individual enrolled patients.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The records may include information related to:

1. Clinical care such as clinical symptoms, questions asked about symptoms, answers received, clinical protocol used and advice provided. It might include doctors' orders for patient care including nursing care, current medications, including their scheduling and delivery, consultations, radiology, laboratory and other diagnostic and therapeutic examinations and results; clinical protocol and other reference materials; education provided, including title of education material and reports of contact with individuals or groups. It includes information related to the patient's or family member's understanding of the advice given and their plan of action and, sometimes, the effectiveness of those actions.

2. Record of all calls made to the Call Center, including caller questions about medications, their uses and side effects; requests for renewals of prescriptions, appointment changes, benefits information and the actions taken related to each call, including the notification of providers and other staffs about the call.

3. Contact information from private sector medical facilities or clinicians contacting the VA about issues such as enrolled veterans' visits to an emergency department or admissions to a community medical center.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title 38, United States Code, section 501.

**PURPOSE(S):**

The purpose of these records is to provide clinical and administrative support to patient care and provide medical and administrative documentation of the care and/or services provided in Call Centers. The records may be used for such purposes as improving Call Center staff's ability to provide telephone care services to veterans and the quality of the service by having immediate access to records of calls made previously by the veteran. Records may be used for purposes of notifying VA providers of the patient's condition and status, the criteria used to judge the status of the patient and/or the information given to the external provider on follow-up steps that they must take to receive authorization for the care. Records may be used to assess and improve the quality of the services provided through telephone care services and to produce various management and patient follow-up reports. Records may be used to respond to patient, family and other inquiries, including at times non-VA clinicians and Joint Commission for Accreditation of Healthcare Organizations (JCAHO) or the Utilization Review Accreditation Commission (URAC) for the accreditation of a Call Center or facility. Records may also be used to conduct health care related studies, statistical analysis, and resource allocation planning using data that has been stripped of individual patient identifiers. The clinical information is integrated into the patient's overall medical record, into quality improvement plans, and activities of the facility, such as utilization review and risk management. They are also used to improve Call Center services, such as patient education, the improved integration of clinical care, the provision of telephone care services, and communication.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To the extent that records contained in the system include information protected by 45 CFR Parts 160 and 164, i.e., individually identifiable health information, and 38 U.S.C. 7332, i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR Parts 160 and 164 permitting disclosure.

1. Disclosure may be made to a member of Congress or staff person acting for the member when the member or staff person requests the records on behalf of and at the request of that individual.

2. Disclosure may be made to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

3. Disclosure may be made to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individual's employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

4. Disclosure may be made for program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

5. Disclosure may be made to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

6. Disclosure may be made to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/reprivileging of health care practitioners, and other times as deemed necessary by VA.

7. Disclosure may be made to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

8. Disclosure of information related to the performance of a health care student or provider may be made to a medical or nursing school or other health care

related training institution or other facility with which there is an affiliation, sharing agreement, contract or similar arrangement when the student or provider is enrolled at or employed by the school or training institution or other facility and the information is needed for personnel management, rating and/or evaluation purposes.

9. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

10. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, reporting of an investigation of an employee, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

11. Disclosure of information may be made to the next-of-kin and/or the person(s) with whom the patient has a meaningful relationship to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices.

12. On its own initiative, VA may disclose information, except for the names and home addresses of veterans and their dependents, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

13. Disclosure of relevant information may be made to a non-VA physician or medical facility staff caring for a veteran for the purpose of providing relevant clinical information in an urgent or emergent situation.

14. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C).

15. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

16. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in the electronic medical record and on an automated storage media, such as magnetic tape, disc or laser optical media.

**RETRIEVABILITY:**

Records are retrieved by name, social security number or other assigned identifier of the enrolled veteran who is calling or about whom the call is being made.

**SAFEGUARDS:**

1. Access to patient-specific information located in Call Center databases and storage areas is restricted to VA employees and contract personnel on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA Call Center areas are locked after normal duty hours or when the Call Center is closed, and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to VA and contracted Call Centers and computer rooms is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Information in the Veterans Health Information Systems and Technology Architecture (VistA) may be accessed by authorized VA employees or authorized contract employees. Access to file information is controlled at two levels; the systems recognize authorized employees or contract employees by a series of individually unique passwords/codes as a part of each data message, and personnel are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on VA is afforded similar storage and access protections as the data that is maintained in the original files access to information stored on automated storage media at other VA and contract locations is controlled by individually unique passwords/codes.

3. Remote access to VHA information in VistA is provided to those Call Center employees, either VA or contract staff, that require access to information stored in the medical record. Access to this information is protected through hardened user access and is controlled by individual unique passwords. Additionally, contracted Call Centers, either VA or private sector, are required to have a separate computer security plan that meets national information security requirements.

**RETENTION AND DISPOSAL:**

Records are to be disposed of in accordance with the Veterans Health Administration Records Control Schedule; 10–1. Paper records and information stored on electronic storage media are maintained and disposed of in accordance with the records disposition authority approved by the Archivist of the United States.

**SYSTEM MANAGER(S) AND ADDRESS:**

Official responsible for policies and procedures: Chief Consultant for Primary Care (11PC) Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Officials maintaining the system: Network and/or facility director at the Network and/or

facility where the individuals are associated.

**NOTIFICATION PROCEDURE:**

Individuals who wish to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA health care facility where care was rendered. Addresses of VA health care facilities may be found at *http://www2.va.gov/directory/guide/home.asp?isFlash=1.* Inquiries should include the person's full name, social security number, dates of employment, date(s) of contact, and return address.

**RECORD ACCESS PROCEDURE:**

Individuals seeking information regarding access to and contesting of records in this system may write or visit the VA facility location where they normally receive their care.

**CONTESTING RECORD PROCEDURES:**

(See Record Access Procedures above.)

**RECORD SOURCE CATEGORIES:**

Record sources include: enrolled patients, patients' families and friends, private medical facilities and their clinical and administrative staffs, health care professionals, Patient Medical Records—VA (24VA136), VistA (79VA19), VA health care providers, and Call Center nurses and administrative staff.

[FR Doc. E9–10711 Filed 5–7–09; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of Amendment to System of Records.

**SUMMARY:** As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled ''National Chaplain Management Information System (NCMIS)–VA'' (84VA111K) as set forth in the **Federal Register** 59 FR 13765 and last amended in the **Federal Register** on March 23, 1994. VA is amending the system of records by revising the Routine Uses of Records Maintained in the System Including Categories of Users and the Purpose of Such Uses. VA is republishing the system notice in its entirety.

**DATES:** Comments on the amendment of this system of records must be received no later than June 8, 2009. If no public comment is received, the amended system will become effective June 8, 2009.

**ADDRESSES:** Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

**SUPPLEMENTARY INFORMATION:**

Chaplain Service of the Veterans Health Administration, Department of Veterans Affairs, has developed a data base to maintain information that will be used as part of a comprehensive program to evaluate applicants for employment as chaplains, and to plan the Spiritual and Pastoral Care Program. The information will be used to facilitate personnel succession planning. It will also support the documentation and tracking of credentialing and privileging for all chaplains providing patient care in the system.

The Report of Intent to Amend a System on Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Routine Use 13 was added to disclose relevant information that may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such service as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

Routine use 14 was added to disclose information to other Federal agencies that may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

Routine use 15 was added so that the VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

Approved: April 21, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

**84VA111K**

**SYSTEM NAME:**

''National Chaplain Management Information System (NCMIS)–VA.''

**SYSTEM LOCATION:**

The data base will reside on its own micro-computers at the National VA Chaplain Center (301/111K) at the Department of Veterans Affairs (VA) Medical Center (VAMC) located at 100 Emancipation Road, Hampton, Virginia 23667.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The personal data collected will be limited to VA Chaplains, other VA

Chaplain Service staff, applicants for VA chaplain positions (VA employees and individuals seeking VA employment), and selected providers of services to the VA chaplaincy.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

1. The following data will be collected on individuals who are VA chaplains or chaplain candidates: Name, date of birth, Social Security Number, educational data (e.g., college degrees), membership in religious bodies and related religious experience, employment history relevant to the chaplaincy, name, location and dates of significant professional events (e.g., ordination), continuing education data (e.g., name, location and type of continuing education course), psychological and related survey data relevant to personal and professional development activities in support of chaplain development and research in the Chaplain Service (e.g., Myers-Briggs, 16PF Survey, leadership style surveys, etc.), data to verify and validate the effectiveness of affirmative action programs, work-related performance data, and performance data appropriate for national aggregation and management applications (e.g., bedside visits, number of chapel services, office visits, etc.), and 2. The following additional data may be maintained for resource providers who have or may assist in the work of the chaplaincy; names of consultants or providers, their organization, type of services provided, effectiveness and performance on contracts, special characteristics related to nature of their service (e.g., techniques or manner of teaching bereavement counseling, resources used, etc.), and nature of correspondence and related administrative matters.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title 38, United States Code, Sec. 7304(a).

**PURPOSE(S):**

The information will be used as part of a comprehensive program in Total Quality Improvement (TQI) in order to facilitate: (1) More meaningful and effective management of the functions and performance of Chaplain Services, (2) staff development to enhance and improve the work related activities of chaplains nationally, (3) the personal growth and spiritual development of all chaplains over and above improving the performance of their duties, (4) the documentation and tracking of credentialing and privileging for all chaplains providing patient care in the system, and (5) personnel related decisions.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To the extent that records contained in the system include information protected by 45 CFR Parts 160 and 164, i.e., individually identifiable health information, and 38 U.S.C. 7332, i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR Parts 160 and 164 permitting disclosure.

1. A record from this system of records may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Department decision concerning the hiring or retention of any employee, the issuance or reappraisal of clinical privileges, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit.

2. A record from this system of records may be disclosed to an agency in executive, legislative, or judicial branch, in response to its request, or at the initiation of VA, information in connection with the hiring of an employee, the issuance of security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

5. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

6. Hiring, performance, or other personnel related information may be disclosed to any facility with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement, for purposes of establishing, maintaining, or expanding any such relationship.

7. Information may be disclosed to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

8. Disclosure may be made to the VA-appointed representative of an employee of all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

9. Information may be disclosed to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

11. Information may be disclosed to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

12. VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

13. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

14. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

15. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on micro-computers.

**RETRIEVABILITY:**

Records are retrieved by the names. Social Security Numbers, or other assigned identifiers of the individuals on whom they are maintained.

**SAFEGUARDS:**

1. Access to VA working and storage areas is restricted to VA employees on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. All chaplains and other VA employees who enter or use data in the data base will do so by direct access into the system, or by means of the national VA communications network (VADATS/IDCU). All users must have access and verify codes maintained by the National Chaplain Center. All staff access to the system data will be restricted to only that data required on a ''need-to-know'' basis consistent with the routine performance of their duties. Access to individual work stations will be protected under security protocols established at the user's facility. Computers will be maintained in the locked environment in the main computer room of the VA Medical Center, Hampton, Virginia.

**RETENTION AND DISPOSAL:**

Paper records and information stored on electronic storage media are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Chaplain Service (301/111K), National VA Chaplain Center, VA Medical Center, 100 Emancipation Road, Hampton, Virginia 23667.

**NOTIFICATION PROCEDURE:**

Individuals who wish to determine whether this system of records contains information about them should write to the System Manager at the above address. Inquiries should include the individual's name, address, and social security number.

**RECORD ACCESS PROCEDURE:**

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the System Manager at the above address.

**CONTESTING RECORD PROCEDURES:**

(*See* Record Access Procedures above.)

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided by the applicant/employee, or obtained from current or previous employers, references, educational institutions, religious bodies and/or their representatives and VA staff.

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Federal Register

**Friday,**
**May 8, 2009**

**Part II**

# United States Sentencing Commission

**Sentencing Guidelines for United States Courts; Notice**

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of submission to Congress of amendments to the sentencing guidelines effective November 1, 2009.

**SUMMARY:** Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. This notice sets forth the amendments and the reason for each amendment.

**DATES:** The Commission has specified an effective date of November 1, 2009, for the amendments set forth in this notice.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, 202–502–4590. The amendments set forth in this notice also may be accessed through the Commission's Web site at *http://www.ussc.gov*.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on January 27, 2009 (*see* 74 FR 4802). The Commission held a public hearing on the proposed amendments in Washington, DC, on March 17–18, 2009. On May 1, 2009, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2009.

**Authority:** 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

**Ricardo H. Hinojosa,**

*Acting Chair.*

1. *Amendment:* Section 2B1.1(b) is amended by redesignating subdivisions (15) and (16) as subdivisions (16) and (17); and by inserting after subdivision (14) the following:

''(15) If (A) the defendant was convicted of an offense under 18 U.S.C. 1030, and the offense involved an intent to obtain personal information, or (B) the offense involved the unauthorized public dissemination of personal information, increase by 2 levels.''.

Section 2B1.1(b) is amended in subdivision (16), as redesignated by this amendment, by striking ''(I)'' after ''involved''; by striking ''; or (II) an intent to obtain personal information'' after ''security''; and by striking ''(i)'' after ''(5)(A)''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 1 by inserting after the paragraph that begins '' 'Foreign instrumentality' '' the following:

'' 'Means of identification' has the meaning given that term in 18 U.S.C. 1028(d)(7), except that such means of identification shall be of an actual (*i.e.*, not fictitious) individual, other than the defendant or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct).'';

and by inserting after the paragraph that begins '' 'National cemetery' '' the following:

'' 'Personal information' means sensitive or private information involving an identifiable individual (including such information in the possession of a third party), including (i) medical records; (ii) wills; (iii) diaries; (iv) private correspondence, including e-mail; (v) financial records; (vi) photographs of a sensitive or private nature; or (vii) similar information.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 3(C) in subdivision (i) by inserting '', copied,'' after ''taken''; by redesignating subdivisions (ii) through (v) as subdivisions (iii) through (vi); and by inserting after subdivision (i) the following:

''(ii) In the case of proprietary information (*e.g.*, trade secrets), the cost of developing that information or the reduction in the value of that information that resulted from the offense.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 4 by adding at the end the following:

''(E) *Cases Involving Means of Identification.*—For purposes of subsection (b)(2), in a case involving means of identification 'victim' means (i) any victim as defined in Application Note 1; or (ii) any individual whose means of identification was used unlawfully or without authority.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 9(A) by striking the paragraph that begins '' 'Means of identification' ''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 13 by striking ''(15)'' and inserting ''(16)'' each place it appears; by striking the paragraph that begins '' 'Personal information' ''; and by inserting ''(A)'' before ''(iii)'' each place it appears.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 14 by striking ''(b)(16)'' and inserting ''(b)(17)'' each place it appears.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 19(B) by striking ''(15)'' and inserting ''(16)(A)''.

The Commentary to § 2B1.1 captioned ''Background'' is amended by inserting after the paragraph that begins ''Subsection (b)(14)(B)(i)'' the following:

''Subsection (b)(15) implements the directive in section 209 of Public Law 110–326.'';

and in the paragraph that begins ''Subsection (b)(15)'' by striking ''(15)'' and inserting ''(16)'' each place it appears.

The Commentary to § 2H3.1 captioned ''Application Notes'' is amended in Note 4 by striking ''*Definitions.*—For purposes of subsection (b)(2)(B):'' and inserting ''*Definitions.*—For purposes of this guideline:''; and by inserting after the paragraph that begins '' 'Interactive computer service' '' the following:

'' 'Means of identification' has the meaning given that term in 18 U.S.C. § 1028(d)(7), except that such means of identification shall be of an actual (*i.e.*, not fictitious) individual, other than the defendant or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct).

'Personal information' means sensitive or private information involving an identifiable individual (including such information in the possession of a third party), including (i) medical records; (ii) wills; (iii) diaries; (iv) private correspondence, including e-mail; (v) financial records; (vi) photographs of a sensitive or private nature; or (vii) similar information.''.

The Commentary to § 2H3.1 captioned ''Application Notes'' is amended in Note 5(i) by inserting ''personal information, means of identification,'' after ''offense involved''; and by inserting a comma before ''or tax''.

The Commentary to § 3B1.3 captioned ''Application Notes'' is amended in Note 2(B) by inserting '', transfer, or issue'' after ''in order to obtain''.

*Reason for Amendment:* This multi-part amendment responds to the directive in section 209 of the Identity

Theft Enforcement and Restitution Act of 2008, Title II of Public Law 110–326 (the ''Act''), and addresses other related issues arising from case law. Section 209(a) of the Act directed the Commission to—review its guidelines and policy statements applicable to persons convicted of offenses under sections 1028, 1028A, 1030, 2511, and 2701 of title 18, United States Code, and any other relevant provisions of law, in order to reflect the intent of Congress that such penalties be increased in comparison to those currently provided by such guidelines and policy statements.

The Act further required the Commission, in determining the appropriate sentence for the above referenced offenses, to consider the extent to which the guidelines and policy statements adequately account for 13 factors listed in section 209(b) of the Act.

In response to the congressional directive, the amendment increases penalties provided by the applicable guidelines and policy statements by adding a new enhancement and a new upward departure provision. In addition, the amendment expands both the definition of ''victim'' and the factors to be considered in the calculation of loss; each of these expansions may, in an appropriate case, increase penalties in comparison to those provided prior to the amendment.

First, the amendment adds a new two-level enhancement in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). The new enhancement, which addresses offenses involving personal information, is at subsection (b)(15). An existing enhancement, which addresses offenses under 18 U.S.C. 1030 (*i.e.*, computer crimes), was at subsection (b)(15) but has been redesignated as subsection (b)(16).

The new enhancement for offenses involving personal information applies if (A) the defendant was convicted of an offense under 18 U.S.C. 1030 and the offense involved an intent to obtain personal information, or (B) the offense involved the unauthorized public dissemination of personal information. The ''(A)'' prong of the new personal information enhancement had been a prong of the existing computer crime enhancement, but the tiered structure of that enhancement was such that if a computer crime involved both an intent to obtain personal information and another harm (such as an intrusion into a government computer, an intent to cause damage, or a disruption of a critical infrastructure), only the greatest applicable increase would apply. The amendment responds to concerns that a case involving those other harms is different in kind from a case involving an intent to obtain personal information. Moving the intent to obtain personal information prong out of the computer crime enhancement and into the new enhancement ensures that a defendant convicted under section 1030 receives an incremental increase in punishment if the offense involved both an intent to obtain personal information and another harm addressed by the computer crime enhancement. The ''(B)'' prong of the new personal information enhancement ensures that any defendant, regardless of the statute of conviction, receives an additional incremental increase in punishment if the offense involved the unauthorized public dissemination of personal information. This prong accounts for the greater harm to privacy caused by such an offense.

Second, the amendment amends the Commentary to § 2B1.1 to provide that, for purposes of the victims table in subsection (b)(2), an individual whose means of identification was used unlawfully or without authority is considered a ''victim.'' The Commentary to § 2B1.1 in Application Note 1 defines ''victim'' in pertinent part to mean ''any person who sustained any part of the actual loss determined under subsection (b)(1)''. An identity theft case may involve an individual whose means of identification was taken and used but who was fully reimbursed by a third party (*e.g.*, a bank or credit card company). Some courts have held that such an individual is not counted as a ''victim'' for purposes of the victims table at § 2B1.1(b)(2). *See United States* v. *Kennedy*, 554 F.3d 415 (3d Cir. 2009) (discussing various cases addressing this issue, including *United States* v. *Armstead*, 552 F.3d 769 (9th Cir. 2008); *United States* v. *Abiodun*, 536 F.3d 162 (2d Cir. 2008); *United States* v. *Connor*, 537 F.3d 480 (5th Cir. 2008); *United States* v. *Icaza*, 492 F.3d 967 (8th Cir. 2007); *United States* v. *Lee*, 427 F.3d 881 (11th Cir. 2005); and *United States* v. *Yagar*, 404 F.3d 967 (6th Cir. 2005)). The Commission determined that such an individual should be considered a ''victim'' for purposes of subsection (b)(2) because such an individual, even if fully reimbursed, must often spend significant time resolving credit problems and related issues, and such lost time may not be adequately accounted for in the loss calculations under the guidelines. The Commission received testimony that the incidence of data breach cases, in which large numbers of means of identification are compromised, is increasing. This new category of ''victim'' for purposes of subsection (b)(2) is appropriately limited, however, to cover only those individuals whose means of identification are actually used.

Third, the amendment makes two changes to Application Note 3(C) regarding the calculation of loss. The first change specifies that the estimate of loss may be based upon the fair market value of property that is copied. This change responds to concerns that the calculation of loss does not adequately account for a case in which an owner of proprietary information retains possession of such information, but the proprietary information is unlawfully copied. The amendment recognizes, for example, that a computer crime that does not deprive the owner of the information in the computer nonetheless may cause loss inasmuch as it reduces the value of the information. The amendment makes clear that in such a case the court may use the fair market value of the copied property to estimate loss. The second change adds a new provision to Application Note 3(C) specifying that, in a case involving proprietary information (*e.g.*, trade secrets), the court may estimate loss using the cost of developing that information or the reduction in the value of that information that resulted from the offense. The new provision responds to concerns that the guidelines did not adequately explain how to estimate loss in a case involving proprietary information such as trade secrets.

Fourth, the amendment moves the definitions of ''means of identification'' and ''personal information'' to Application Note 1, and clarifies that for information to be considered ''personal information,'' it must involve information of an identifiable individual.

Fifth, the amendment amends § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information) to provide that an upward departure may be warranted in a case in which the offense involved personal information or means of identification of a substantial number of individuals. As a conforming change, in Application Note 4 the amendment adds definitions of ''means of identification'' and ''personal information'' that are identical to the definitions of those terms in § 2B1.1. The departure provision responds to concerns that the guideline may not

adequately account for the rare wiretapping offense that involves a substantial number of victims.

Sixth, the amendment clarifies Application Note 2(B) of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). The first sentence of Application Note 2(B) specifies that an adjustment under § 3B1.3 shall apply to a defendant who exceeds or abuses his or her authority to ''obtain'' or ''use'' a means of identification. The second sentence then provides, as an example of such a defendant, an employee of a state motor vehicle department who exceeds or abuses his or her authority by ''issuing'' a means of identification. To make the two sentences consistent, the amendment clarifies the first sentence so that it expressly applies not only to obtaining or using a means of identification, but also to issuing or transferring a means of identification.

Finally, the amendment makes several technical changes. In particular, it corrects several places in the *Guidelines Manual* that erroneously refer to subsection ''(b)(15)(iii)'' of § 2B1.1; the reference should be to subsection (b)(15)(A)(iii) (redesignated by the amendment as (b)(16)(A)(iii)). Also, it conforms a statutory reference in § 2B1.1(b)(15)(A)(ii) (redesignated by the amendment as (b)(16)(A)(ii)), which refers to 18 U.S.C. 1030(a)(5)(A)(i); the Act redesignated this statute as 18 U.S.C. 1030(a)(5)(A).

The Commission determined that certain factors listed in the directive are adequately accounted for by existing provisions in the *Guidelines Manual. See, e.g.,* §§ 2B1.1(b)(1), (b)(9)(C), (b)(13), (b)(16) (as redesignated by the amendment); 2B2.3(b)(1), (b)(3); 2B3.2(b)(3)(B); 2H3.1(b)(1)(B); and 3B1.4 (Using a Minor To Commit a Crime)).

2. *Amendment:* Section 2D1.1(a) is amended by redesignating subdivision (3) as subdivision (5); and by inserting after subdivision (2) the following:

''(3) 30, if the defendant is convicted under 21 U.S.C. 841(b)(1)(E) or 21 U.S.C. 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or

(4) 26, if the defendant is convicted under 21 U.S.C. 841(b)(1)(E) or 21 U.S.C. 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or''.

Section 2D1.1(c)(5) is amended by inserting ''700,000 or more units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''.

Section 2D1.1(c)(6) is amended by inserting ''At least 400,000 but less than 700,000 units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''.

Section 2D1.1(c)(7) is amended by inserting ''At least 100,000 but less than 400,000 units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''.

Section 2D1.1(c)(8) is amended by inserting ''At least 80,000 but less than 100,000 units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''.

Section 2D1.1(c)(9) is amended by inserting ''At least 60,000 but less than 80,000 units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''.

Section 2D1.1(c)(10) is amended by inserting ''At least 40,000 but less than 60,000 units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''; and by inserting ''or Hydrocodone'' after ''(except Ketamine''.

Section 2D1.1(c)(11) is amended by inserting ''At least 20,000 but less than 40,000 units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''; and by inserting ''or Hydrocodone'' after ''(except Ketamine''.

Section 2D1.1(c)(12) is amended by inserting ''At least 10,000 but less than 20,000 units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''; and by inserting ''or Hydrocodone'' after ''(except Ketamine''.

Section 2D1.1(c)(13) is amended by inserting ''At least 5,000 but less than 10,000 units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''; and by inserting ''or Hydrocodone'' after ''(except Ketamine''.

Section 2D1.1(c)(14) is amended by inserting ''At least 2,500 but less than 5,000 units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''; and by inserting ''or Hydrocodone'' after ''(except Ketamine''.

Section 2D1.1(c)(15) is amended by inserting ''At least 1,000 but less than 2,500 units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''; and by inserting ''or Hydrocodone'' after ''(except Ketamine''.

Section 2D1.1(c)(16) is amended by inserting ''At least 250 but less than 1,000 units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''; and by inserting ''or Hydrocodone'' after ''(except Ketamine''.

Section 2D1.1(c)(17) is amended by inserting ''Less than 250 units of Schedule III Hydrocodone;'' after the line referenced to ''Schedule I or II Depressants''; and by inserting ''or Hydrocodone'' after ''(except Ketamine''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10(E) in the subdivision captioned ''Schedule III Substances (except ketamine)'' by inserting in the heading ''and hydrocodone'' after ''(except ketamine''; and in the sentence that begins ''***Provided'' by inserting ''(except ketamine and hydrocodone)'' after ''Schedule III substances''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10(E) by inserting after the subdivision captioned ''Schedule III Substances (except ketamine)'' the following subdivision:

''*Schedule III Hydrocodone*****

1 unit of Schedule III hydrocodone = 1 gm of marihuana

******Provided, that the combined equivalent weight of all Schedule III substances (except ketamine), Schedule IV substances (except flunitrazepam), and Schedule V substances shall not exceed 999.99 kilograms of marihuana.''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10(E) in the subdivision captioned ''Schedule IV Substances (except flunitrazepam)'' by inserting an additional asterisk after ''*****'' each place it appears.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10(E) in the subdivision captioned ''Schedule V Substances'' by inserting an additional asterisk after ''******'' each place it appears.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10(E) in the subdivision captioned ''List I Chemicals (relating to the manufacture of amphetamine or methamphetamine)'' by inserting an additional asterisk after ''*******'' each place it appears.

Section 2D3.1 is amended in the heading by striking ''Schedule I'' and inserting ''Scheduled''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 21 U.S.C. 841(g) the following:

''21 U.S.C. 841(h) 2D1.1''.

*Reason for Amendment:* This amendment responds to the Ryan Haight Online Pharmacy Consumer Protection Act of 2008, Public Law 110–425 (the ''Act'').

The Act amended the Controlled Substances Act (21 U.S.C. 801 *et seq.*) to

create two new offenses involving controlled substances, increased the statutory maximum terms of imprisonment for all Schedule III and IV controlled substance offenses and for second and subsequent Schedule V controlled substance offenses, and added a sentencing enhancement for Schedule III controlled substance offenses in a case in which ''death or serious bodily injury results from the use of such substance''. The Act also included a directive to the Commission that states:

The United States Sentencing Commission, in determining whether to amend, or establish new, guidelines or policy statements, to conform the Federal sentencing guidelines and policy statements to this Act and the amendments made by this Act, should not construe any change in the maximum penalty for a violation involving a controlled substance in a particular schedule as being the sole reason to amend, or establish a new, guideline or policy statement.

First, the amendment addresses the sentencing enhancement added by the Act, which applies when the offense involved a Schedule III controlled substance and death or serious bodily injury resulted from the use of such substance. The statutory enhancement provides a maximum term of imprisonment of 15 years, or 30 years if the violation is committed after a prior conviction for a felony drug offense. *See* 21 U.S.C. 841(b)(1)(E), 960(b)(5). The amendment addresses the statutory enhancement by amending § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to provide two new alternative base offense levels at subsections (a)(3) and (a)(4) for offenses involving Schedule III controlled substances in which death or injury results that are comparable to the alternative base offense levels at subsections (a)(1) and (a)(2) for offenses involving Schedule I and II controlled substances in which death or injury results. To reflect the harms involved in these offenses and the criminal histories of repeat drug offenders, the alternative base offense levels are set at level 30 if the defendant committed the offense after one or more prior convictions for a similar offense and level 26 otherwise.

Second, the amendment modifies the Drug Quantity Table in § 2D1.1 to increase the maximum base offense level for offenses involving Schedule III hydrocodone from level 20 to level 30, without modifying any other offense level. The amendment extends the Drug Quantity Table for Schedule III hydrocodone offenses to level 30 using the existing marihuana equivalency (*i.e.,* 1 pill of Schedule III hydrocodone = 1 gram of marihuana). The Commission determined that a maximum base offense level of 30 is appropriate for Schedule III hydrocodone offenses because of data and testimony indicating a relatively high prevalence of misuse (when compared to other, non-marihuana drugs of abuse), an increasing number of emergency room visits involving this drug, and the very large volume of hydrocodone pills illicitly distributed, either over the Internet or in specialized pain clinics.

Finally, the amendment addresses the two new offenses created by the Act. The first new offense, at 21 U.S.C. 841(h), prohibits the delivery, distribution, or dispensing of controlled substances over the Internet without a valid prescription. The applicable statutory maximum term of imprisonment depends on the controlled substance involved. The amendment amends Appendix A (Statutory Index) to reference 21 U.S.C. 841(h) to § 2D1.1 because distribution of a controlled substance is an element of the offense. That guideline also is appropriate because it includes an enhancement at subsection (b)(6) that provides a two-level increase in a case in which ''a person distributes a controlled substance through mass-marketing by means of an interactive computer service'' (*e.g.*, sale of a controlled substance by means of the Internet).

The second new offense, at 21 U.S.C. 843(c)(2)(A), prohibits the use of the Internet to advertise for sale a controlled substance and has a statutory maximum term of imprisonment of four years. Offenses under 21 U.S.C. 843(c) already are referenced in Appendix A (Statutory Index) to § 2D3.1 (Regulatory Offenses Involving Registration Numbers; Unlawful Advertising Relating to Schedule I Substances; Attempt or Conspiracy). The amendment modifies the title of that guideline to indicate that it covers any scheduled controlled substance.

3. *Amendment:* Section 2D1.1(b)(2) is amended by striking ''or'' before ''(B)''; and by inserting ''a submersible vessel or semi-submersible vessel as described in 18 U.S.C. 2285 was used, or ''(C)'' after ''(B)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 8 in the paragraph that begins ''Note, however'' by striking ''(B)'' and inserting ''(C)''.

Chapter Two, Part X, Subpart 7 is amended in the heading by adding at the end ''AND SUBMERSIBLE AND SEMI-SUBMERSIBLE VESSELS''.

Chapter Two, Part X, Subpart 7 is amended by adding at the end the following guideline and accompanying commentary:

''§ 2X7.2. *Submersible and Semi-Submersible Vessels*

(a) Base Offense Level: 26

(b) Specific Offense Characteristic

(1) (Apply the greatest) If the offense involved—

(A) a failure to heave to when directed by law enforcement officers, increase by 2 levels;

(B) an attempt to sink the vessel, increase by 4 levels; or

(C) the sinking of the vessel, increase by 8 levels.

*Commentary*

*Statutory Provision:* 18 U.S.C. 2285.

*Application Note:*

1. *Upward Departure Provisions.*—An upward departure may be warranted in any of the following cases:

(A) The defendant engaged in a pattern of activity involving use of a submersible vessel or semi-submersible vessel described in 18 U.S.C. 2285 to facilitate other felonies.

(B) The offense involved use of the vessel as part of an ongoing criminal organization or enterprise.

*Background:* This guideline implements the directive to the Commission in section 103 of Public Law 110–407.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 2284 the following:

''18 U.S.C. 2285 2X7.2''.

*Reason for Amendment:* This amendment responds to the Drug Trafficking Vessel Interdiction Act of 2008, Public Law 110–407 (the ''Act''). The Act created a new offense at 18 U.S.C. 2285 making it unlawful to operate, attempt or conspire to operate, or embark in an unflagged submersible or semi-submersible vessel in international waters with the intent to evade detection. Section 103 of the Act directed the Commission to amend the guidelines, or promulgate new guidelines, to provide adequate penalties for persons convicted of offenses under 18 U.S.C. 2285 and included a list of circumstances for the Commission to consider.

First, the amendment amends § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) by expanding the scope of the specific offense characteristic at subsection (b)(2) to apply if a submersible or semi-submersible vessel was used in a drug importation offense. The Commission determined that a drug importation offense involving the use of a

submersible or semi-submersible vessel poses similar risks and harms as a drug importation offense involving an unscheduled aircraft (which subsection (b)(2) already covers). The amendment also makes a conforming change to a reference in Application Note 8.

Second, the amendment creates a new guideline at § 2X7.2 (Submersible and Semi-Submersible Vessels) for the new offense at 18 U.S.C. 2285. The new guideline provides a base offense level of 26 and includes a tiered specific offense characteristic and upward departure provisions to address certain aggravating circumstances listed in the directive. Public testimony indicates that submersible and semi-submersible vessels to date have been used for the purpose of transporting drugs. Such conduct receives a minimum offense level of 26 under § 2D1.1(b)(2), discussed above, regardless of the type or quantity of drug involved in the offense. The Commission determined that a base offense level of 26 in § 2X7.2 for an offense under section 2285 would be appropriate to promote proportionality.

The specific offense characteristic in § 2X7.2 provides a two-level enhancement for failing to heave to, a four-level enhancement for attempting to sink the vessel, and an eight-level enhancement for sinking the vessel; the greatest applicable enhancement applies. Offenses involving such conduct are more serious because they create greater risk of harm to the crew of the illegal vessel and the interdicting law enforcement personnel, particularly in a case in which the illegal vessel is sunk and its crew must be rescued. In addition, sinking the vessel destroys evidence of illegal activity. The upward departure provisions provide that an upward departure may be warranted if the defendant engaged in a pattern of activity involving the use of a submersible or semi-submersible vessel, or if the offense involved the use of the vessel as a part of an ongoing criminal organization or criminal enterprise.

Third, the amendment amends Appendix A (Statutory Index) to reference 18 U.S.C. 2285 to § 2X7.2.

4. *Amendment:* Section 2A6.1(b) is amended by redesignating subdivision (5) as subdivision (6); by inserting after subdivision (4) the following:

''(5) If the defendant (A) is convicted under 18 U.S.C. 115, (B) made a public threatening communication, and (C) knew or should have known that the public threatening communication created a substantial risk of inciting others to violate 18 U.S.C. 115, increase by 2 levels.'';

and in subdivision (6), as redesignated by this amendment, by striking ''and (4)'' and inserting ''(4), and (5)''.

The Commentary to § 2A6.1 captioned ''Background'' is amended by adding at the end the following:

''Subsection (b)(5) implements, in a broader form, the directive to the Commission in section 209 of the Court Security Improvement Act of 2007, Public Law 110–177.''.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 1513 by inserting ''2A1.1, 2A1.2, 2A1.3, 2A2.1, 2A2.2, 2A2.3, 2B1.1,'' before ''2J1.2''.

*Reason for Amendment:* This amendment responds to the Court Security Improvement Act of 2007, Public Law 110–177 (the ''Act''), and other related issues.

First, the amendment responds to the directive in section 209 of the Act, which required the Commission to review the guidelines applicable to threats punishable under 18 U.S.C. 115 (Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member) that occur over the Internet, and determine ''whether and by how much that circumstance should aggravate the punishment pursuant to section 994 of title 28, United States Code.'' The directive further required the Commission to consider the number of such threats made, the intended number of recipients of such threats, and whether the initial senders of such threats were acting in an individual capacity or as part of a larger group.

The amendment implements the directive by amending § 2A6.1 (Threatening or Harassing Communications; Hoaxes; False Liens) to provide a new two-level enhancement for a case in which the defendant is convicted under 18 U.S.C. 115, made a public threatening communication, and knew or should have known that the public threatening communication created a substantial risk of inciting others to violate 18 U.S.C. 115. The Commission determined that the policy concerns underlying the directive regarding threats occurring over the Internet apply equally to threats made public by other means (*e.g.*, radio, television broadcast) and that the response to the directive therefore should be technology neutral. The threat guideline, § 2A6.1, adequately accounts for offenses involving multiple threats and multiple victims through the existing specific offense characteristic at subsection (b)(2) and the upward departure provision in Application Note 4.

Second, the amendment amends Appendix A (Statutory Index) to add references for 18 U.S.C. 1513 (Retaliating against a witness, victim, or an informant) to §§ 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2A1.3 (Voluntary Manslaughter), 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), 2A2.2 (Aggravated Assault), 2A2.3 (Minor Assault), and 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), in addition to § 2J1.2 (Obstruction of Justice). The additional references more adequately reflect the range of conduct covered by 18 U.S.C. 1513, including killing or attempting to kill a witness, causing bodily injury to a witness, and damaging the tangible property of a witness. In addition, 18 U.S.C. 1512 (Tampering with a witness, victim, or an informant), which covers a similar range of conduct, including killing or attempting to kill a witness and using physical force against a witness, is referenced to the same Chapter Two, Part A guidelines.

5. *Amendment:* Section 2H4.1(a) is amended by striking ''(Apply the greater)'' after ''Offense Level''; and by striking subdivision (2) and inserting the following:

''(2) 18, if (A) the defendant was convicted of an offense under 18 U.S.C. 1592, or (B) the defendant was convicted of an offense under 18 U.S.C. 1593A based on an act in violation of 18 U.S.C. 1592.''.

The Commentary to § 2H4.1 captioned ''Statutory Provisions'' is amended by inserting '', 1593A'' after ''1592''.

The Commentary to § 2H4.1 captioned ''Application Notes'' is amended by adding at the end the following:

''4. In a case in which the defendant was convicted under 18 U.S.C. 1589(b) or 1593A, a downward departure may be warranted if the defendant benefitted from participating in a venture described in those sections without knowing that (*i.e.*, in reckless disregard of the fact that) the venture had engaged in the criminal activity described in those sections.''.

Section 2L1.1(b) is amended by striking subdivision (8) and inserting the following:

''(8) (Apply the greater):

(A) If an alien was involuntarily detained through coercion or threat, or in connection with a demand for payment, (i) after the alien was smuggled into the United States; or (ii) while the alien was transported or harbored in the United States, increase by 2 levels. If

the resulting offense level is less than level 18, increase to level 18.

(B) If (i) the defendant was convicted of alien harboring, (ii) the alien harboring was for the purpose of prostitution, and (iii) the defendant receives an adjustment under § 3B1.1 (Aggravating Role), increase by 2 levels, but if the alien engaging in the prostitution had not attained the age of 18 years, increase by 6 levels.''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 6 by inserting ''(A)'' after ''(b)(8)''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1350 the following:

''18 U.S.C. 1351 2B1.1'';

and by inserting after the line referenced to 18 U.S.C. 1592 the following:

''18 U.S.C. 1593A2H4.1''.

*Reason for Amendment:* This amendment responds to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110–457 (the ''Act''), which included a directive to the Commission and created two new offenses.

First, the amendment responds to the directive in section 222(g) of the Act. It directed the Commission to—

review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of alien harboring to ensure conformity with the sentencing guidelines applicable to persons convicted of promoting a commercial sex act if—

(1) the harboring was committed in furtherance of prostitution; and

(2) the defendant to be sentenced is an organizer, leader, manager, or supervisor of the criminal activity.

The amendment amends § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) to provide an alternative prong to the enhancement at subsection (b)(8), which covers cases in which an alien was involuntarily detained through coercion or threat, or in connection with a demand for payment. The new alternative prong, at subsection (b)(8)(B), applies in a case in which the defendant was convicted of alien harboring, the alien harboring was for the purpose of prostitution, and the defendant receives an adjustment under § 3B1.1 (Aggravating Role). In such a case, a two-level increase applies, but if the alien engaging in the prostitution had not attained the age of 18 years, a six-level increase applies. Because this is an alternative enhancement, it does not apply if the enhancement for coercion at § 2L1.1(b)(8)(A) is greater.

The amendment also amends Application Note 6 to provide that, while an adjustment under § 3A1.3 (Restraint of Victim) does not apply in a case that receives an enhancement under § 2L1.1(b)(8)(A), such an adjustment may apply in a case that receives an enhancement under § 2L1.1(b)(8)(B).

Second, the amendment responds to a new offense created by the Act, 18 U.S.C. 1351 (Fraud in foreign labor contracting). The new offense has a statutory maximum term of imprisonment of five years. Because this new offense has fraud as an element, the amendment references this new offense in Appendix A (Statutory Index) to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States).

Third, the amendment responds to another new offense created by the Act, 18 U.S.C. 1593A (Benefitting financially from peonage, slavery, and trafficking in persons). This new offense applies when a person has knowingly benefitted financially from participating in a venture that has engaged in a violation of 18 U.S.C. 1581(a), 1592, or 1595(a), knowing or in reckless disregard of the fact that the venture has engaged in such violation. The amendment amends Appendix A (Statutory Index) to reference 18 U.S.C. 1593A to § 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade) because that guideline covers the relevant underlying statutes, 18 U.S.C. 1581(a) and 1592. The amendment also amends § 2H4.1 to provide that a defendant convicted of 18 U.S.C. 1593A receives the same base offense level as if the defendant were convicted of committing the underlying violation. Accordingly, if the defendant was convicted under section 1593A under circumstances in which the defendant benefitted from participation in a venture that engaged in a violation of 18 U.S.C. 1592, the defendant would receive the same base offense level, 18, as if the defendant had been convicted of 18 U.S.C. 1592. If the defendant was convicted under section 1593A under circumstances in which the defendant benefitted from participation in a venture that engaged in a violation of 18 U.S.C. 1581(a), the defendant would receive the same base offense level, 22, as if the defendant had been convicted of 18 U.S.C. 1581(a).

The amendment also amends the Commentary to § 2H4.1 to provide that a downward departure may be warranted in a case in which the defendant is convicted under 18 U.S.C. 1589(b) or 1593A if the defendant benefitted from participating in a venture described in those sections in reckless disregard of the fact that the venture had engaged in the criminal activities described in those sections. This downward departure provision recognizes that a defendant who commits such an offense in reckless disregard of the fact that the venture engaged in such criminal activities may be less culpable than a defendant who acts with knowledge of that fact.

Finally, the amendment makes a technical change to § 2H4.1(a) by striking the phrase ''(Apply the greater)''.

6. *Amendment:* Section 2B5.1(b)(2)(B) is amended by inserting ''(ii) genuine United States currency paper from which the ink or other distinctive counterfeit deterrent has been completely or partially removed;'' after ''paper;''; and by striking ''or (ii)'' and inserting ''or (iii)''.

The Commentary to § 2B5.1 captioned ''Application Notes'' is amended in Note 1 by inserting after the paragraph that begins ''*Definitions.*—'' the following:

'' 'Counterfeit' refers to an instrument that has been falsely made, manufactured, or altered. For example, an instrument that has been falsely made or manufactured in its entirety is 'counterfeit', as is a genuine instrument that has been falsely altered (such as a genuine $5 bill that has been altered to appear to be a genuine $100 bill).''.

The Commentary to § 2B5.1 captioned ''Application Notes'' is amended by striking Note 3; and by redesignating Note 4 as Note 3.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 474A by striking ''2B1.1,''; and in the line referenced to 18 U.S.C. 476 by striking ''2B1.1,''.

*Reason for Amendment:* This amendment amends § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) to clarify guideline application issues regarding the sentencing of counterfeiting offenses involving ''bleached notes.'' A bleached note is genuine United States currency stripped of its original image through the use of solvents or other chemicals and then reprinted to appear to be a note of higher denomination. The amendment responds to concerns expressed by federal judges and members of Congress regarding which guideline should apply to offenses involving bleached notes.

Courts in different circuits have resolved differently the question of whether an offense involving bleached notes should be sentenced under § 2B5.1 or § 2B1.1 (Larceny,

Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). *Compare United States* v. *Schreckengost*, 384 F.3d 922 (7th Cir. 2004) (holding that bleached notes should be sentenced under § 2B1.1), *and United States* v. *Inclema*, 363 F.3d 1177 (11th Cir. 2004) (same), *with United States* v. *Dison*, 2008 WL 351935 (W.D. La. Feb. 8, 2008) (applying § 2B5.1 in a case involving bleached notes), *and United States* v. *Vice*, 2008 WL 113970 (W.D. La. Jan. 3, 2008) (same).

The amendment resolves this issue by providing that an offense involving bleached notes is sentenced under § 2B5.1. The amendment does so by deleting Application Note 3 and revising the definition of ''counterfeit'' to more closely parallel relevant counterfeiting statutes, including 18 U.S.C. 471 (Obligations or securities of the United States) and 472 (Uttering counterfeit obligations or securities). It establishes a new definition at Application Note 1 providing that counterfeit ''refers to an instrument that has been falsely made, manufactured, or altered.'' Under the new definition, altered instruments are treated as counterfeit and sentenced under § 2B5.1. Technological advances in counterfeiting, such as bleaching notes, have rendered obsolete the previous distinction in the guidelines between an instrument falsely made or manufactured in its entirety and a genuine instrument that is altered.

The amendment also adds a prong to the enhancement at subsection (b)(2)(B) to cover a case in which the defendant controlled or possessed genuine United States currency paper from which the ink or other distinctive counterfeit deterrent has been completely or partially removed. Blank or partially blank bleached notes are similar to counterfeiting paper in how they are involved in counterfeiting offenses. Accordingly, this new prong ensures that an offender who controlled or possessed blank or partially blank bleached notes is subject to the same two-level enhancement as an offender who controlled or possessed ''counterfeiting paper similar to a distinctive paper'', as subsection (b)(2)(B)(i) already provides.

Finally, the amendment amends Appendix A (Statutory Index) by striking the reference to § 2B1.1 for two offenses that do not involve elements of fraud. Specifically, the amendment deletes the reference to § 2B1.1 for offenses under 18 U.S.C. 474A (Deterrents to counterfeiting of obligations and securities) and 476 (Taking impressions of tools used for obligations or securities).

7. *Amendment:* The Commentary to § 2A3.2 captioned ''Application Notes'' is amended in Note 3(B) in the paragraph that begins ''*Undue Influence''* by adding at the end ''The voluntariness of the minor's behavior may be compromised without prohibited sexual conduct occurring.''; by inserting after the paragraph that begins ''*Undue Influence''* the following:

''However, subsection (b)(2)(B)(ii) does not apply in a case in which the only 'minor' (as defined in Application Note 1) involved in the offense is an undercover law enforcement officer.'';

and in the paragraph that begins ''In a case'' by striking '', for purposes of'' and all that follows through ''sexual conduct'' and inserting ''that subsection (b)(2)(B)(ii) applies''.

The Commentary to § 2A3.2 captioned ''Background'' is amended by striking ''two-level'' and inserting ''four-level'' each place it appears.

The Commentary to § 2G1.3 captioned ''Application Notes'' is amended in Note 3(B) in the paragraph that begins ''*Undue Influence''* by adding at the end ''The voluntariness of the minor's behavior may be compromised without prohibited sexual conduct occurring.''; by inserting after the paragraph that begins ''*Undue Influence''* the following:

''However, subsection (b)(2)(B) does not apply in a case in which the only 'minor' (as defined in Application Note 1) involved in the offense is an undercover law enforcement officer.'';

and in the paragraph that begins ''In a case'' by striking '', for purposes of'' and all that follows through ''sexual conduct'' and inserting ''that subsection (b)(2)(B) applies''.

*Reason for Amendment:* This amendment addresses a circuit conflict regarding application of the undue influence enhancement at subsection (b)(2)(B)(ii) of § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) and at subsection (b)(2)(B) of § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor). The undue influence enhancement applies if ''a participant otherwise unduly influenced the minor to engage in prohibited sexual conduct.'' The Commentary to both guidelines states that in determining whether the undue influence enhancement applies, ''the court should closely consider the facts of the case to determine whether a participant's influence over the minor compromised the voluntariness of the minor's behavior.'' The Commentary also provides for a rebuttable presumption of undue influence ''[i]n a case in which a participant is at least 10 years older than the minor.''

In both guidelines, the term ''minor'' is defined to include ''an individual, whether fictitious or not, who a law enforcement officer represented to a participant * * * could be provided for the purposes of engaging in sexually explicit conduct'' or ''an undercover law enforcement officer who represented to a participant that the officer had not attained'' the age of majority.

Three circuits have expressed different views on two issues: first, whether the undue influence enhancement can apply in a case involving attempted sexual conduct; and second, whether the undue influence enhancement can apply in a case in which the only minor involved is a law enforcement officer. *Compare United States* v. *Root,* 296 F.3d 1222, 1234 (11th Cir. 2002) (holding that the undue influence enhancement in § 2A3.2 can apply in instances of attempted sexual conduct, including a case in which the only ''victim'' involved in the case is an undercover law enforcement officer), *and United States* v. *Vance,* 494 F.3d 985, 996 (11th Cir. 2007) (holding that the undue influence enhancement in § 2G1.3 can apply in a case in which the minor is fictitious), *with United States* v. *Mitchell,* 353 F.3d 552, 554, 557 (7th Cir. 2003) (holding that the undue influence enhancement in § 2A3.2 ''cannot apply in the case of an attempt where the victim is an undercover police officer'', and suggesting that it cannot apply in any case in which ''the offender and victim have not engaged in illicit sexual conduct''), *and United States* v. *Chriswell,* 401 F.3d 459, 469 (6th Cir. 2005) (holding that the undue influence enhancement in § 2A3.2 ''is not applicable in cases where the victim is an undercover agent representing himself to be a child under the age of sixteen'' but leaving open the possibility that it can apply in other instances of attempted sexual conduct).

The amendment resolves the first issue by providing that the undue

influence enhancement can apply in a case involving attempted sexual conduct. Specifically, the amendment amends the Commentary in §§ 2A3.2 and 2G1.3 to provide that ''[t]he voluntariness of the minor's behavior may be compromised without prohibited sexual conduct occurring.''

The amendment resolves the second issue by providing in the Commentary to §§ 2A3.2 and 2G1.3 that the undue influence enhancement does not apply in a case in which the only ''minor'' involved in the offense is an undercover law enforcement officer. The Commission determined that the undue influence enhancement should not apply in a case involving only an undercover law enforcement officer because, unlike other enhancements in the sex offense guidelines, the undue influence enhancement is properly focused on the effect of the defendant's actions on the minor's behavior.

The amendment also makes a stylistic change to the language in the Commentary of both §§ 2A3.2 and 2G1.3, and makes a technical change to the Background of § 2A3.2.

8. *Amendment:* Section 2B1.1(b)(6) is amended by striking ''or'' after ''damage to,''; and by inserting ''or trafficking in,'' after ''destruction of,''.

The Commentary to § 2B1.1 captioned ''Background'' is amended in the paragraph that begins ''Subsection (b)(6)'' by inserting ''and the directive to the Commission in section 3 of Public Law 110–384'' after ''105–101''.

Section 2G2.1(b)(6) is amended by inserting ''or for the purpose of transmitting such material live'' after ''explicit material''.

The Commentary to § 2G2.1 captioned ''Application Notes'' is amended in Note 1 in the paragraph that begins '''Distribution' means'' by inserting ''transmission,'' after ''production,''; and by inserting after the paragraph that begins '''Interactive computer service''' the following:

'' 'Material' includes a visual depiction, as defined in 18 U.S.C. 2256.''.

The Commentary to § 2G2.1 captioned ''Application Notes'' is amended in Note 4 by inserting ''or for the purpose of transmitting such material live'' after ''explicit material'' each place it appears; and in subdivision (B) by striking ''purpose'' after ''for such'' and inserting ''purposes''.

Section 2G2.2(a)(1) is amended by striking ''or'' after ''2252(a)(4),''; and by inserting '', or § 2252A(a)(7)'' after ''2252A(a)(5)''.

Section 2G2.2(b)(6) is amended by inserting ''or for accessing with intent to view the material,'' after ''material,''.

Section 2G2.2(c)(1) is amended by inserting ''or for the purpose of transmitting a live visual depiction of such conduct'' after ''such conduct''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 1 in the paragraph that begins '''Distribution' means'' by inserting ''transmission,'' after ''production,''; by inserting after the paragraph that begins '' 'Interactive computer service' '' the following:

'' 'Material' includes a visual depiction, as defined in 18 U.S.C. 2256.''; and

in the paragraph that begins '' 'Sexual abuse or exploitation' '' by inserting ''accessing with intent to view,'' after ''possession,''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 2 by inserting ''access with intent to view,'' after ''possess,''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 4(B)(ii) by striking ''recording'' and inserting ''visual depiction'' each place it appears.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 5(A) by inserting ''or for the purpose of transmitting live any visual depiction of such conduct'' after ''such conduct''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended by redesignating Note 6 as Note 7; and by inserting after Note 5 the following:

''6. *Cases Involving Adapted or Modified Depictions.*—If the offense involved material that is an adapted or modified depiction of an identifiable minor (*e.g.,* a case in which the defendant is convicted under 18 U.S.C. 2252A(a)(7)), the term 'material involving the sexual exploitation of a minor' includes such material.''.

Chapter Two, Part H, Subpart 4 is amended in the heading by striking ''AND'' after ''SERVITUDE,''; and by adding at the end '', AND CHILD SOLDIERS''.

Section 2H4.1 is amended in the heading by striking ''and'' after ''Servitude,''; and by adding at the end '', and Child Soldiers''.

The Commentary to § 2H4.1 captioned ''Statutory Provisions'' is amended by inserting '', 2442'' before the period at the end.

The Commentary to § 2H4.1 captioned ''Application Notes'' is amended in Note 1 by adding at the end the following:

'' 'Peonage or involuntary servitude' includes forced labor, slavery, and recruitment or use of a child soldier.''.

Chapter Two, Part N is amended in the heading by inserting ''CONSUMER PRODUCTS,'' after ''PRODUCTS,''.

Chapter Two, Part N, Subpart 2 is amended in the heading by striking ''AND'' after ''DRUGS,''; and by adding at the end '', AND CONSUMER PRODUCTS''.

Section 2N2.1 is amended in the heading by striking ''or'' after ''Cosmetic,''; and by adding at the end '', or Consumer Product''.

Section 5B1.3(a) is amended in subdivision (2) by striking ''(B) give notice'' and all that follows through ''or area,'' and inserting ''(B) work in community service, or (C) both, unless the court has imposed a fine, or''; and by striking the paragraph that begins ''*Note:* Section 3563(a)(2)''.

Section 5B1.3(e)(1) is amended by adding at the end ''*See* § 5F1.1 (Community Confinement).''.

Section 5B1.3(e)(6) is amended by adding at the end ''*See* § 5F1.8 (Intermittent Confinement).''.

Section 5C1.1(c)(2) is amended by striking the asterisk after ''confinement''.

Section 5C1.1(d)(2) is amended by striking the asterisk after ''confinement''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in Note 3(C) in the first sentence by striking the asterisk after ''confinement''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in Note 4(B) in the first sentence by striking the asterisk after ''confinement''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in Note 6 by striking the asterisk after ''confinement''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended by striking the paragraph that begins ''*Note:'' and the paragraph that begins ''However,''.

Section 5D1.3(e)(1) is amended by striking the asterisk after *''Confinement'';* and by striking the paragraph that begins ''*Note: Section 3583(d)'' and the paragraph that begins ''However,''.

Section 5D1.3(e) is amended by adding at the end the following:

''(6) *Intermittent Confinement*

Intermittent confinement (custody for intervals of time) may be ordered as a condition of supervised release during the first year of supervised release, but only for a violation of a condition of supervised release in accordance with 18 U.S.C. 3583(e)(2) and only when facilities are available. *See* § 5F1.8 (Intermittent Confinement).''.

Section 5F1.1 is amended by striking the asterisk after ''release.''; and by striking the paragraph that begins

''*Note: Section 3583(d)'' and the paragraph that begins ''However,''.

Chapter Five, Part F is amended by adding at the end the following guideline and accompanying commentary:

''§ 5F1.8. *Intermittent Confinement*

Intermittent confinement may be imposed as a condition of probation during the first year of probation. *See* 18 U.S.C. 3563(b)(10). It may be imposed as a condition of supervised release during the first year of supervised release, but only for a violation of a condition of supervised release in accordance with 18 U.S.C. 3583(e)(2) and only when facilities are available. *See* 18 U.S.C. 3583(d).

*Commentary*

*Application Note:*

1. 'Intermittent confinement' means remaining in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense, during the first year of the term of probation or supervised release. *See* 18 U.S.C. 3563(b)(10).''.

Chapter Seven, Part A, Subpart 2(b) is amended in the paragraph that begins ''With the exception'' by striking ''With the exception'' and all that follows through ''sentence of probation.'' and inserting ''The conditions of supervised release authorized by statute are the same as those for a sentence of probation, except for intermittent confinement. (Intermittent confinement is available for a sentence of probation, but is available as a condition of supervised release only for a violation of a condition of supervised release.)''; and by striking the paragraph that begins ''*Note: Section 3583(d)'' and the paragraph that begins ''However,''.

The Commentary to § 7B1.3 captioned ''Application Notes'' is amended by striking Note 5 and inserting the following:

''5. Intermittent confinement is authorized as a condition of probation during the first year of the term of probation. 18 U.S.C. 3563(b)(10). Intermittent confinement is authorized as a condition of supervised release during the first year of supervised release, but only for a violation of a condition of supervised release in accordance with 18 U.S.C. 3583(e)(2) and only when facilities are available. *See* § 5F1.8 (Intermittent Confinement).''.

Section 8D1.3(b) is amended by striking '', (2) notice to victims'' and all that follows through ''or area,'' and inserting ''or (2) community service, unless the court has imposed a fine, or''; and by striking the paragraph that begins ''*Note:''*.

Appendix A (Statutory Index) is amended by inserting before the line referenced to 2 U.S.C. 437g(d) the following:

''2 U.S.C. 192 2J1.1, 2J1.5
2 U.S.C. 390 2J1.1, 2J1.5'';

by inserting after the line referenced to 7 U.S.C. 87b the following:

''7 U.S.C. 87f(e) 2J1.1, 2J1.5'';

by inserting after the line referenced to 8 U.S.C. 1375a(d)(3)(C),(d)(5)(B) the following:

''10 U.S.C. 987(f) 2X5.2'';

by inserting after the line referenced to 12 U.S.C. 631 the following:

''12 U.S.C. 1818(j) 2B1.1
12 U.S.C. 1844(f) 2J1.1, 2J1.5
12 U.S.C. 2273 2J1.1, 2J1.5
12 U.S.C. 3108(b)(6) 2J1.1, 2J1.5
12 U.S.C. 4636b 2B1.1
12 U.S.C. 4641 2J1.1, 2J1.5'';

by inserting after the line referenced to 15 U.S.C. 78ff the following:

''15 U.S.C. 78u(c) 2J1.1, 2J1.5
15 U.S.C. 80a–41(c) 2J1.1, 2J1.5'';

by inserting after the line referenced to 15 U.S.C. 80b–6 the following:

''15 U.S.C. 80b–9(c) 2J1.1, 2J1.5'';

by inserting after the line referenced to 15 U.S.C. 714m(c) the following:

''15 U.S.C. 717m(d) 2J1.1, 2J1.5'';

by inserting after the line referenced to 15 U.S.C. 1176 the following:

''15 U.S.C. 1192 2N2.1
15 U.S.C. 1197(b) 2N2.1
15 U.S.C. 1202(c) 2N2.1
15 U.S.C. 1263 2N2.1'';

by inserting after the line referenced to 15 U.S.C. 1990c the following:

''15 U.S.C. 2068 2N2.1'';

by inserting after the line referenced to 16 U.S.C. 773g the following:

''16 U.S.C. 825f(c) 2J1.1, 2J1.5'';

by inserting after the line referenced to 18 U.S.C. 115(b)(4) the following:

''18 U.S.C. 117 2A6.2'';

in the line referenced to 18 U.S.C. 2280 by inserting ''2A6.1,'' after ''2A4.1,'';
in the line referenced to 18 U.S.C. 2332a by inserting ''2A6.1,'' before ''2K1.4'';
by inserting after the line referenced to 18 U.S.C. 2425 the following:

''18 U.S.C. 2442 2H4.1'';

in the line referenced to 26 U.S.C. 7210 by inserting '', 2J1.5'' after ''2J1.1'';

by striking the line referenced to 33 U.S.C. 506;

in the line referenced to 33 U.S.C. 1227(b) by inserting '', 2J1.5'' after ''2J1.1'';

in the line referenced to 42 U.S.C. 3611(f) by inserting '', 2J1.5'' after ''2J1.1'';

by inserting after the line referenced to 47 U.S.C. 223(b)(1)(A) the following:

''47 U.S.C. 409(m) 2J1.1, 2J1.5'';

in the line referenced to 49 U.S.C. 14909 by inserting '', 2J1.5'' after ''2J1.1'';

in the line referenced to 49 U.S.C. 16104 by inserting '', 2J1.5'' after ''2J1.1'';

and by inserting after the line referenced to 50 U.S.C. 783(c) the following:

''50 U.S.C. App. 527 (e)2X5.2''.

*Reason for Amendment:* This multi-part amendment responds to miscellaneous issues arising from legislation recently enacted and other miscellaneous guideline application issues.

First, the amendment amends Appendix A (Statutory Index) to include offenses created by the Housing and Economic Recovery Act of 2008, Public Law 110–289, and other offenses similar to those offenses, as follows:

(1) The new offense at 12 U.S.C. 4636b is referenced to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). The similar existing offense at 12 U.S.C. 1818(j) is also referenced to § 2B1.1. These offenses are similar to economic crimes and are best accounted for by § 2B1.1.

(2) The new offense at 12 U.S.C. 4641 is referenced to § 2J1.1 (Contempt) and § 2J1.5 (Failure to Appear by Material Witness); similar existing offenses (2 U.S.C. 192, 390; 7 U.S.C. 87f(e); 12 U.S.C. 1844(f), 2273, 3108(b)(6); 15 U.S.C. 78u(c), 80a–41(c), 80b–9(c), 717m(d); 16 U.S.C. 825f(c); 26 U.S.C. 7210; 33 U.S.C. 1227(b); 42 U.S.C. 3611; 47 U.S.C. 409(m); 49 U.S.C. 14909, 16104) are also referenced to § 2J1.1 and § 2J1.5. Contempt offenses can involve a range of conduct. The Commission determined that referencing these offenses to both § 2J1.1 and § 2J1.5 will best account for the range of conduct involved. Another similar offense, 33 U.S.C. 506, is deleted from Appendix A (Statutory Index) because it has been repealed.

Second, the amendment amends Appendix A (Statutory Index) to include offenses upgraded from misdemeanors to felonies by the Consumer Product Safety Improvement Act of 2008, Public Law 110–314. These offenses (15 U.S.C. 1192, 1197(b), 1202(c), 1263, 2068) are referenced to § 2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product). These offenses cover a range of conduct (from paperwork violations

to making or selling a nonconforming product) and a range of mental states (from strict liability to knowing, willful, or intentional misconduct). The Commission determined that these offenses are similar to offenses referenced to § 2N2.1, which has provisions to account for aggravating and mitigating circumstances that may be involved in such offenses. Technical and conforming changes are also made to indicate that § 2N2.1 covers consumer product safety offenses.

Third, the amendment amends Appendix A (Statutory Index) to include an offense created by the Veterans' Benefits Improvement Act of 2008, Public Law 110–389. The new offense, 50 U.S.C. App. § 527(e), is a Class A misdemeanor and, accordingly, is referenced to § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). The amendment also references 10 U.S.C. 987(f), a similar Class A misdemeanor, to § 2X5.2.

Fourth, the amendment amends Appendix A (Statutory Index) to include an offense created by the Violence Against Women and Department of Justice Reauthorization Act of 2005, Public. Law 109–162. The offense, 18 U.S.C. 117, covers domestic assault by a person with two or more prior convictions for domestic assault offenses. It is similar to the offenses referenced to § 2A6.2 (Stalking or Domestic Violence) and, therefore, is referenced to that guideline.

Fifth, the amendment amends Appendix A (Statutory Index) to include an offense created by the Child Soldiers Accountability Act of 2008, Public Law 110–340. The offense, 18 U.S.C. 2442, is referenced to § 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade). The offenses currently indexed to § 2H4.1 include five offenses that relate to illegal use of an individual's labor and have the same statutory maximum term of imprisonment as the new child soldiers offense (20 years imprisonment or, if death results, life). Likewise, § 2H4.1 has provisions to account for aggravating and mitigating circumstances that may be involved in a child soldiers offense. Technical and conforming changes are also made to indicate that § 2H4.1 applies to the new offense.

Sixth, the amendment makes changes throughout the *Guidelines Manual* to reflect the amendments made by the Judicial Administration and Technical Amendments Act of 2008, Public Law 110–406, to the probation and supervised release statutes (18 U.S.C. 3563, 3583). The changes include a new guideline for intermittent confinement at § 5F1.8 (Intermittent Confinement) that parallels the statutory language, as well as technical and conforming changes. These changes conform the *Guidelines Manual* to reflect what Congress has provided.

Seventh, the amendment responds to the Let Our Veterans Rest in Peace Act of 2008, Public Law 110–384, which directed the Commission to review and, if appropriate, amend the guidelines to ''provide adequate sentencing enhancements'' for any offense involving ''desecration, theft, or trafficking'' in a veteran's grave marker. There is a specific offense characteristic at subsection (b)(6) of § 2B1.1 for damage, destruction, or theft of a veteran's grave marker. The amendment amends this specific offense characteristic so that it also covers trafficking in a veteran's grave marker.

Eighth, the amendment makes changes in the child pornography guidelines, § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) and § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor), so that they reflect the amendments made to the child pornography statutes (18 U.S.C. 2251 *et seq.*) by the Effective Child Pornography Prosecution Act of 2007, Public Law 110–358, and the PROTECT Our Children Act of 2008, Public Law 110–401. The changes relate primarily to cases in which child pornography is transmitted over the Internet. Under the amendment, where the guidelines refer to the purpose of producing a visual depiction, they will also refer to the purpose of transmitting a live visual depiction; where the guidelines refer to possessing material, they will also refer to accessing with intent to view the material. The amendment also amends the child pornography guidelines so that the term ''distribution'' includes ''transmission'', and the term ''material'' includes any visual depiction, as now defined by 18 U.S.C. 2256 (*i.e.,* to include data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format). These changes conform the child pornography guidelines to reflect what Congress has provided.

Ninth, the amendment amends Appendix A (Statutory Index) so that the threat guideline, § 2A6.1 (Threatening or Harassing Communications; Hoaxes; False Liens), is included on the list of guidelines to which 18 U.S.C. 2280 and 2332a are referenced. A person may be charged and convicted of committing such an offense by threat. In such a case, § 2A6.1 may be the most appropriate guideline.

Tenth, the amendment addresses subsection (a)(7) of 18 U.S.C. 2252A, a new child pornography offense created by the PROTECT Our Children Act of 2008, Public Law 110–401. The offense makes it unlawful to knowingly produce with intent to distribute, or to knowingly distribute, ''child pornography that is an adapted or modified depiction of an identifiable minor.'' A violator is subject to a maximum term of imprisonment of 15 years. This offense is already referenced in Appendix A (Statutory Index) to the child pornography distribution guideline, § 2G2.2, by virtue of the fact that all offenses under section 2252A(a) are referenced to that guideline. The Commission determined that the distribution guideline is the appropriate guideline for this offense because distribution is a required element of this offense, in that the offender must either distribute the material or produce it with intent to distribute. The distribution guideline also has provisions to account for aggravating and mitigating circumstances that may be involved in these offenses. The amendment provides a base offense level of 18 for this offense, which is four levels lower than the base offense level for other child pornography distribution offenses referenced to § 2G2.2. The Commission determined that the lower base offense level was appropriate for this offense because, unlike for other child pornography distribution offenses, the process of creating the image does not involve the sexual exploitation of a child, and Congress provided a lower penalty structure for this offense (a maximum term of imprisonment of 15 years, and no mandatory minimum term of imprisonment) than for other child pornography distribution offenses (typically, a maximum term of imprisonment of 20 years and a mandatory minimum of 5 years). The lower base offense level also accounts for the fact that the enhancements at subsections (b)(3) (for distribution) and (b)(6) (for use of a computer) will likely apply in these cases. Finally, to ensure that § 2G2.2 treats material involving an adapted or modified image in the same

manner as it treats material involving any other form of child pornography, the amendment provides a new Application Note to § 2G2.2 to clarify that, if the offense involved material that is an adapted or modified depiction of an identifiable minor, the term ''material involving the sexual exploitation of a minor'' includes such material.

9. *Amendment:* The Commentary to § 3C1.3 captioned ''Application Note'' is amended in Note 1 by striking ''as adjusted'' and inserting ''including, as in any other case in which a Chapter Three adjustment applies (*see* § 1B1.1 (Application Instructions)), the adjustment provided''; and by adding at the end ''Similarly, if the applicable adjusted guideline range is 30–37 months and the court determines a 'total punishment' of 30 months is appropriate, a sentence of 24 months for the underlying offense plus 6 months under 18 U.S.C. 3147 would satisfy this requirement.''.

*Reason for Amendment:* This amendment clarifies Application Note 1 in § 3C1.3 (Commission of Offense While on Release). Section 3C1.3 (formerly § 2J1.7, *see* Appendix C to the *Guidelines Manual,* Amendment 684) provides a three-level adjustment if the defendant is subject to the statutory enhancement at 18 U.S.C. 3147—that is, if the defendant has committed the underlying offense while on release. Application Note 1 to § 3C1.3 states that, in order to comply with the statute's requirement that a consecutive sentence be imposed, the sentencing court must ''divide the sentence on the judgment form between the sentence attributable to the underlying offense and the sentence attributable to the enhancement.''

The Second and Seventh Circuits have held that, according to the terms of Application Note 2 to § 2J1.7 (now Application Note 1 to § 3C1.3), a sentencing court cannot apportion to the underlying offense more than the maximum of the guideline range absent the three-level adjustment. *See United States* v. *Confredo,* 528 F.3d 143 (2d Cir. 2008); *United States* v. *Stevens,* 66 F.3d 431 (2d Cir. 1995); *United States* v. *Wilson,* 966 F.2d 243 (7th Cir. 1992).

The amendment clarifies that the court determines the applicable guideline range for a defendant who committed an offense while on release and is subject to the enhancement at 18 U.S.C. 3147 as in any other case. Therefore, under ordinary guideline application principles, only one guideline range applies to such a defendant. *See* § 1B1.1 (Application Instructions) (instructing the sentencing court to, in this order: (1) Determine the offense guideline applicable to the offense of conviction (the underlying offense); (2) determine the base offense level and specific offense characteristics, and follow other instructions in Chapter Two; (3) apply adjustments from Chapter Three; and, ultimately, (4) ''[d]etermine the guideline range in Part A of Chapter Five that corresponds to the offense level and criminal history category determined above''). At that point, the court determines an appropriate ''total punishment'' using that applicable guideline range, and then divides the total sentence between the underlying offense and the section 3147 enhancement as the court considers appropriate.

10. *Amendment:* Section 2B5.3(b)(5) is amended by inserting ''death or'' after ''risk of''; and by striking ''13'' and inserting ''14'' each place it appears.

*Reason for Amendment:* This amendment responds to the Prioritizing Resources and Organization for Intellectual Property Act of 2008, Public Law 110–403, which added two sentencing enhancements to violations of 18 U.S.C. 2320 (Trafficking in counterfeit goods or services). Under those sentencing enhancements, if the offender causes or attempts to cause serious bodily injury, the statutory maximum term of imprisonment is increased from 10 years to 20 years; if the offender causes or attempts to cause death, the statutory maximum is increased to any term of years (or to life).

The amendment amends § 2B5.3 (Criminal Infringement of Copyright or Trademark) at subsection (b)(5) to clarify that the enhancement in that subsection, which applies when the offense involved the risk of serious bodily injury, also applies when the offense involved the risk of death. This brings the language of that enhancement back into parallel with the corresponding enhancement in subsection (b)(13) of § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). The Commission envisioned, when it added the enhancement to § 2B5.3, that paralleling the fraud guideline would promote proportionality. *See* Appendix C to the *Guidelines Manual,* Amendment 590 (''The Commission determined that this kind of aggravating conduct in connection with infringement cases should be treated under the guidelines in the same way it is treated in connection with fraud cases; therefore, this enhancement is consistent with an identical provision in the fraud guideline.''). Accordingly, the amendment also increases the minimum offense level in § 2B5.3(b)(5) from level 13 to level 14, bringing it back into parallel with the minimum offense level in § 2B1.1(b)(13).

11. *Amendment:* The Commentary to § 1B1.8 captioned ''Application Notes'' is amended in Note 3 by striking ''(e)(6) (Inadmissibility of Pleas,'' and inserting ''(f) (Admissibility or Inadmissibility of a Plea,''.

The Commentary to § 2G2.1 captioned ''Statutory Provisions'' is amended by inserting ''(a)–(c), 2251(d)(1)(B)'' after ''2251''.

The Commentary to § 2G2.2 captioned ''Statutory Provisions'' is amended by inserting ''(a)–(b)'' after ''2252A''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 1 in the paragraph that begins '' 'Sexual abuse'' by inserting ''(a)–(c), § 2251(d)(1)(B)'' after ''2251''.

The Commentary to § 2G2.3 captioned ''Background'' is amended by striking ''twenty'' and inserting ''thirty''.

Section 2G3.1(c)(1) is amended by inserting ''Soliciting,'' after ''Shipping,''; and by striking ''Traffic) or § 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), as appropriate.'' and inserting ''Traffic; Possessing Material Involving the Sexual Exploitation of a Minor).''.

The Commentary to § 2J1.1 captioned ''Application Notes'' is amended in Note 3 by striking ''(7)'' and inserting ''(8)''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1 in the paragraph that begins ''Unlawfully possessing a listed'' by striking ''(d)'' and inserting ''(c)''.

The Commentary to § 5C1.2 captioned ''Application Notes'' is amended in Note 8 by striking ''(c)(1), (3)'' and inserting ''(f), (i)''.

The Commentary to § 5D1.2 captioned ''Background'' is amended by striking ''(b)'' and inserting ''(c)''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 2251(a),(b) the following:

''18 U.S.C. 2251(c) 2G2.1'';

in the line referenced to 18 U.S.C. 2251(c)(1)(A) by striking ''(c)'' and inserting ''(d)'';

in the line referenced to 18 U.S.C. 2251(c)(1)(B) by striking ''(c)'' and inserting ''(d)'';

in the line referenced to 18 U.S.C. 2252A by inserting ''(a), (b)'' after ''2252A'';

by inserting before the line referenced to 18 U.S.C. 2252B the following:

''18 U.S.C. 2252A(g) 2G2.6'';

and in the line referenced to 42 U.S.C. 3611(f) by striking ''(f)'' and inserting ''(c)''.

*Reason for Amendment:* This multi-part amendment makes various technical and conforming changes to the guidelines.

The amendment addresses several cases in which the *Guidelines Manual* refers to a guideline, or to a statute or rule, but the reference has become incorrect or obsolete. First, it makes technical changes in § 1B1.8 (Use of Certain Information) to address the fact that provisions that had been contained in subsection (e)(6) of Rule 11 of the Federal Rules of Criminal Procedure are now contained in subsection (f) of that rule. Second, it makes a technical change in § 2J1.1 (Contempt), Application Note 3, to address the fact that the provision that had been contained in subsection (b)(7)(C) of § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States)) is now contained in subsection (b)(8)(C) of that guideline. Third, it makes a technical change in § 4B1.2 (Definitions of Terms Used in Section 4B1.1), Application Note 1, to address the fact that the offense that had been contained in subsection (d)(1) of 21 U.S.C. 841 is now contained in subsection (c)(1) of that section. Fourth, it makes technical changes in § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), Application Note 8, to address the fact that subsections (c)(1) and (c)(3) of Rule 32 of the Federal Rules of Criminal Procedure are now contained in subsections (f) and (i) of that rule. Fifth, it makes a technical change to the Commentary in § 5D1.2 (Term of Supervised Release) to address the fact that the provision that had been contained in subsection (b) of § 5D1.2 is now contained in subsection (c) of that guideline. Sixth, it makes a technical change in Appendix A (Statutory Index) to address the fact that the offense that had been contained in subsection (f) of 42 U.S.C. 3611 is now contained in subsection (c) of that section.

The amendment also resolves certain technical issues that have arisen in the *Guidelines Manual* with respect to child pornography offenses. First, it makes technical changes to the Commentary in § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) to more accurately indicate which offenses under 18 U.S.C. 2251 are referenced to § 2G2.1. Second, it makes technical changes to the Commentary in § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor) to address the fact that offenses under 18 U.S.C. 2252A(g) are now covered by § 2G2.6 (Child Exploitation Enterprises) (*see* Appendix C to the *Guidelines Manual,* Amendment 701), while offenses under section 2252A(a) and (b) continue to be covered by § 2G2.2. Third, it makes a technical change to the Commentary in § 2G2.3 (Selling or Buying of Children for Use in the Production of Pornography) to address the fact that the statutory minimum sentence for a defendant convicted under 18 U.S.C. 2251A is now 30 years imprisonment. Fourth, it makes technical changes in subsection (c)(1) of § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor; Misleading Domain Names) to address the fact that § 2G2.4 no longer exists, having been consolidated into § 2G2.2 effective November 1, 2004 (*see* Appendix C to the *Guidelines Manual,* Amendment 664). Fifth, it makes a technical change in Appendix A (Statutory Index) to address the fact that the offenses that had been contained in subsections (c)(1)(A) and (c)(1)(B) of 18 U.S.C. 2251 are now contained in subsections (d)(1)(A) and (d)(1)(B) of that section. In doing so, it also provides the appropriate reference for the offense that is now contained in subsection (c) of that section. Sixth, it makes a technical change in Appendix A (Statutory Index) to address the fact that offenses under section 2252A(g) are now covered by § 2G2.6, while offenses under section 2252A(a) and (b) continue to be covered by § 2G2.2.

[FR Doc. E9–10737 Filed 5–7–09; 8:45 am]

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Federal Register

Friday,
May 8, 2009

## Part III

# The President

**Notice of May 7, 2009—Continuation of the National Emergency with Respect to the Actions of the Government of Syria**

Federal Register
Vol. 74, No. 88
Friday, May 8, 2009

# Presidential Documents

**Title 3—**

## The President

**Notice of May 7, 2009**

## Continuation of the National Emergency with Respect to the Actions of the Government of Syria

On May 11, 2004, pursuant to his authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108–175, the President issued Executive Order 13338, in which he declared a national emergency with respect to the actions of the Government of Syria. To deal with this national emergency, Executive Order 13338 authorized the blocking of property of certain persons and prohibited the exportation or re-exportation of certain goods to Syria. On April 25, 2006, and February 13, 2008, the President issued Executive Order 13399 and Executive Order 13460, respectively, to take additional steps with respect to this national emergency.

The President took these actions to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining U.S. and international efforts with respect to the stabilization and reconstruction of Iraq.

Because the actions and policies of the Government of Syria continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on May 11, 2004, and the measures adopted on that date, on April 25, 2006, in Executive Order 13399, and on February 13, 2008, in Executive Order 13460, to deal with that emergency must continue in effect beyond May 11, 2009. Therefore, in accordance with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency declared with respect to certain actions of the Government of Syria.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
*May 7, 2009.*

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Billing code 3195–W9–P

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